

LEGISLATIVE BILL 111

Approved by the Governor February 14, 2007

Introduced by Erdman, 47

FOR AN ACT relating to milk; to amend sections 2-3903, 2-3904, 2-3909, 2-3911, 2-3913, 2-3916, 2-3919, 2-3920, 2-3921, 2-3922, 2-3923, 2-3925, 2-3935, 2-3937, and 2-3942, Reissue Revised Statutes of Nebraska, and sections 2-3901, 2-3902, 2-3906, 2-3907, 2-3908, 2-3910, 2-3914, 2-3915, 2-3917, 2-3917.01, 2-3924, and 81-2,270, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to the regulation and processing of milk; to rename a law; to adopt federal and other national milk standards; to provide powers and duties for the Director of Agriculture and the Department of Agriculture; to provide and eliminate penalties; to eliminate an act and a fund; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-3905, 2-3918, 2-3926, 2-3927, 2-3931, 2-3932, 2-3934, 2-3936, 2-3937.01, 2-3939, 2-3940, 2-3941, 2-3943, 2-3944, 2-3945, and 2-3946, Reissue Revised Statutes of Nebraska, and sections 2-3917.02, 2-3928, 2-3929, 2-3930, and 2-3938, Revised Statutes Cumulative Supplement, 2006.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-3901, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3901~~ (1) Sections ~~2-3901~~ ~~to~~ ~~2-3911~~ 1 to 28 of this act and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Pasteurized Milk Law. Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, ~~1999~~ 2005 Revision, as delineated in subsection (3) of this section;

~~(b) Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, 1995 Revision;~~

~~(c) (b) Methods of Making Sanitation Ratings of Milk Supplies, 1999 2005 Revision;~~

~~(d) (c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 1999 2005 Revision; and~~

~~(e) (d) Evaluation of Milk Laboratories, 1995 2005 Revision.~~

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2005 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section ~~2-3903,~~ 5 of this act;

(b) Section 15 of the ordinance is replaced by ~~sections 2-3904 and 2-3905,~~ section 6 of this act;

(c) Section 16 of the ordinance is replaced by section ~~2-3909,~~ 10 of this act;

(d) Section 17 of the ordinance is not adopted; and

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The ~~Department of Agriculture~~ department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Pasteurized Milk Law; Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

Sec. 2. Section 2-3914, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3914~~ For purposes of the Nebraska ~~Manufacturing~~ Milk Act, unless the context otherwise requires:

(1) 3-A sanitary standards means the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the

International Association of Milk, Food and Environmental Sanitarians, the United States Department of Health and Human Services, and the Dairy Industry Committee and published by the International Association of Milk, Food and Environmental Sanitarians in effect on July 1, 2001;

(2) Acceptable milk means milk that qualifies under sections 2-3915 to 2-3917.01 15 to 18 of this act as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk by-product; Adulterated milk and dairy products means any milk or dairy products in which one or more of the conditions described in section 402 of the Federal Food, Drug, and Cosmetic Act, as it exists on July 1, 2001, exist;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy farm or farm means a place or premises where one or more milking cows, goats, or sheep are kept and milk is produced and offered for sale to a plant for manufacturing purposes;

(6) Dairy plant, plant, or receiving station means any place, premises, or establishment where milk or dairy products are received or handled for processing or manufacturing or prepared for distribution. When plant is used in connection with the production, transportation, grading, or use of milk, it means any plant that handles or purchases milk for manufacturing purposes, and when used in connection with minimum specifications for plants or issuing of permits to plants, it means only those plants that manufacture dairy products;

(7) (5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(8) (6) Department means the Department of Agriculture;

(9) (7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(10) Fieldman (8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Manufacturing Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(11) Hauler-sampler means an individual who collects and samples milk from a dairy farm for delivery to a dairy plant, receiving station, or transfer station;

(12) Inspector means an employee of the department who is qualified and trained to perform inspections under the act;

(13) Laboratory procedures means procedures found in: (a) Standard Methods for the Examination of Dairy Products, sixteenth edition, a publication of the American Public Health Association; (b) Official Methods of Analysis, fifteenth edition, a publication of the AOAC International; (c) Pesticide Analytical Manual, second edition, a publication of the federal Environmental Protection Agency; (d) Bacteriological Analytical Manual, seventh edition, a publication of the federal Food and Drug Administration; and (e) other methods that have shown to be equally accurate, precise, and practical and which have been approved by the director;

