GRADE A MILK LAW OF 2001

Act 266 of 2001

AN ACT to regulate the production, transportation, handling, processing, delivery, and sale of grade A milk and milk products; to define grade A milk and milk products and to establish standards and requirements for grade A milk and milk products; to provide for dairy food safety; to provide for the sampling, sampling analysis, and transportation of milk and milk products; to regulate the labeling, manufacture, distribution, and sale of milk and milk products for the protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of milk and milk products; to provide for enforcement; to provide for licenses and permits and revocation of licenses and permits; to impose certain fees; to require certain security arrangements of milk plants to ensure the prompt payment of producers; to prescribe powers and duties of certain state departments and officers; to provide for uniform standards and uniform inspection; to provide for promulgation of rules; to provide for certain remedies and penalties; and to repeal acts and parts of acts.

History: 2001, Act 266, Eff. Feb. 8, 2002

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The People of the State of Michigan enact:

Article I

288.471 Short title.

Sec. 1.

This act shall be known and may be cited as the "grade A milk law of 2001".

History: 2001, Act 266, Eff. Feb. 8, 2002

288.472 Definitions; A.

Sec. 2.

As used in this act:

(a) "Adulterated" means food or milk to which any of the following apply:

(i) It bears or contains any poisonous or deleterious substance that may render it injurious to health except that, if the substance is not an added substance, the food or milk is not considered adulterated if the quantity of that substance in the food or milk does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subparagraph (v).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subparagraph (v).

(iv) It bears or contains any food additive considered unsafe within the meaning of subparagraph (v) provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed

under subparagraph (v) and the raw agricultural commodity has been subjected to processing the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subparagraph (v) and this subdivision, not be considered unsafe if that residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(v) Any added poisonous or deleterious substance, any food additive, and pesticide chemical in or on a raw agricultural commodity, or any color additive is considered unsafe for the purpose of application of this definition, unless there is in effect a federal regulation or exemption from regulation under the federal act, meat inspection act, poultry product inspection act, or other federal acts, or a rule adopted under this act limiting the quantity of the substance, and the use or intended use of the substance, and the use or intended use of the substance conforms to the terms prescribed by the rule.

(vi) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 512 of the federal act, 21 USC 360b.

(vii) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or it is otherwise unfit for food.

(viii) It has been produced, prepared, packed, or held under insanitary conditions in which it may have become contaminated with filth or in which it may have been rendered diseased, unwholesome, or injurious to health.

(ix) It is the product of a diseased animal or an animal that has died other than by slaughter or that has been fed uncooked garbage or uncooked offal from a slaughterhouse.

(x) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

(xi) A valuable constituent has been in whole or in part omitted or abstracted from the food; a substance has been substituted wholly or in part for the food; damage or inferiority has been concealed in any manner; or a substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(xii) It is confectionery and has partially or completely imbedded in it any nonnutritive object except in the case of any nonnutritive object if, as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; it bears or contains any alcohol other than alcohol not in excess of 1/2 of 1% by volume derived solely from the use of flavoring extracts; or it bears or contains any nonnutritive substance except a nonnutritive substance such as harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of the provisions of this act. For the purpose of avoiding or resolving uncertainty as to the application of this subdivision, the director may issue rules allowing or prohibiting the use of particular nonnutritive substances.

(xiii) It is or bears or contains any color additive that is unsafe within the meaning of subparagraph (v).

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(xiv) It has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption under this act or a regulation or exemption under the federal act.

(xv) It is bottled water that contains a substance at a level higher than allowed under this act.

(b) "Advertise" or "advertisement" means a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or is likely to induce, directly or indirectly, the purchase of milk or milk products.

(c) "Approved laboratory" means a laboratory that is listed in the national conference of interstate milk shipments list of sanitation compliance and enforcement ratings distributed by the United States food and drug administration and as approved by the director.

(d) "Approved sample container" means a presterilized, suitable nontoxic single service container of adequate size that complies with the requirements of standard methods.

(e) "Audited financial statement" means a fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.473 Definitions; B to G.

Sec. 3.

As used in this act:

(a) "Bulk milk hauler/sampler" means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant, receiving station, or transfer station and has in his or her possession a license or permit issued by the department to sample those products.

(b) "Bulk milk pickup tanker" means a vehicle, including truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler/sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(c) "Cash payments", regarding the producer security requirements of this act, means a payment in cash or by check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred.

(d) "Dairy animal" means any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, which is managed and milked to obtain milk for human consumption.

(e) "Dairy farm" means any place or premises where 1 or more dairy animals are kept for milking purposes, and from which a part or all of the milk is provided, sold, or offered for sale.

(f) "Department" means the Michigan department of agriculture.

(g) "Director" means the director of the Michigan department of agriculture or his or her designee.

(h) "Distributor" means a person other than a producer or processor who offers for sale, holds for sale, or sells at wholesale milk or milk products. A distributor's facilities include warehousing, refrigerated storage, and distribution vehicles.

(i) "Farm tank" means the farm bulk milk tank, milk tank truck, or silo used for the storage or cooling, or both, of milk prior to pickup and transport from the farm.

(j) "Federal act" means the federal food, drug, and cosmetic act, 21 USC 301 to 321, 331 to 360dd, 360hh to 376, and 378 to 399.

(k) "First receiving point" means the milk plant where the milk is first received for processing and manufacturing. First receiving point for producer security requirements does not include receiving stations and transfer stations.

(l) "Food law of 2000" means the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(m) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

(i) A motel that serves continental breakfasts only.

(ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(iii) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

(n) "Grade A milk" means milk or milk products produced in substantial compliance with the requirements of this act.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.474 Definitions; I to M.

Sec. 4.

As used in this act:

(a) "Imminent or substantial health hazard" means a determination of the director of either or both of the following:

(i) A condition that exists at a dairy farm or dairy plant requiring immediate action to prevent endangering the public health or safety.

(ii) A milk product may be unwholesome or unsafe.

(b) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article conforming to a requirement imposed under this act that any word, statement, or other information appearing on the label appears on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.

(c) "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers or accompanying the article.

(d) "Manufacturing milk law of 2001" means the manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740.

(e) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of 1 or more healthy cows, goats, sheep, or other dairy animals.

(f) "Milk buyer" means any producer, milk producer marketing organization, milk plant, receiving station, transfer station, or bulk milk hauler that either takes delivery of raw milk or raw milk product or manages the sale of the raw milk or raw milk product, or both.

(g) "Milk plant" or "dairy plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, packaged, or prepared for distribution.

(h) "Milk product" or "dairy product" means cottage cheese, dry curd cottage cheese, reduced fat cottage cheese, lowfat cottage cheese, cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, flavored milk, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Unless a product is considered a milk product under this subdivision, milk product does not include dietary products, infant formula, ice cream or other desserts, cheese, or butter. Milk products include the following:

(i) Those dairy foods made by modifying the federally standardized products described in this section in accordance with 21 CFR 130.10.

(ii) Those milk and milk products that have been aseptically processed and then packaged.

(iii) Those products that have been retort processed after packaging or that have been concentrated, condensed, or dried only if they are used as an ingredient to produce any milk or milk product or if they are grade A national conference of interstate milk shipments listed.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.475 Definitions; M to O.

Sec. 5.

As used in this act:

(a) "Milk tank truck" means both a bulk milk pickup tanker and a milk transport tank.

(b) "Milk tank truck cleaning facility" means any place, premises, or establishment, separate from a milk plant, receiving station, or transfer station where a milk tank truck is cleaned and sanitized.

(c) "Milk tank truck driver" means any person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station.

(d) "Milk transportation company" means the company that is the person responsible for a milk tank truck.

(e) "Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler/sampler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

(f) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(g) "Offering for sale" means selling, offering to sell, holding for sale, preparing for sale, trading, bartering, offering as a gift as an inducement for sale of, and advertising for sale in any media.

(h) "Other security" means a mutually acceptable producer security agreement, acceptable to the director, approved and signed by the milk buyer and all milk sellers selling milk to that milk buyer.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.476 Definitions; P to S.

Sec. 6.

As used in this act:

(a) "Pasteurized milk ordinance" or "PMO" means the Grade "A" Pasteurized Milk Ordinance, 2017 revision, published by the United States Department of Health and Human Services.