(14) Milk means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, or sheep. Milk includes only milk for manufacturing purposes. Cow milk, goat milk, sheep milk, or a combination thereof may be used to manufacture dairy products that are legally provided for in 21 C.F.R., as it exists on July 1, 2001, or for nonstandardized products when properly labeled;

(15) (9) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(16) Milking facility means a milking barn, milking area, or milking parlor in which the milking of dairy animals is performed;

(17) Permit means a permit issued under the act by the director;

(18) Person means an individual, plant operator, partnership, limited liability company, corporation, company, firm, trustee, or association;

(19) (10) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(20) Producer means the person or persons who exercise control over

the production of the milk delivered to a processing plant or receiving station for manufacturing purposes;

~~(21) (11) Reject milk means milk that does not qualify under sections 2-3915 to 2-3917.01, 15 to 18 of this act.~~

~~(22) State-certified laboratory means a dairy industry laboratory or commercial laboratory certified under the Grade A Interstate Milk Shippers Program or that has been certified by the department to perform official work for examination of milk for manufacturing purposes as required in the Nebraska Manufacturing Milk Act; and~~

~~(23) Transfer station means any place, premises, or establishment where milk for manufacturing purposes or manufactured milk products are transferred directly from one transport tank to another.~~

Sec. 3. Section 2-3902, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3902~~ The Nebraska Pasteurized Milk Law Milk Act shall be used for the regulation of: (1) The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products; ~~other than milk and milk products regulated under the Nebraska Manufacturing Milk Act;~~ (2) the inspection of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers, and milk distributors; and (3) the issuance, suspension, and revocation of permits.

Sec. 4. (1) A milk producer shall receive a Grade A milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for Grade A milk or milk products.

(2) A milk producer shall receive a manufacturing grade milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for manufacturing grade milk or dairy products.

(3) Dairy products made from milk for manufacturing purposes shall not be labeled with the Grade A designation.

Sec. 5. Section 2-3903, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3903~~ (1) Except as provided in subsections (2) and (3) of this section, only Grade A pasteurized milk and milk products from approved sources with an appropriate permit issued by the department or a similar regulatory authority of another state shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments.

(2) In an emergency, the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be authorized by the regulatory agency, in which case such milk and milk products shall be labeled as ungraded.

(3) Milk and ~~milk products~~ cream produced by farmers exclusively for sale at the farm directly to customers for consumption and not for resale shall be exempt from the Nebraska Pasteurized Milk Law. ~~Milk Act.~~

(4) If the permit of a Grade A milk producer is suspended for sanitary or milk quality violations, ~~of the Nebraska Pasteurized Milk Law,~~ the producer may market milk, for manufacturing purposes only, for an interim period not to exceed sixty days with the approval of the ~~Department of Agriculture,~~ department, if the milk meets the criteria of ~~the Nebraska Manufacturing Milk Act.~~ manufacturing grade milk.

Sec. 6. Section 2-3904, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3904~~ The Nebraska Pasteurized Milk Law Milk Act shall be administered and enforced by the ~~Department of Agriculture.~~ department.

Sec. 7. Section 2-3906, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3906~~ (1) As Until July 31, 2008, as a condition precedent to the issuance of a permit issued pursuant to the Nebraska Pasteurized Milk Law, and Milk Act, on or before August 1 of each year, thereafter, the following described annual permit fees shall be paid to the department:

Milk Plant	\$100.00
Receiving Station	100.00
Plant Fabricating Single-Service Articles ..	100.00
Milk Distributor	75.00
Transfer Station	50.00
Milk Tank Truck Cleaning Facility	50.00
Milk Transportation Company	25.00
Milk Hauler	25.00
Milk Producer	No Fee
Milk Tank Truck	No Fee

(2) If the applicant is an individual, the application for a permit shall include the applicant's social security number.