(b) "Person" means an individual, partnership, company, limited liability company, cooperative, association, firm, trustee, educational institution, state or local government unit, or corporation.

(c) "Processor" means the owner or operator of a milk plant.

(d) "Producer" means a person that owns or operates a dairy farm and sells or distributes milk produced on that farm including a person that markets milk on behalf of a producer under a marketing agreement.

(e) "Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and is prepared for further transporting.

(f) "Registered name" means either a name that is registered as "doing business as" at the county clerk's office in the county in which the producer or processor resides or that is registered with this state as a legal entity registered to do business within this state under an assumed name. Registered name includes, but is not limited to, incorporations, corporations, limited liability companies, limited liability partnerships, and similar entities.

(g) "Retail" means selling or offering for sale dairy products directly to a consumer.

(h) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment but does not include a food processing plant.

(i) "Sample transfer instrument" means any of the following:

(i) Individually wrapped, sterile, single-service sampling tubes.

(ii) Stainless steel metal dippers, with long handles having capacities of 10 milliliters or greater.

(iii) Sampling devices approved by the director.

(j) "Sanitary standards" means the dairy equipment construction standards or accepted dairy system operating practices formulated by 1 of the following:

(i) 3-A sanitary standards committees representing the International Association for Food Protection, the United States Public Health Service, the United States Department of Agriculture, and the dairy industry committee as approved by the director.

(ii) If sanitary standards are not available for a particular piece of equipment, general sanitary construction standards for dairy equipment formulated by the United States Department of Agriculture or the United States Food and Drug Administration as approved by the director.

(iii) The equipment or practice is approved by bulletin of the director on a case-by-case basis.

(k) "Sell-by date" means the recommended last date of sale.

(l) "Single service containers and closures" means single use containers or parts of single use containers that become milk product contact surfaces when used for the storage, shipping, or marketing of milk or milk products.

(m) "Standard methods" means the seventeenth edition of "Standard Methods for the Examination of Dairy Products", published by the American Public Health Association, incorporated by reference.

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History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008 ;-- Am. 2016, Act 259, Eff. Sept. 26, 2016 ;-- Am. 2018, Act 623, Eff. Mar. 28, 2019

288.477 Definitions; T to W.

Sec. 7.

As used in this act:

(a) "Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from 1 milk tank truck to another.

(b) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by an authorized representative of the milk plant, attesting that the financial statement is correct.

(c) "Wholesale" means selling or offering to sell dairy products to retailers, jobbers, or distributors rather than directly to a consumer.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

Article II

288.490 Administration of act and promulgation of rules; adoption and incorporation by reference of pasteurized milk ordinance; "regulatory agency" amended; water for milk operations and purposes.

Sec. 20.

(1) The department shall administer this act and may promulgate rules for its implementation and enforcement and adopt revisions of references cited in this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except as otherwise specifically defined or described in this act, the pasteurized milk ordinance is adopted and incorporated by reference. Where the words "regulatory agency" are used in these ordinances, they are amended to read the "Michigan department of agriculture" and where "the ____ of ____" are used in these ordinances, they are amended to read "the state of Michigan".

(2) Water for the milkhouse and milking operations and for milk plant purposes shall be from a supply properly located and protected and shall be easily accessible, adequate, and of a safe sanitary quality. Recommendations shall be made to the department by the department of environmental quality according to the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.491 Imposition of different standards or requirements prohibited; out-of-state produced milk or milk products.

Sec. 21.

(1) A political subdivision of the state shall not impose any different standards or requirements for grade A milk and grade A milk products other than those provided for in this act and shall not prohibit the sale of grade A milk and grade A milk products if produced and processed as grade A milk under supervision of the department. The director shall furnish copies of its inspection reports on any dairy farm producing grade A milk to a purchaser of grade A milk from that farm upon written request.

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(2) A sanitary standard or similar requirement issued under this act shall not prohibit the sale of grade A milk or grade A milk products that are produced or processed under laws or rules of a governmental unit, outside the state, that are substantially equivalent to the requirements of the rules promulgated under this act and which are enforced with equal effectiveness, as determined by the director, if the governmental unit accepts Michigan grade A milk and milk products certified by a Michigan sanitation rating officer.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.492 Inspecting, sampling, and investigating conditions; authority of director to enter premises or vehicles.

Sec. 22.

The director, after proper identification, is authorized and has the power to enter all dairy farms, milk plants, single service manufacturing facilities, milk tank truck cleaning facilities, receiving stations, transfer stations, distribution facilities, vehicles used to transport milk and milk products, and single service manufacturers under its jurisdiction for the purpose of inspecting, sampling, and investigating conditions relating to the enforcement of this act.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.493 Seizure; procedures.

Sec. 23.

The director may seize or hold for investigation any milk, milk product, or equipment that the director has reason to believe is adulterated, constitutes or may be contributing to an imminent health hazard, or violates this act. Such milk, milk products, or equipment shall not be disposed of until a release is secured from the director. The director shall complete his or her action on any such seized item within a reasonable time, and the farm, plant, or station shall be promptly notified of the director's decision. The director may collect and retain evidence to verify the determination of an imminent health hazard.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.494 Declaration of imminent health hazard; findings; prohibited conduct; dairy animals classified as tuberculosis reactors.

Sec. 24.

(1) Whenever the director finds in any dairy farm, dairy plant, receiving station, transfer station, or vehicle any milk, milk product, or other product that contains any unwholesome substance or that may be poisonous or deleterious to health or otherwise unsafe, such milk, milk product, or other product shall be declared by the director as an imminent health hazard. The director shall condemn, destroy, or in any other manner render the same unsalable as human food.

(2) A person shall not remove a condemnation or seizure tag attached to any container of condemned milk or milk product and shall not transfer condemned milk to another container and sell or offer for sale the condemned milk for human consumption.

(3) Any dairy animals that are officially classified as tuberculosis reactors as defined in title 9 of the code of federal regulations and the bovine tuberculosis eradication: uniform methods

and rules, effective January 22, 1999, approved by veterinary services of the animal plant health inspection service of the United States department of agriculture, and all amendments to those publications thereafter adopted pursuant to rules that the director may promulgate, shall be milked last or in separate equipment and the milk from these dairy animals shall not be used or sold for human or animal consumption.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.495 Repeal of MCL 288.21 to 288.29a and R 285.408.1 to R 285.408.5.

Sec. 25.

(1) The fluid milk act of 1965, 1965 PA 233, MCL 288.21 to 288.29a, is repealed effective 30 days after enactment of this act.

(2) R 285.408.1 to R 285.408.5 of the Michigan administrative code are repealed effective 30 days after enactment of this act.

History: 2001, Act 266, Eff. Feb. 8, 2002

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Article III

288.500 Licensing required; prohibited conduct; compliance with act; temporary license or permit; state agencies operating dairy facilities; applicant for initial grade A dairy farm permit; examination of books, records, and accounts; applicants for permits or licenses; milk products manufactured at retail food establishments.

Sec. 30.

(1) A person shall not do any of the following without being licensed under this act:

(a) Produce grade A milk to be offered for sale.

(b) Collect grade A milk samples for regulatory purposes.

(c) Operate a milk transportation company that owns or operates a bulk milk tank truck.

(d) Process, label, distribute, or sell grade A milk or grade A milk products, except that a person operating a retail food establishment is exempt from licensure under this act if he or she complies with subsection (8) and is licensed under the food law of 2000. This subdivision does not prevent the sale, at wholesale or retail at a retail food establishment licensed under the food law of 2000, of milk or milk products that are packaged in final consumer packages at a facility licensed under this act.

(e) Wash milk tank trucks.

(f) Manufacture single service containers or closures to be used for grade A milk products, except that the manufacture of single service containers and closures for grade A dry milk products are exempt from this section.

(2) A person licensed under the manufacturing milk law of 2001 or this act and engaged in activities regulated under this act shall comply with the requirements of this act, where applicable, and is subject to the penalties set forth in this act, where applicable.

(3) The director may issue a temporary license or permit for activities regulated by this act.

(4) State agencies operating dairy facilities under a memorandum of understanding with the department are not required to be licensed or permitted or to provide producer security under this act but are required to otherwise be in compliance with this act.

(5) An applicant for an initial grade A dairy farm permit shall complete education, acceptable to the director, on drug residue avoidance control measures, as identified in the pasteurized milk ordinance, prior to receiving the permit.

(6) The director shall examine the books, records, and accounts of a milk plant if the milk plant has not responded to requests from the director pursuant to section 31 or article IV. All examinations of books, records, and accounts required under this subsection shall be made within this state.

(7) All applicants for a permit or license must complete an application provided by the department and meet the minimum requirements of this act, the pasteurized milk ordinance, and rules promulgated under this act.

(8) Milk products manufactured at retail food establishments licensed under the food law of 2000 are exempt from this act if both of the following conditions are met:

(a) All ingredients contained in these products comply with the requirements of the food law of 2000.

(b) The milk products manufactured are not sold wholesale or to another business entity.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.501 Milk plant license; application; form; renewal; fees; deposit; new construction, remodeling, and equipment changes; late fee; total fees.

Sec. 31.

(1) An applicant for an initial license as a milk plant shall apply to the department on a form supplied by the department and provide a statement containing the following:

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the milk plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The anticipated value of greatest milk receipts the milk plant expects to receive during a consecutive 30-day period within the licensing period.

(d) A list of producers, including names, mailing addresses, and department producer permit number, with whom the milk plant intends to do business except that not later than 90 days after becoming licensed for the first time, the milk plant shall send an updated list to the department.

(e) The name of the financial institution through which milk checks are to be issued to producers.

(f) The annual volume of raw milk the milk plant anticipates receiving.

(2) A milk plant shall annually renew a license issued under this act by applying to the department at least 30 days prior to the expiration of the existing license. The anniversary date of a license for a milk plant that is providing a financial statement as a security device is 130 days after the close of the licensee's fiscal year. The milk plant shall apply for renewal of a license on a form supplied by the department and provide a statement containing the following:

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the milk plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The greater of either the value of greatest milk receipts that the milk plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the milk plant is anticipated to receive during a consecutive 30-day period within the licensing period.

(d) A complete list of producers, including names, mailing addresses, and department producers permit number, with whom the milk plant is doing business.

(e) The name of the financial institution through which milk checks are issued to producers.

(f) The annual volume of raw milk each milk plant anticipates receiving. The department may conduct an audit to verify the accuracy of the annual volume of raw milk receipts reported and may reassess the license fee accordingly. In the alternative, the department may utilize an audit conducted by the United States department of agriculture or any other audit acceptable to the director.

(3) License renewal for a milk plant shall take place on June 30 of each year unless otherwise specified in this act. A milk plant licensed under this act shall pay an annual license or permit fee as follows:

(a) Milk plant with less than 20,000,000 pounds of anticipated raw milk receipts per year, at a rate of $400.00 per year.

(b) Milk plant with greater than or equal to 20,000,000 but less than 100,000,000 pounds of anticipated raw milk receipts per year, at a rate of $800.00 per year.

(c) Milk plant with greater than or equal to 100,000,000 pounds of anticipated raw milk receipts per year, at a rate of $1,600.00 per year.

(4) Any fees, assessments, civil or administrative fines, and money from any other source collected by the department under this act shall be deposited into the dairy and food safety fund created in section 4117 of the food law of 2000, MCL 289.4117.

(5) A milk plant operator shall submit detailed plans to the department for approval before commencing new construction, remodeling, and equipment changes. Plans for new construction or remodeling shall include a plan that provides for operational or physical isolation of the milk plant from sources of potential product contamination caused by animal production facilities located in close proximity to the milk plant. Retail or public viewing areas shall be separated from processing areas by a solid floor-to-ceiling partition, except that, as approved by the director, other equally effective means of protection may be used.

(6) The department may impose a late fee of $10.00 for a renewal application for each business day the application is late. The total late fee shall not exceed $100.00. The department shall not issue or renew a license until any fees and fines have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this subsection except as allowed under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may charge a convenience fee and collect from the applicants any additional costs associated with the method of fee payment for the license or permit fees described in this section and sections 32 and 33, not to exceed the costs to the department.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008 ;-- Am. 2010, Act 41, Imd. Eff. Mar. 31, 2010

288.502 Certified industry farm inspectors; license fee; requirements.

Sec. 32.

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(1) Each certified industry farm inspector shall pay a 3-year license fee of $150.00 for a license to conduct certified farm inspections. License renewal shall take place on the completion date of the 3-year certification.

(2) Certified industry farm inspectors must comply with the requirements for certified inspectors listed in the pasteurized milk ordinance and, in addition, shall conduct both of the following:

(a) A farm inspection of all producers having the first routine count exceeding legal standards for bacteria or somatic cells, or both.

(b) One routine inspection per year of all producers, with a copy of each required inspection forwarded to the local area dairy inspector.

(3) Certified industry farm inspectors may perform official inspections, only with authorization by the director.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2010, Act 41, Imd. Eff. Mar. 31, 2010

288.503 Activities requiring license or permit; fees; license renewals; application for initial grade A dairy farm permit; rates; payment; submission of invoice by milk buyer; assessment of plan review fee; fee for consecutive reinspections.

Sec. 33.

(1) Each receiving station or transfer station must be licensed or permitted either as part of a milk plant or as a stand-alone facility. Each stand-alone facility will be licensed or permitted at a rate of $250.00 per year. License renewal shall take place on June 30 every year.

(2) Each milk tank truck cleaning facility that cleans milk contact surfaces of milk tank trucks used to haul milk or milk products regulated under this act must be licensed or permitted under this act either as part of a milk plant, receiving station, or transfer station or a stand-alone milk tank truck cleaning facility. A licensing or permitting fee shall not be charged under this act for a milk tank truck cleaning facility that is a part of a dairy plant, receiving station, or transfer station licensed or permitted under the manufacturing milk law of 2001. Each stand-alone facility will be licensed or permitted at a rate of $250.00 per year. License renewal shall take place on June 30 every year.

(3) Each milk transportation company must be licensed or permitted under this act at a rate of $50.00 per year. License renewal shall take place on June 30 every year.

(4) Each milk tank truck must be licensed or permitted under this act at a rate of $20.00 per year. License renewal shall take place on June 30 every year.

(5) Each distributor who is primarily engaged in the distribution of finished grade A milk products must be licensed or permitted under this act either as part of a milk plant or as a stand-alone distributor. Each stand-alone distribution facility is licensed at a rate of $100.00 per year. License renewal shall take place on June 30 every year.

(6) Each single service containers and closures manufacturer must be licensed or permitted under this act either as part of a milk plant or as a stand-alone manufacturer. Each stand-alone facility will be licensed at a rate of $250.00 per year. License renewal shall take place on June 30 every year.

(7) A person shall not pick up grade A milk in a farm pickup milk tank from a farm bulk milk tank without a hauler/sampler license issued by the department under this section. Each applicant for a license shall be examined by the director under the provisions of this act to determine his or her qualifications to evaluate milk in a farm bulk milk tank, to accurately measure milk in a farm bulk milk tank, to obtain representative samples of milk from a farm bulk milk tank, to properly handle and deliver the samples, and to pick up milk. The license

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fee is $50.00 for 2 years. An initial license fee may be prorated in 1-year increments at $25.00 per increment. A hauler/sampler licensed or permitted in another state shall apply for a license from the department without examination after submitting satisfactory proof of training and current licensing in another state to the department with the license fee and application, unless this requirement is waived by the director based on reciprocal agreements with individual states. The director may deny license renewal to any bulk milk hauler/sampler if the bulk milk hauler/sampler has not had a satisfactory evaluation of their hauler/sampler methods in the previous 2 years. License renewal shall take place on June 30 every 2 years.

(8) An applicant for an initial grade A dairy farm permit shall apply to the department on a form supplied by the department and pay the annual fee as prescribed by this section.

(9) Each dairy farm producing grade A milk to be offered for sale shall be licensed or permitted annually at either of the following rates:

(a) If the dairy farm does not maintain adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, $70.00.

(b) If the dairy farm maintains adequate industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections, $25.00.

(10) The fee described in subsection (9) shall be paid to the department by June 30 every year.

(11) A milk buyer shall pay the annual license or permit fee on behalf of dairy farms and may submit an invoice to the dairy farms for reimbursement of the fee or may deduct the fee from the dairy farms' milk check. A milk buyer shall complete a form provided by the department that indicates the number of producers for which it is responsible and shall include a list of the producer names, addresses, and department permit numbers. The department may conduct audits to verify fee payments.