(3) ~~All~~ Until September 30, 2007, all raw milk produced on farms or pasteurized in plants holding permits issued under the Nebraska Pasteurized Milk Law act shall be subject to the payment of inspection fees as prescribed in subsections (4) through (7) of this section. All fees shall be paid on or before the fifteenth of the month for milk produced or processed during the preceding month. Inspection fees for milk pasteurized outside of Nebraska shall be paid by the person shipping such raw milk outside the state. Inspection fees for milk pasteurized within Nebraska shall be paid by the plant pasteurizing such raw milk.

(4) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the Nebraska Pasteurized Milk Law act and pasteurized at a Grade A plant holding a permit issued under such law shall be three cents per hundredweight of raw milk pasteurized.

(5) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the Nebraska Pasteurized Milk Law act and pasteurized at a manufacturing milk plant shall be two and one-half cents per hundredweight of raw milk pasteurized in Nebraska, or per hundredweight of raw milk shipped from Nebraska, as appropriate.

(6) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the Nebraska Pasteurized Milk Law act and pasteurized at a plant located outside of Nebraska shall be two and one-half cents per hundredweight of raw milk shipped from Nebraska.

(7) The inspection fee on raw milk produced on a Grade A farm not holding a permit issued under the Nebraska Pasteurized Milk Law act and pasteurized at a Grade A plant holding a permit issued under such law shall be three-fourths of one cent per hundredweight of raw milk pasteurized.

(8) (a) Beginning August 1, 2008, as a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

(i) Milk Plant processing 100,000 or less pounds per month...\$100.00;

(ii) Milk Plant processing 100,001 to 2,000,000 pounds per month...\$500.00;

(iii) Milk Plant processing more than 2,000,000 pounds per month...\$1,000.00;

(iv) Receiving Station.....\$200.00;

(v) Plant Fabricating Single-Service Articles..\$300.00;

(vi) Milk Distributor.....\$150.00;

(vii) Transfer Station.....\$100.00;

(viii) Milk Tank Truck Cleaning Facility.....\$100.00;

(ix) Bulk Milk Hauler/Sampler.....\$25.00;

(x) Field Representative.....\$25.00; and

(xi) Milk Producer.....No Fee.

(b) Beginning August 1, 2008, and on or before each August 1 thereafter a Milk Transportation Company shall pay twenty-five dollars for each truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(9) (a) Beginning October 1, 2007, all milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the fifteenth of the month for milk or components of milk produced or processed during the preceding month.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not

be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

~~(8)~~ (10) If any person required to have a permit pursuant to the Nebraska Pasteurized Milk Law act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Sec. 8. Section 2-3907, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3907~~ Whenever a regulatory agency finds milk or milk products being manufactured, processed, transported, distributed, offered for sale, or sold, in violation of the adulteration or misbranding provisions of the Nebraska Pasteurized Milk Law, Milk Act, it shall have the authority to issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such milk or milk product only if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. Such an order shall specifically describe the nature of the violation found and the precise action necessary to bring the milk or milk products into compliance with the applicable provisions of the Nebraska Pasteurized Milk Law- act. Such an order shall clearly advise the person in charge of the milk or milk products that he or she may request an immediate hearing before the Director of Agriculture director or his or her designee on the matter. The issuance of orders under this section shall be limited to instances in which no alternative course of action would sufficiently protect the public health, safety, or welfare.

Sec. 9. Section 2-3908, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3908~~ The Department of Agriculture department may adopt and promulgate reasonable rules and regulations to carry out the Nebraska Pasteurized Milk Law- Milk Act.

Sec. 10. Section 2-3909, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3909~~ (1) The Department of Agriculture department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Pasteurized Milk Law Milk Act or the rules and regulations adopted and promulgated pursuant to ~~such law~~ the act in order to insure compliance with the provisions thereof. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of other remedies at law and shall be granted without bond.

(2) Any person violating the act or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director in the performance of his or her duties in connection with the enforcement of the act or the rules and regulations adopted and promulgated by the department is guilty of a Class V misdemeanor.

~~(2)~~ (3) It shall be the duty of the county attorney of the county in which violations of the Nebraska Pasteurized Milk Law act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

Sec. 11. Section 2-3910, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3910~~ The Director of Agriculture director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Pasteurized Milk Law- Milk Act. The Director of Agriculture director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services in its documents entitled Methods of Making Sanitation Ratings of Milk Supplies, 1999 2005 Revision, and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 1999 2005 Revision.