(12) The department may assess a plan review fee of $100.00 to a potential dairy licensee or permittee, to be paid prior to an on-site consultation. The plan review fee is not refundable and does not apply toward any future license fees.

(13) The department may assess a $300.00 fee on any licensee or permittee requiring the performance of 2 or more consecutive reinspections for compliance of items found in violation of this act.

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History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2010, Act 41, Imd. Eff. Mar. 31, 2010

288.503a Receipt of completed application; issuance of license within certain time period; "completed application" defined.

Sec. 33a.

(1) The department shall issue an initial or renewal license or permit for regulated activities described in sections 31 and 33, other than a grade A dairy farm, a bulk milk hauler/sampler, or a certified industry farm inspector, not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state.

(2) If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the

application for the license or permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or permit.

(3) If the department fails to issue or deny a license or permit within the time required by this section, the department shall return the license or permit fee and shall reduce the license or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue or deny a license or permit within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, must be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license or permit fee was refunded or discounted under this subsection.

(4) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing or permit fees and fines as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. Under appropriate circumstances, completed application includes the completion of construction or renovation of any facility and the passing of a satisfactory inspection.

History: Add. 2004, Act 277, Imd. Eff. July 23, 2004 ;-- Am. 2008, Act 136, Eff. June 20, 2008 ;-- Am. 2018, Act 301, Imd. Eff. June 29, 2018

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288.504 Temporary license or permit.

Sec. 34.

The director may issue a temporary license or permit for activities regulated by this act if the director determines that issuance of the license or permit will not be detrimental to the protection of the public health, safety, or welfare or will not cause an imminent threat of financial loss to producers.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.505 Special license fees or taxes.

Sec. 35.

A political subdivision of the state shall not levy special license fees or taxes on 1 or more of the persons or businesses described in this article except for taxes or fees that are generally levied on persons or businesses other than milk plants and milk plant operators.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.506 Access to markets for grade A milk and milk products; certificate of free sale; application; fees; "certificate of free sale" defined.

Sec. 36.

(1) To facilitate continued access to markets for grade A milk and milk products, the department may do 1 or both of the following:

(a) At the request of a processor or producer or based upon records voluntarily supplied by a processor or producer, inspect, audit, or certify milk plants where grade A milk or milk products are processed, pasteurized, or aseptically processed in this state.

(b) Issue certificates of free sale under subsection (3).

(2) A processor or producer shall submit an application for a certificate of free sale on a form and in a manner prescribed by the department.

(3) The department shall grant or deny an application for a certificate of free sale within 10 business days after the department receives a completed application under subsection (2) and the application fee under subsection (4). If the department determines that the application meets the requirements of this act, the department shall issue a certificate of free sale. If the department determines that the application does not meet the requirements of this act, the department shall deny the application and send a written notice to the processor or producer stating the reasons for the denial.

(4) If a certificate of free sale is issued under subsection (3), the processor or producer shall pay the department the following fees, as applicable:

(a) An application fee, $60.00.

(b) A duplicate copy of a certificate of free sale, $10.00.

(5) A fee collected under subsection (4) must be deposited in the dairy and food safety fund created in section 4117 of the food law of 2000, MCL 289.4117.

(6) A certificate of free sale issued under this section is valid for 1 year.

(7) As used in this section, "certificate of free sale" means a document that is issued by the department that verifies that the grade A milk or milk product listed is processed, pasteurized, or aseptically processed in this state and is legally sold or distributed in this state and on the open market with the approval of the department.

History: Add. 2022, Act 129, Imd. Eff. June 29, 2022

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Article IV

288.510 Purchasing milk for resale or manufacture into another product; payment; manner; dates; issuance of check; notation.

Sec. 40.

(1) A person purchasing milk for resale or manufacture into another product shall pay the producer in a manner and on dates set by the United States department of agriculture milk market administrator or as mutually agreed upon by the producers, the milk plant, and the department. The department shall revoke or deny a license issued under this act for a violation of this subsection.

(2) A person purchasing milk for resale or manufacture into another product shall not issue a check for payment to the producer unless the name of the person issuing the check is noted on the check.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.511 Security device as condition to issuance and maintenance of license; exemption.

Sec. 41.

(1) The department shall revoke or deny a license for a milk plant if the licensee or applicant fails to provide 1 of the security devices required as a condition to issuance and maintenance of a license. As a condition to issuance and maintenance of a license, a milk plant that is a first receiving point for milk shall provide 1 or more of the security devices described in section 42, 43, or 44.

(2) Milk plants that receive milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant are exempt from the requirements of this section.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.512 Milk plant not providing security device; audited or verified financial statement; requirements.

Sec. 42.

(1) A licensee or applicant for a license as a milk plant not providing a security device under section 43 or 44 shall provide an audited fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles and a quarterly verified financial statement that verifies the licensee's ability to meet the ratio of 1.20:1 for minimum liquidity requirements of current assets to current liabilities.

(2) The audited financial statement, to be filed by the licensee not later than 120 days after the close of the licensee's fiscal year, shall contain a balance sheet, income statement, equity statement, statement of cash flow, notes to the statements, and any other information required by the department. The department may extend the date for filing the audited year end financial statement by up to 30 days only upon the written request of the milk plant or the milk plant's accountant preparing the statement if the request is made not less than 10 days before the deadline for the filing of the statement. The request shall state the reason for the delay.

(3) The verified quarterly financial statement shall be filed within 60 days after the end of the fiscal quarter to which the statement pertains. The verified quarterly financial statement shall include, but not be limited to, a balance sheet, income statement, and any other information required by the department. The department may require a milk plant to file a supplementary or interim financial statement or provide additional information at any time pertaining to the financial statements filed under this subsection or to specific information requests made by the department. In determining whether the milk plant has met the minimum liquidity requirement described in this subsection in an audited or verified financial statement, the department shall exclude all intangible assets and assets the department determines to be of doubtful value and may also exclude nontrade notes; accounts receivable from officers, directors, employees, partners, or stockholders or from members of their families; and notes and accounts receivable from parent organizations, subsidiaries, or affiliates if the department determines them to be of doubtful value.

(4) An applicant for a license that has not been in the business of receiving milk during the preceding 12 months shall only provide a security device other than an audited financial statement for at least the initial 12 months of licensed operation. At the end of the initial 12-month period, the department may allow the milk plant to utilize an audited financial statement as a security device if the statement meets minimum liquidity requirements of this subsection and if the milk plant is otherwise in compliance with this act.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.513 Other forms of security; terms and conditions; value.

Sec. 43.

(1) A licensee or applicant for a license as a milk plant not providing a security device under section 42 or 44 shall provide any of the following forms of security, in a form and subject to terms and conditions considered necessary by the department, for the benefit of producers who may be damaged by a default in payment, the value of which shall be in an amount determined by the department to be the greater of the value of the greatest milk receipts that the milk plant has received within a consecutive 30-day period during that milk plant's most recent fiscal year or the value of the greatest milk receipts that the milk plant is anticipated to receive during a consecutive 30-day period within the licensing period:

(a) A commercial surety bond made payable to the department on a form provided by or acceptable to the department and subject to cancellation only after written notice to the department at least 90 days before cancellation. The commercial surety bond shall be issued by a surety company authorized to do business in this state and conditioned upon the faithful and proper discharge of the duty to pay a producer, when payment is due as provided for in section 40, for milk received by the milk plant.

(b) A certificate of deposit or money market certificate that is issued or endorsed to the department and that cannot be canceled or redeemed, or from which funds cannot be transferred or withdrawn, without the written authorization of the department. The certificate shall be from a financial institution authorized to do business in this state whose deposits are federally insured.

(c) Stocks, bonds, or securities acceptable to the department that are issued or endorsed to the department and readily convertible to cash by the department and subject to redemption or sale only upon written permission of the department.

(d) An irrevocable letter of credit filed as security on a form provided by or acceptable to the department with the department and made payable to the department issued by a financial institution acceptable to the department and licensed to do business in this state. The letter of credit shall provide for automatic renewal unless, at least 90 days before the scheduled renewal date, the issuing financial institution gives written notice received by the department that the letter of credit is not to be renewed. The irrevocable letter of credit shall provide that in the event the financial institution gives timely notice of nonrenewal as set forth in this subdivision, the department is permitted to draw on the letter of credit to cover any potential losses, whether known or unknown at the time of the draw, that have been or may be incurred on behalf of the producers. The money drawn from the letter of credit shall be held in an interest-bearing account by the department. Money in the account in excess of the total dollar amount of the approved claims after an adequate time period to discover and approve or disapprove claims shall be repaid to the bank. The excess money is to be paid to the milk plant if the bank has provided the department with a waiver of payment to the bank and has authorized payment to the dairy plant on a form approved by the department.

(e) Life insurance policies acceptable to the department that are issued or endorsed to the department that prohibit the insurer from making any payment to the policy beneficiaries unless the insurer first pays the equivalent of the cash surrender value to the department and provides that the cash surrender value is paid to the department upon cancellation or surrender of the policy.

(f) Other security acceptable to the department.

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(2) The department may request information from the office of financial and insurance services of the department of consumer and industry services regarding the financial viability of the financial or insurance institution issuing any security device described in subsection (1).

History: 2001, Act 266, Eff. Feb. 8, 2002

288.514 Prepayment.

Sec. 44.

A licensee or applicant for licensure as a milk plant not providing a security device under section 42 or 43 shall provide an agreement in which the milk plant prepays for its milk supply by means of cash payments before or at the time the milk is received at the plant.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.515 Cancellation or modification of security device; milk plant as first receiving point for milk; milk sold in interstate commerce; choice of independent audit or voluntary security modification; cost of audit; payment; failure of milk plant to meet minimum liquidity requirement.

Sec. 45.

(1) A milk plant shall not cancel or modify a security device unless written notice is given to the department by the milk plant at least 90 days before the date of cancellation or modification and approval is given by the department for the cancellation or modification. The milk plant shall send the notice of cancellation or modification to the department by certified mail.

(2) A milk plant that is a first receiving point for milk shall notify the department at least 30 days before receiving milk that will increase the amount due and accrued from the milk plant to an amount greater than the amount represented as a basis for the issuance of the license.

(3) Sections 41 to 46 and 48 do not apply to the sale of milk or milk products in interstate commerce to an out-of-state purchaser not licensed under this act. The protection provided by these sections is available to a producer in another state selling milk products to a licensee in this state.

(4) Except as otherwise provided for in subsection (5), financial and product information filed by a milk plant that is a first receiving point for milk is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Upon receipt of a written request, the department shall provide a producer a copy of the most recent audited financial statement of the milk plant that is a first receiving point for milk of that producer.

(6) A producer may file a written complaint with the department requesting an independent audit regarding the ability of a milk plant that files an audited financial statement as a security device and that is the first receiving point for milk of the producer to meet the minimum liquidity requirement described in section 42. The complaint shall be accompanied by a certified check in the amount of $100.00 and a signed document guaranteeing full payment for the audit if required under subsection (7). Upon receipt of the complaint and check, the department shall notify the milk plant and advise the milk plant of the choice of either having an independent audit conducted or of voluntarily modifying the security device to either of the alternatives provided for in section 43 or 44.

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(7) A milk plant that requests an independent audit under subsection (6) shall bear the cost of that audit if the department determines that the independent audit establishes the milk plant's inability to meet the minimum liquidity requirement described in section 42. The complainant shall bear the cost of the audit if the department determines that the audit establishes that the milk plant meets the minimum liquidity requirement described in section 42.

(8) If the milk plant fails to meet the minimum liquidity requirement described in section 42, the department shall return to the complainant the fee described in subsection (6) and suspend or revoke the milk plant's license in the manner provided for in section 50 or 51. The department may reinstate a suspended license or reissue a revoked license if the milk plant provides the department with a security device described in section 43 or 44. If the department determines that the milk plant meets the minimum liquidity requirement described in section 42, the $100.00 fee shall be forfeited to the milk plant.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.516 Change in security device; circumstances; decision by department to require modification of security device; notice to producers shipping milk.

Sec. 46.

(1) A milk plant may request a change in its security device at any time. The department shall allow the change in the milk plant's security device if all requirements for the new security device have been met and all producers doing business with the licensee have been notified by the department.

(2) The department may require a milk plant to provide a change or increase in a security device if the department has reason to believe, after reviewing relevant financial information, that 1 or more of the following circumstances exist:

(a) The milk plant no longer meets the minimum liquidity requirement of this act.

(b) The milk plant can no longer make payments in the manner provided for in section 40.

(c) The value of the milk plant's security device falls below the requirements due to depreciation in the value of the security, an increase in the maximum liability to producers, or the cancellation or change of the security device as specified in this act.

(3) The department shall send written notice by certified mail to the milk plant stating the reasons for the demand for change or increase in a security device and setting the date for providing the changed or increased security device.

(4) The department shall notify all producers shipping milk to a milk plant of the decision to require the milk plant to modify or change a security device. The notice required under this subsection shall be provided within 5 days after the department's issuance of the order to require another security device.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.517 Breach of secured obligation; filing verified proof of claim or evidence of default; entry of department order requiring creditors to file claims; publication of order; audit by department; order allowing or disallowing each claim; collection of amount from licensee or surety to satisfy claims; action by attorney general; award of interest; other lien, security, or priority.

Sec. 47.

(1) A person injured by the breach of an obligation secured by a security device described in section 42, 43, or 44, including, but not limited to, a producer and a person representing a commodity check-off program, may file with the department a verified proof of claim or other evidence of default. Upon receipt of a verified proof of claim or other evidence of default, the department may issue an order requiring each interested creditor, as may be known to the department, to file a verified proof of claim before a certain date or be barred from participating in any recovery made by the department.

(2) The department shall provide notice of the entry of an order issued under subsection (1) by posting a copy of the order on the premises described in the license and by publication in accordance with the Michigan court rules that govern service of process by publication. Publication shall be completed at least 30 days before the final date for the filing of claims.

(3) The department shall make the necessary audit and issue an order allowing or disallowing each claim presented. Within 30 days of that order, the department shall send to the principal and surety, by certified mail, notice of allowance or disallowance and request for the payment. The department shall demand and may collect and receive from the licensee, or from the surety or sureties of the licensee, the amount determined to be necessary to satisfy the claims with interest at the judgment rate computed from the date of loss. The department may request that the department of attorney general commence an action for that purpose in a court of competent jurisdiction. If the attorney general prevails in whole or in part, the court shall award interest from the date of loss at the judgment rate. Upon receipt of money paid in partial or complete satisfaction of a claim as provided in this section, the department shall distribute to the claimant in accordance with the order allowing the claim, in full or proportionally.

(4) This section does not affect or impair any other lien, security, or priority for the claim or judgment.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.518 License issued, renewed, or modified; notice to producers delivering milk; form.

Sec. 48.

The department shall notify producers delivering milk to a licensed milk plant any time a license is issued, renewed, or modified. The notice sent by the department shall substantially conform to the following:

"Michigan law requires milk plant licensees to demonstrate a reasonable degree of financial responsibility to the Michigan department of agriculture. This act is designed to provide reasonable assurance that producers will be paid for their milk; however, it does not guarantee that producers will be paid. Each producer has some responsibility for determining the credit-worthiness of the milk plant to which the producer is selling milk. A milk plant licensee may qualify for a license by doing 1 of the following:

(a) Filing financial statements audited by a certified public accountant with the department demonstrating that the milk plant meets the minimum liquidity requirement.

(b) Filing security with the department in an amount determined by the department to be the greater of the following:

(1) The value of the greatest milk receipts that the milk plant received within a consecutive 30-day period during that milk plant's most recent fiscal year.

(2) The greatest milk receipts that the milk plant is anticipated to receive during a 30-day period within the licensing period.

(c) _____, (name of milk plant licensee) is currently licensed on the basis of its audited financial statement meeting the minimum liquidity requirement of a current ratio

of at least 1.20 to 1 current assets to current liabilities. The licensee's most recent year-end financial statement audited by the firm of _____ (auditor's name) meets the following minimum liquidity requirement, (or) _____ (name of milk plant licensee) has filed security with the department to secure payment to producers. The maximum amount of security is the amount determined to be the greater of the following:

(1) The value of the greatest milk receipts that the milk plant received within a consecutive 30-day period during that milk plant's most recent fiscal year.

(2) The greatest milk receipts that the milk plant is anticipated to receive within a 30-day period within the licensing period, whichever is greater.