Sec. 12. Section 2-3911, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3911~~ All fees paid to the department in accordance with the

Nebraska Pasteurized Milk Law Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering ~~such law, the act.~~ Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the Manufacturing Milk Cash Fund on the effective date of this act shall be transferred to the Pure Milk Cash Fund on such date.

Sec. 13. (1) Beginning August 1, 2008, milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 7 of this act. The permit shall expire on July 31 of the year following issuance.

Sec. 14. Section 2-3913, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3913~~ It is hereby recognized and declared as a matter of legislative determination that in the field of human nutrition, safe, clean, wholesome milk ~~for manufacturing purposes~~ is indispensable to the health and welfare of the citizens of the State of Nebraska; that milk is a perishable commodity susceptible to contamination and adulteration; that the production and distribution of an adequate supply of clean, safe, and wholesome milk ~~for manufacturing purposes~~ are significant to sound health; and that minimum standards are declared to be necessary for the production and distribution of milk and milk products. ~~for manufacturing purposes.~~

Sec. 15. Section 2-3915, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3915~~ The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for somatic cells, bacterial content, sediment content, and drug residues. Classification shall be either acceptable, probational, or reject.

Sec. 16. Section 2-3916, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3916~~ The odor of acceptable raw milk for manufacturing purposes shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished product, and it shall not show any abnormal condition, including, but not limited to, curdled, ropy, bloody, or mastitic condition, as indicated by sight or odor.

Sec. 17. Section 2-3917, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3917~~ (1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

~~(1)~~ (2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

~~(2)~~ (3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subdivision (1) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk

Ordinance, 2005 Revision, relating to somatic cells shall apply to milk for manufacturing purposes.

(3) All dairy plants shall smell all raw milk received. Milk failing to meet the odor standards of section 2-3916 shall be rejected.

(4) Laboratory examinations for somatic cells shall be conducted at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Such examinations may begin with a screening test to determine whether the sample exceeds a Wisconsin Mastitis Test result of ten millimeters or higher.

(5) If a sample exceeds the screening test results set out in subdivision (4) of this section or if no screening test is run, either of the following tests shall be used to obtain an official result:

- (a) Direct microscopic somatic cell count or equivalent; or
- (b) Electronic somatic cell-counting procedure.

Whenever an official result indicates a somatic cell count of more than seven hundred fifty thousand somatic cells per milliliter for cow milk or sheep milk or one million per milliliter for goat milk, the procedure set out under subdivision (6) of this section shall be applied.

(6) The following somatic cell standards shall apply to individual manufacturing milk producers: Cow and sheep milk shall not exceed seven hundred fifty thousand somatic cells per milliliter, and goat milk shall not exceed one million somatic cells per milliliter. Whenever any two out of four consecutive somatic cell counts exceed the standard, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in this subdivision. A producer sample shall be taken between three and twenty-one days after the second excessive count. Whenever three out of five consecutive samples are in excess of the standard, the producer's milk shall be rejected until subsequent testing indicates a somatic cell count equal to or less than the standard. For three weeks after the acceptable count is obtained, the producer's milk shall be tested at least once a week but no more than twice a week. Testing at this frequency shall continue until three consecutive acceptable counts are obtained, after which testing may return to the routine frequency prescribed in subdivision (4) of this section.

(7) Milk from cows, goats, or sheep infected with mastitis, milk containing drug residues, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human food. Cows, goats, or sheep that secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply. Milk from cows, goats, or sheep treated with drugs shall be excluded for such period of time as is necessary to have the milk free from drug residues.

(8) Each producer's milk shall be tested by the plant at least four times each six months at irregular intervals at times designated by the director for drug residues. Load samples may be tested in lieu of individual producer samples if all the producer samples are available to identify the responsible producer in case of positive results. Milk found to contain drug residues shall be handled as prescribed in subdivision (7) of this section. State-certified laboratories shall immediately notify the department of drug residues.