The security filed is in the following form or forms and in the amount of:

_____

_____

_____".

History: 2001, Act 266, Eff. Feb. 8, 2002

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Article V

288.520 Conduct resulting in revocation, suspension, or summary suspension of license or permit; administrative action; notice to each producer; time period for licensee or permittee to regain compliance and reinstatement.

Sec. 50.

(1) The director may revoke or suspend the license or permit of a licensee or permittee issued under this act or impose an administrative fine under section 53 for failure to comply with the requirements of this act, the pasteurized milk ordinance, or a rule promulgated under this act. A license or permit shall be revoked or suspended according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall notify in writing each producer with whom a milk plant does business regarding the pendency of the administrative action not less than 5 days before the date for the formal hearing set under subsection (1).

(3) The director may revoke or suspend a license or permit issued under this act, or impose an administrative fine pursuant to section 53, upon determining that the licensee or permittee has done 1 or more of the following:

(a) Failed to provide supplementary or interim information or information required to be supplied to the department under this act or information requested by the director under article III or IV.

(b) Failed to provide a security device in the amount and manner required by the director under article IV.

(c) Knowingly provided false or fraudulent information or made a material misrepresentation on an application.

(d) Knowingly provided false or fraudulent information or made a material misrepresentation in response to a request for information by the department.

(e) Failed to pay a producer in the manner provided in section 40.

(f) Failed to agitate milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department.

(g) Failed to take the sample for analysis in accordance with the procedures set forth in the pasteurized milk ordinance, standard methods, and this act.

(h) Picked up grade A milk the temperature of which exceeds 45 degrees Fahrenheit (7 degrees Celsius).

(i) Failed to accurately report the weight or temperature of grade A milk picked up from a farm bulk milk tank.

(j) In the case of a milk plant, failed to provide a security device described in article IV.

(k) Adulterated milk or milk products.

(l) Failed to pay a final civil or administrative fine issued under this act.

(m) Violated this act, the pasteurized milk ordinance adopted under this act, or a rule promulgated under this act.

(4) The director may summarily suspend a license or permit issued under this act upon determining that the licensee or permittee has done 1 or more of the following:

(a) Offered for sale or sold milk or milk products from diseased animals, or animals otherwise considered abnormal, that have been incorporated with milk or milk products from normal healthy animals.

(b) Offered for sale or sold milk or milk products suspected of being contaminated with any substance considered by the department to be an imminent or substantial health hazard.

(c) Offered for sale or sold milk or milk products from production, transportation, packaging, or storage facilities that have such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precludes the reasonable protection of the milk or milk products from contamination.

(d) Offered for sale or sold milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues that were left after having gone through a cleaning regimen and that are thick enough that they may be easily scraped to form a body of solids.

(e) Offered for sale or sold milk or milk products stored in a container of unapproved construction.

(f) Received or picked up milk or milk products stored in a container of unapproved construction.

(g) Offered for sale or sold milk or milk products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precludes the reasonable protection of the milk from contamination during the milking process.

(h) Offered for sale or sold milk that was of inadequate volume to properly agitate after the first milking.

(i) Offered for sale or sold milk or milk products produced with excessive sediment.

(j) Interfered with inspection of milk or milk products.

(k) Maintained dead animals on the premises in a manner inconsistent with 1982 PA 239, MCL 287.651 to 287.683.

(l) Maintained a minimum of 3 of the last 5 official bacteria counts illegal.

(m) Maintained a minimum of 3 of the last 5 official somatic cell counts illegal.

(n) Maintained a minimum of 3 of the last 5 official milk or milk product cooling temperatures illegal.

(o) Failed to provide milk or milk products free of violative drug residues based on tests approved by the food and drug administration.

(p) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper or unknown storage temperature.

(q) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper allergen labeling.

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(r) Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that has been condemned under this act.

(s) Offered for sale or sold packaged milk or milk products that present an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the requirements set forth in the PMO.

(t) Any other condition that creates an imminent threat to the public health, safety, or welfare.

(5) When the director suspends a license or permit under subsection (4), the licensee or permittee shall be allowed a minimum of 72 hours to regain compliance and reinstatement of the license or permit prior to scheduling an administrative hearing.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.521 Immediate discontinuation of operation; eligibility for reinstatement; order of summary suspension; effect of order during proceedings.

Sec. 51.

(1) A person whose license or permit has been suspended, revoked, or denied shall immediately discontinue operation of the business for which the license or permit was issued or requested.

(2) A person whose license or permit has been suspended or revoked is not eligible for reinstatement of the license or permit until the director determines that all violations have been corrected.

(3) If the department has provided notice to a licensee or permittee as required by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and subsequently determines that summary suspension of the licensee's or permittee's license or permit is necessary to prevent an imminent threat of financial loss to 1 or more producers with whom the licensee or permittee does business, the director may summarily suspend the licensee's or permittee's license or permit. The director shall incorporate the determination in his or her order of summary suspension. This summary suspension may be ordered effective on the date specified in the order or the date of service upon the licensee, whichever is later, and is effective during the proceedings. The proceedings shall be promptly commenced and determined.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.522 Conduct as misdemeanor; penalty.

Sec. 52.

A person, alone or through an agent, as the agent of any other person, or as the officer or agent of any firm or corporation, who does any of the following is guilty of a misdemeanor punishable by a fine of not less than $250.00 and not more than $2,500.00 or imprisonment for not more than 90 days, or both:

(a) Violates this act, the pasteurized milk ordinance adopted under this act, or a rule promulgated under this act.

(b) Provides false or fraudulent information on an application or in response to a request from the director.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.523 Violation of act by producer; sanctions and administrative fines; procedure.

Sec. 53.

(1) The director shall impose upon a producer who violates this act by selling or offering for sale milk which has been found positive for violative drug residues on a test performed pursuant to the pasteurized milk ordinance, the following sanctions and administrative fines and provide notice and the opportunity for an administrative hearing:

(a) The following in the case of a first violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of $300.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(b) The following in the case of a second violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of $600.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(iii) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and shall retain records of these tests for a minimum of 18 months.

(iv) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and shall retain records of these treatments for a minimum of 18 months.

(c) The following in the case of a third or any additional violative drug residue within a 12-month period:

(i) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(ii) The producer shall pay an administrative fine of $1,200.00 to the department upon the violative shipment, as determined by an approved drug residue test. The milk buyer may pay

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the administrative fine, if a like amount has been deducted from the producer's milk check. If the producer's violative shipment caused the partial or total loss of a load of milk, the producer shall pay directly to the milk buyer an additional administrative fine equal to the lost value of the contaminated load and any costs associated with the disposition of that load. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets its own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load.

(iii) The suspension of the producer's permit for a period not to exceed 60 days after notice and the opportunity for an administrative hearing before the department.

(iv) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and shall retain records of these tests for a minimum of 18 months.

(v) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and must retain records of these treatments for a minimum of 18 months.

(2) The director may accept verification, on forms acceptable to the director, from the violative producer's milk marketing cooperative or purchaser of milk as satisfying the penalty requirements and may verify the information.

(3) The disposal method and location of disposal for violative drug residue milk on the milk tank truck shall be immediately reported to the director, by the party making the disposal, on forms provided by and acceptable to the director.

(4) The director shall investigate the cause of the violative drug residue and shall discuss drug residue avoidance control measures, as outlined in the pasteurized milk ordinance, with the violative producer.

(5) Selling or offering for sale milk which has been found positive for violative drug residues is determined by either of the following criteria:

(a) When milk is picked up from a producer by a milk tank truck and not commingled with milk from other producers, the milk becomes subject to possible drug residue penalties at the point the milk tank truck leaves the farm with the milk.

(b) When milk is picked up from a producer by a milk tank truck and commingled with milk from other producers, it becomes subject to possible drug residue penalties at the point of commingling.

(6) Section 52 applies to a producer who violates this act by selling or offering for sale milk which tests positive for violative drug residues on a test performed pursuant to the pasteurized milk ordinance only under either of the following circumstances:

(a) The producer fails to pay the administrative fine required by subsection (1) in compliance with subsections (8) and (9).

(b) The producer has been fined under subsection (1) within the preceding 12-month period 3 or more times.