(9)(a) (5) The industry shall test all producer's milk and bulk milk pickup tankers for beta lactam drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance, 2005 Revision. Additionally, other drug residues may be screened for by employing a random sampling program on bulk milk pickup tankers. Samples collected under the random sampling program shall be analyzed as specified by the federal Food and Drug Administration. All loads of milk testing positive for drug residue shall be immediately reported to the department. Bulk loads of milk shall be sampled prior to commingling and tested prior to processing of the milk. Whenever a load of milk shows a positive test, individual producer samples shall be individually tested to determine the farm of origin. The samples shall be tested as directed by the department. Accurate records of the results of the milk quality and drug residue test for each producer shall be kept on file at the plant for a period of not less than twelve months. The records shall be available for examination by the department.

(b) When a producer's milk sample is found to be positive for drug residue, the department shall immediately suspend the permit of the producer. The producer's permit may be reinstated when a sample taken from the producer's milk is no longer positive for drug residue. All tests for suspension and reinstatement shall be done in a certified laboratory using certified methods and certified analysts. For a third occurrence of a

positive drug residue in a twelve-month period, the director shall initiate administrative procedures to revoke the producer's permit.

(c) Whenever a load of milk is positive for drug residue, it shall be deemed adulterated and shall not be used for human consumption. The responsible producer shall be liable for the value of the adulterated milk plus any cost associated with its disposal. The department may accept certification from the milk purchaser as verification that the producer was assessed the penalty.

(d) The department shall monitor industry surveillance activities by making unannounced onsite inspections to collect samples from bulk milk pickup tankers and to review industry records of the random sampling program.

(e) The department shall perform routine sampling and testing for drug residues.

(10) Each producer's milk shall be tested by the department at least once a year for residues of pesticides or other harmful chemicals. Milk found to contain excessive residues of such substances shall be handled as prescribed in subdivision (7) of this section.

Sec. 18. Section 2-3917.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

~~2-3917.01~~ (1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section ~~2-3916~~, 16 of this act, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in ~~the laboratory procedures. Sediment content shall be based on comparison with applicable charts of subpart T, sections 58.2728 to 58.2732 of the United States Sediment Standards for Milk and Milk Products, 7 C.F.R. 58, 58.134, as such standards exist~~ section existed on July 1, 2001-2006.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Sec. 19. Section 2-3919, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3919~~ A milking facility producing milk for manufacturing purposes of adequate size and arrangement shall be provided to permit normal sanitary milking operations. Such milking facility shall be physically separated by solid partitions or doors from other parts of the barn or building which do not meet the requirements of this section. A milking facility shall meet the following requirements:

(1) Sufficient space shall be provided for each dairy animal during the milking operation. If housed in the same area, the individual dairy animal should be able to lie down comfortably without being substantially in the gutter or alley. There shall not be overcrowding of the dairy animals;

(2) Maternity pens and calf, kid, and lamb pens, if provided, shall be properly maintained and cleaned regularly;

(3) Walls and ceilings shall be of solid and tight construction and in good repair;

(4) Only dairy animals shall be permitted in any part of the milking facility;

(5) The floors and gutters of the milking facility shall be constructed of concrete or other impervious material, graded to drain, and in good repair;

(6) The milking facility shall be well lighted and well ventilated to accommodate day or night milking;

(7) The milking facility shall be kept clean with walls and ceilings kept free of filth, cobwebs, and manure. The floor shall be scraped or washed

after each milking and the manure stored to prevent access by dairy animals;

(8) Only articles directly related to the normal milking operation may be stored in the milking facility; and

(9) Feed storage rooms and silo areas ~~should~~ shall be partitioned from the milking facility.

Sec. 20. Section 2-3920, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3920~~ The yard or loafing area of a facility producing milk for manufacturing purposes shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean. Manure piles shall not be accessible to the dairy animals. Swine shall not be allowed in the yard or loafing area.