(7) After notice and an opportunity for an administrative hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a license or permit issued under this act for any violation of this act or a rule promulgated under this act. Except as otherwise provided for under subsection (1), upon finding that a person violated a provision of this act or rule promulgated under this act, the director may impose an administrative fine of not more than $1,000.00 and the actual costs of the investigation of the violation.

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(8) The administrative fines imposed under subsection (1) or (7) shall be paid to the department within 10 days after notification of the violation and fine or within 10 days after notification of adverse findings following a hearing or appeal, or both. The administrative fines received by the department under subsections (1) and (7) shall be deposited in the dairy and food safety fund.

(9) Failure to pay a load contamination or any other administrative fine imposed under this section within 120 days without making acceptable arrangements for payment of the fine may result in license revocation or permit suspension or court action, following notice and the opportunity for an administrative hearing.

(10) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(11) A decision of the director under this section is subject to judicial review as provided by law.

(12) This section does not require the director to issue an administrative fine or initiate court action for minor violations of this act whenever the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008 ;-- Am. 2010, Act 41, Imd. Eff. Mar. 31, 2010

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288.524 Restraining order.

Sec. 54.

In addition to the remedies otherwise provided in this act, the department may apply to circuit court to grant a temporary or permanent injunction restraining any person from violating this act or any rule promulgated pursuant to this act, irrespective of whether there exists an adequate remedy at law.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.530 Packaged milk products; label requirements; advertisements.

Sec. 60.

(1) Packaged milk products shall be labeled as specified in the pasteurized milk ordinance and in the food law of 2000.

(2) Milk and milk products shall be advertised as specified in the food law of 2000.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

Article VI

288.531 Bulk milk hauler/sampler; requirements for picking up milk; measurement; pickup record; information; copies; responsibility of driver for official samples.

Sec. 61.

(1) A bulk milk hauler/sampler shall not take milk from a farm tank without first determining that the farmer has a valid permit. Milk shall be picked up from only an approved farm tank, constructed to sanitary standards with agitation and cooling except as approved in writing by the director on a case-by-case basis.

(2) A bulk milk hauler/sampler shall pick up only milk that appears to be normal and does not contain off odors or visible foreign material and that has been stored on the farm for no more than 72 hours, except that milk produced under the manufacturing milk law of 2001 may be stored as provided under that act. Goat milk may be stored up to 7 days in a farm tank if properly cooled. Sheep milk may be frozen for storage.

(3) A bulk milk hauler/sampler shall not record or report inaccurately a milk measurement taken in the farm tank. A measurement shall be made with a measuring gauge that is clean and wiped dry with a sanitary towel or by any other measuring method meeting the requirements of section 65(3).

(4) After measuring the milk in the farm tank, the bulk milk hauler/sampler shall promptly, accurately, and legibly record the following information on the pickup record:

(a) The gauge or stick reading.

(b) The converted gauge or stick reading in pounds.

(c) The date and time of pickup.

(d) The milk producer's name and permit number.

(e) The temperature of the milk from an accurate thermometer.

(f) The bulk milk hauler/sampler's permit identification, which is the first and last name, or the hauler/sampler's identification number printed on the license.

(g) The assigned "bulk tank unit" (BTU) number.

(5) A bulk milk hauler/sampler shall provide the original copy of the pickup record to the milk buyer and a duplicate copy, or other record acceptable to the director, to the producer.

(6) A milk tank truck driver engaged in direct farm pickup has direct responsibility for accompanying official samples.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.532 Bulk milk hauler/sampler; duties.

Sec. 62.

(1) During a pickup, a bulk milk hauler/sampler shall take a sanitarily collected representative sample from each farm tank after the tank is agitated for not less than 5 minutes and for not less than 10 minutes for tanks over 1,500 gallons or for such additional time as may be recommended by the tank manufacturer or the director, so as to obtain a representative sample.

(2) A sample dipper shall be rinsed by the bulk milk hauler/sampler at least twice in the milk prior to transferring the sample to the approved sample container.

(3) Sample transfer instruments shall be used by bulk milk hauler/samplers that are of sanitary construction, clean, and sterile, or which are sanitized with approved sanitizers and protected from contamination prior to each use.

(4) A bulk milk hauler/sampler shall take a temperature control sample of the milk at the bulk milk hauler/sampler's first sampling point and shall place it in the refrigerated, insulated transport case with the first official sample.

(5) The bulk milk hauler/sampler shall identify the temperature control sample with the hauler/sampler identification, time, temperature, date, producer permit number, and letters "T.C.".

(6) A bulk milk hauler/sampler shall not sample milk in the farm tank during emptying.

(7) A bulk milk hauler/sampler shall not sample milk in the farm tank with a sample container or any other unapproved transfer instrument or sampling device.

(8) A bulk milk hauler/sampler shall place producer milk samples into approved sample containers only. The sample containers shall be properly protected and handled to prevent contamination.

(9) A bulk milk hauler/sampler shall place milk only in sample containers that are legibly marked with the following:

(a) The milk producer's permit number.

(b) The date of pickup.

(c) Temperature.

(10) The bulk milk hauler/sampler shall store the milk samples in an approved manner to protect the samples from contamination inside a refrigerated, insulated transport case that is kept tightly covered until the samples are delivered to the transfer point, laboratory, or other destination.

(11) The bulk milk hauler/sampler shall maintain milk samples in a temperature range of 32 degrees Fahrenheit (0 degree Celsius) to 40 degrees Fahrenheit (4.4 degrees Celsius).

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.533 Bulk milk hauler/sampler; partial pickups; thermometer; sample transfer instrument and transport case; hose port; compliance with pasteurized milk ordinance.

Sec. 63.

(1) A bulk milk hauler/sampler shall not adulterate milk in the farm tank or the milk tank truck.

(2) There shall be no partial removal of milk from the farm tank by the bulk milk hauler/sampler except that partial pickups may be permitted when the farm tank is equipped with a 7-day recording device complying with the specifications of pasteurized milk ordinance appendix H, or another recording device acceptable to the department, provided that the farm milk tank shall be cleaned and sanitized when empty and shall be emptied at least every 72 hours. In the absence of a temperature recording device, partial pickups may be permitted as long as the farm tank is completely empty, clean, and sanitized before the next milking. In the event of emergency situations or seasonal weight restrictions, partial pickups will be allowed.

(3) A bulk milk hauler/sampler shall carry an accurate, approved dial-type or electronic thermometer with him or her on the route and shall not pickup milk from a farm tank which exceeds the maximum temperature allowed by law.

(4) A bulk milk hauler/sampler shall keep his or her sample transfer instrument and sample transport case clean and in good repair.

(5) A bulk milk hauler/sampler shall use the hose port provided for him or her in the milkhouse for accommodation of the pickup milk hose.

(6) A bulk milk hauler/sampler shall comply with the requirements of appendix B of the pasteurized milk ordinance, incorporated herein by reference.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.534 Milk transport truck; requirements.

Sec. 64.

(1) The milk transportation company shall be responsible for maintaining the tank and milk contact surfaces of a milk tank truck clean and in good repair. Milk or milk products shall not

be placed in such tanks unless the tanks have been properly cleaned and sanitized at a milk plant, receiving station, transfer station, or other licensed milk tank truck cleaning facility.

(2) Suitable facilities for cleaning and milk contact surfaces of the milk tank trucks shall be provided and the washing and sanitizing of the tanks shall be carried out by the receiving milk plant, transfer station, receiving station, or other licensed milk tank truck cleaning facility. The milk transportation company representative or the bulk milk hauler/sampler shall be responsible for cleaning the hose, pump, and valves. After the cleaning and sanitizing operation is completed, a representative of the milk tank truck cleaning facility shall provide a suitable record identifying who washed the milk tank truck, the license or permit identification number of the milk tank truck, the date, and the location of the facility. The milk transportation company representative or the bulk milk hauler/sampler, after inspection of the tank, shall indicate on the record that the tank has been cleaned to that person's satisfaction. A copy of this record shall be kept with the vehicle until it is washed and sanitized again.

(3) A bulk milk hauler/sampler operating a bulk milk pickup tanker may make more than 1 trip daily without cleaning and sanitizing the bulk milk pickup tanker. The bulk milk pickup tanker shall be cleaned and sanitized after the final trip of the day, each day of use.

(4) A milk transport tank shall be cleaned and sanitized each time the tank is emptied.

(5) Milk may be picked up in the milk tank truck on the return trip to the bulk milk hauler/sampler's home if the milk tank truck is cool enough to maintain the milk placed in it at or below the legal storage temperature and if the pickup hose and pump are washed and sanitized at a licensed wash facility or at a cleaning facility approved in writing by the director on a case-by-case basis.

(6) A milk tank truck may be used to haul potable water, or other wholesome liquid food products, if the milk contact surfaces are properly cleaned and sanitized prior to picking up raw milk. Certain pasteurized products, as specified in the pasteurized milk ordinance, must be transported in milk tank trucks dedicated to hauling pasteurized products.

(7) A milk transfer station or receiving station shall keep daily records identifying which farm loads of milk have been commingled in each milk transport tank. These records shall be kept at the transfer station or receiving station for not less than 30 days.

(8) Producer samples shall accompany the milk transport tank holding the largest amount of the farm bulk milk pickup tanker's milk unless the samples are transferred or held for testing at other locations.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.535 Farm tank; requirements.

Sec. 65.

(1) A farm tank on a dairy farm shall be installed so as to remain level at all times.

(2) A farm tank shall have an accurate indicating thermometer stored in the milkhouse which may be either an integral thermometer in the farm tank or an approved thermometer acceptable to the director.

(3) A farm tank shall have a calibrated means of measurement and an accurate and legible volume to weight conversion chart unless the farm tank is mounted on an accurate scale. All measuring devices must be in compliance with the weights and measures act of 1964, 1964 PA 283, MCL 290.601 to 290.634.

(4) A conversion chart shall bear the same serial number as that found on the farm tank and measuring rod.

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(5) The producer is responsible for recalibrating a farm tank that does not have an accurate conversion chart. A recalibration must be in compliance with the weights and measures act of 1964, 1964 PA 283, MCL 290.601 to 290.634. A person shall not adjust, alter, or change a conversion chart unless the change, alteration, or adjustment is made strictly according to the requirements of the weights and measures act of 1964, 1964 PA 283, MCL 290.601 to 290.634.

(6) A farm tank shall not be filled to a capacity that exceeds the calibrated limits as indicated by the conversion chart. If the producer wishes to fill the tank nearer to the top, the tank shall be calibrated to an additional height that still permits proper agitation without spillage.

(7) Milk to be offered for sale shall be cooled and stored in the farm tank equipped with cooling and agitation. Other cooling and storage vessels may be used when approved in writing by the director on a case-by-case basis.

(8) Milk production shall be of sufficient quantity so that it can be properly agitated not later than at the completion of the first milking into the farm tank.

(9) Facilities for effectively sanitizing farm tanks shall be provided by the producer.

(10) Nonelectric farms shall provide battery powered lighting for farm tanks that will adequately illuminate each farm tank opening. Fuels used for milkhouse operations shall not cause odors that may impart off-flavors.

History: 2001, Act 266, Eff. Feb. 8, 2002

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288.536 Care and handling of milk samples; substantial compliance.

Sec. 66.

The care and handling of milk samples by all persons in the chain of possession shall be in substantial compliance with standard methods.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.537 Analysis; responsibilities; methods; acceptance or rejection.

Sec. 67.

(1) Methods of analysis, including butterfat analysis, shall comply with the requirements of sections 6 and 7 of the pasteurized milk ordinance. Analysis required on producer, raw, and finished product samples shall comply with the pasteurized milk ordinance.

(2) The milk buyer of grade A raw milk shall be responsible for making the quality tests on the raw milk, at the producer level, that are required by law unless the director specifies otherwise. It shall be the responsibility of the bulk milk hauler/sampler to collect the samples for analysis. In situations where the producer is not represented by a milk buyer or handler that provides an approved sample analysis and reporting service, it shall be the responsibility of the producer to insure that the proper number of samples are submitted to an approved laboratory for analysis and that the results are reported to the department. In all situations, it is ultimately the producer's responsibility to insure that a minimum of 4 official sample results for the previous 6 months' production are reported to the department. The test results shall be reported to the department as requested.

(3) Methods for determining the sediment content of milk shall be those described in standard methods. Sediment content shall be based on comparison with official United States department of agriculture sediment standards, incorporated by reference.

(4) If the sediment disc is classified as no. 1, no. 2, or no. 3, the producer's milk may be accepted. If the milk contains more sediment than a no. 3, it is considered rejectable.

History: 2001, Act 266, Eff. Feb. 8, 2002

288.538 Pasteurized milk and milk products offered for sale; requirements.

Sec. 68.

(1) Only pasteurized milk and milk products shall be offered for sale or sold, directly or indirectly, to the final consumer or to restaurants, grocery stores, or similar establishments.

(2) All milk and milk products shall be pasteurized according to the requirements of the pasteurized milk ordinance and the time-temperature relationships described in the pasteurized milk ordinance.

(3) All dairy plant by-products used for feeding purposes for farm animals shall be pasteurized or be derived from pasteurized products when specified by the director.

(4) Milk and milk products may be aseptically processed as low-acid foods provided they comply with the following requirements:

(a) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall be processed in a milk processing facility licensed under this act, the manufacturing milk law of 2001, or the food law of 2000.

(b) All processors of acidified milk and milk products packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 114.

(c) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 113.

(d) Hermetically sealed packages shall be handled to maintain product and container integrity.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

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288.539 Sell-by date; requirements.

Sec. 69.

(1) Each processor and manufacturer of milk and milk products sold in this state shall place on each container of milk and milk products a recommended last day of sale by month and date.

(2) The sell-by date shall be expressed by the first 3 letters of the month followed by the numeral designating the appropriate calendar day or by expressing the calendar month numerically followed by a numeral designating the calendar day.

(3) The sell-by date shall appear on that part of the container that is most likely to be displayed, presented, or shown under customary display conditions of sale. However, a cup container may have the sell-by date placed on the bottom.

(4) The sell-by date on the container shall be legible and shall not interfere with the legibility of other information required to be on the product.

(5) Processors and manufacturers of milk and milk products shall register the following information with the department on forms provided by the department:

(a) The assigned sell-by date of each milk and milk product processed and the length of time between production and the sell-by date. Plant records of a testing program conducted shall substantiate this length of time by the processor or manufacturer.

(b) The method of application and location of the sell-by date for each size and style of container.

(c) Changes in the time interval of the sell-by date prior to the effective day of the change.

(6) Milk and milk products shall maintain nutritional levels and shall not have a flavor change before the sell-by date.

(7) The director shall periodically sample and analyze milk and milk products to determine if the flavor has changed by the sell-by date. Milk and milk products obtained for analysis by the director prior to the sell-by date shall be stored at a temperature of 44 degrees Fahrenheit (6.5 degrees Celsius), plus or minus 1 degree Fahrenheit (0.5 degree Celsius), until analyzed.

(8) The processor or manufacturer of milk or milk products which do not maintain their flavor until the sell-by date shall, upon receipt of written or verbal notice from the director, make the changes necessary to improve product quality or alter the sell-by date so as to comply with the law. The processor or manufacturer is not responsible for milk and milk products when the nutritive value loss or flavor deterioration of those products can be determined to be caused by mishandling, improper storage, or lack of refrigeration at points beyond his or her control.

(9) Milk and milk products shall not be offered for sale after the sell-by date unless they are advertised to the final consumer in a prominent manner as being beyond the recommended last day of sale.

(10) The final seller is fully responsible for the proper advertisement of milk and milk products sold beyond the sell-by date.

(11) Packaged fluid dairy products that exceed the sell-by date shall not be reused in any dairy products regulated by this act or the manufacturing milk law of 2001 unless a protocol for such reprocessing is approved by the department. The protocol shall include consideration of storage temperatures, bacterial counts, age past sell-by date, sight and smell grading qualities, added ingredients, and any other factors considered critical by the director.

(12) Packaged fluid dairy products that have left the control of a dairy plant but are returned or delivered to a dairy plant, commonly referred to as "returned products", shall not be reprocessed into milk or milk products regulated under this act or the manufacturing milk law of 2001.

History: 2001, Act 266, Eff. Feb. 8, 2002 ;-- Am. 2008, Act 136, Eff. June 20, 2008

288.540 Effective date.

Sec. 70.

This act takes effect 30 days after enactment.

History: 2001, Act 266, Eff. Feb. 8, 2002

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