Sec. 21. Section 2-3921, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3921~~ All facilities producing milk for manufacturing purposes shall meet the following requirements:

(1) The udders and teats of all dairy animals shall be washed or wiped immediately before milking with a clean damp cloth or paper towel moistened with a sanitizing solution and wiped dry or by any other sanitary method. The milker's clothing shall be clean and his or her hands clean and dry. Dairy animals treated with drugs shall be milked last and the milk excluded from the supply as required in subdivision (7) of section 2-3917, for such period of time as is necessary to have the milk free from drug residues;

(2) Milk stools, antikickers, and surcingles shall be kept clean and properly stored. Dusty hay shall not be fed in the milking facility immediately before milking. Strong flavored feeds should not be fed before milking; and -

(3) Drugs shall be stored in such manner that they cannot contaminate the milk or dairy products or milk contact areas. Unapproved or improperly labeled drugs shall not be used to treat dairy animals and shall not be stored in the barn or milking facility. Drugs intended for the treatment of nonlactating dairy animals shall be segregated from drugs used for lactating dairy animals. All drugs shall be properly labeled to include:

(a) The name and address of the manufacturer or distributor for drugs or veterinary practitioners dispensing the product for prescription and extra-labeling-use drugs;

(b) The established name of the active ingredient, or if formulated from more than one ingredient, the established name of each ingredient;

(c) Directions for use, including the class or species or identification of the animals, and the dosage, frequency, route of administration, and duration of therapy;

(d) Any cautionary statements; and

(e) The specified withdrawal or discard time for meat, milk, eggs, or any food which might be derived from the treated animal.

Sec. 22. Section 2-3922, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3922~~ Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A sanitary standards.

Sec. 23. Section 2-3923, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3923~~ A milkhouse or milkroom at a facility producing milk for manufacturing purposes shall be conveniently located and properly constructed, lighted, and ventilated ~~shall be provided~~ for handling and cooling milk in farm bulk tanks. The milkhouse or milkroom shall meet the following requirements:

(1) Adequate natural or artificial lighting shall be provided for conducting milkhouse or milkroom operations. Light fixtures shall not be installed directly above farm bulk milk tanks in areas where milk is drained or in areas where equipment is washed or stored. A minimum of thirty footcandles of light intensity shall be provided where the equipment is washed. All artificial lighting shall be from permanent fixtures;

(2) Adequate ventilation shall be provided to prevent odors and condensation on walls and ceilings;

(3) The milkhouse or milkroom shall be used for no other purpose;

(4) Adequate facilities for washing and storing milking equipment shall be provided in the milkhouse or milkroom. Only C-I-P equipment shall be stored in the milking area or milking parlor. Hot and cold running water under pressure shall be provided in the milkhouse or milkroom;

(5) If the milkhouse or milkroom is part of the milking facility or

other building, it shall be partitioned and sealed to prevent the entrance of dust, flies, or other contamination. Walls, floors, and ceilings shall be kept clean and in good repair;

(6) Feed concentrates, if stored in the building, shall be kept in a tightly covered box or bin;

(7) The floor of the building shall be of concrete or other impervious material and graded to provide drainage;

(8) All doors in the milkhouse or milkroom shall be self-closing. Outer screen doors shall open outward and be maintained in good repair;

(9) No animals shall be allowed in the milkhouse or milkroom;

(10) A farm bulk tank shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator or a light fixture;

(11) A suitable hoseport opening shall be provided in the milkhouse or milkroom for hose connections and the hoseport shall be fitted with a tight-fitting door which shall be kept closed except when the port is in use. An easily cleanable surface shall be constructed under the hoseport adjacent to the outside wall sufficiently large enough to protect the milkhose from contamination;

(12) The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading. It shall not pass through any livestock holding area;

(13) All windows, if designed to be opened, shall be adequately screened;

(14) Surroundings shall be neat, clean, and free of harborage and pooled water; and

(15) Handwashing facilities shall be provided which shall include soap, single-service towels, running water under pressure, a sink, and a covered refuse container.

Sec. 24. Section 2-3924, Revised Statutes Cumulative Supplement, 2006, is amended to read:

2-3924 Utensils, At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A sanitary standards and comply with applicable rules and regulations of the department.

Sec. 25. Section 2-3925, Reissue Revised Statutes of Nebraska, is amended to read:

2-3925 The dairy farm water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services Regulation and Licensure at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Manufacturing Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services Regulation and Licensure shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services Regulation and Licensure shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. On and after October 1, 1989, all new producers issued permits under the Nebraska Manufacturing Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services Regulation and Licensure for private water supplies.

Sec. 26. Section 2-3935, Reissue Revised Statutes of Nebraska, is amended to read:

2-3935 When milk and milk products pasteurization is intended or required or when a product is designated pasteurized, pasteurization shall be accomplished by heating every particle of milk or skim milk to a temperature of not less than one hundred forty-five degrees Fahrenheit and cream and other milk products to at least one hundred fifty degrees Fahrenheit and ice cream mix to at least one hundred fifty-five degrees Fahrenheit and holding them at those temperatures continuously for not less than thirty minutes, or milk or skim milk to a temperature of one hundred sixty-one degrees Fahrenheit and cream and other milk products to at least one hundred sixty-six degrees

Fahrenheit for not less than fifteen seconds, and ice cream mix to at least one hundred seventy-five degrees Fahrenheit for not less than twenty-five seconds, or by any other combination of temperature and time giving equivalent results.

Cream for buttermaking shall be pasteurized at a temperature of not less than one hundred sixty-five degrees Fahrenheit and held continuously in a vat at such temperature for not less than thirty minutes, or at a temperature of not less than one hundred eighty-five degrees Fahrenheit for not less than fifteen seconds, or any other temperature and holding time approved by the director that will assure pasteurization and comparable keeping-quality characteristics. If the vat method of pasteurization is used, vat covers shall be kept closed during the holding and cooling periods. The vat shall meet the requirements set out in subsection (4) of section 2-3929.

Sec. 27. Section 2-3937, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3937~~ Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold, and other possible contamination.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer, or distributor, and plant code number. Consumer-packaged products shall be legibly marked with the name of the product, net weight or content, plant code number, and name and address of the packer or distributor.

Sec. 28. Section 2-3942, Reissue Revised Statutes of Nebraska, is amended to read:

~~2-3942~~ (1) The director or his or her duly authorized agent shall have access during regular business hours to any milking facility or dairy plant for which a permit is held in which milk is used or stored for use in the manufacture, processing, packaging, or storage of manufactured milk or milk products or to enter any vehicle being used to transport or hold such milk or ~~manufactured~~ milk products for the purpose of inspection and to secure specimens or samples of any milk or milk product after paying or offering to pay for such sample or specimen. The director may analyze and inspect samples of raw milk and dairy products.

(2) The director or his or her duly authorized agent shall have access during regular business hours to the books and records of any permitholder under the Nebraska Manufacturing Milk Act when such access is necessary to properly administer and enforce such act.

Sec. 29. Section 81-2,270, Revised Statutes Cumulative Supplement, 2006, is amended to read:

81-2,270 (1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (1) of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year.

(4) (a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4) (b) of this section. The director shall determine the fees based on estimated annual

revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories. ~~and~~

(b) The maximum fees are:

		First Food Preparation Area	Additional Food Preparation Area Annual Inspection Fee (per area)	Unit Or Units Annual Inspection Fee
Food	Initial	Annual	Inspection	Annual
Handling	Permit	Inspection	Fee	Inspection
Activity	Fee	Fee	(per area)	Fee
Convenience Store	\$61.72	\$61.72	\$30.86	N/A
Licensed Beverage				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Limited Food Service				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Temporary Food				
Establishment	\$61.72	\$61.72	\$30.86	N/A
Mobile Food Unit				
(for each unit)	\$61.72	N/A	N/A	\$30.86
Pushcart (for each				
unit)	\$61.72	N/A	N/A	\$12.34
Vending Machine				
Operations:	\$61.72			
One to ten units		N/A	N/A	\$12.34
Eleven to twenty units		N/A	N/A	\$24.68
Twenty-one to thirty units		N/A	N/A	\$37.02
Thirty-one to forty units		N/A	N/A	\$49.36
Over forty units		N/A	N/A	\$61.70
Food Processing				
Plant	\$61.72	\$86.40	\$30.86	N/A
Salvage Operation	\$61.72	\$86.40	\$30.86	N/A
Commissary	\$61.72	\$86.40	\$30.86	N/A

All Other Food

Establishments	\$61.72	\$86.40	\$30.86	N/A
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(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) The department may impose a penalty for an inspection fee which is more than one month delinquent. The penalty may not exceed fifty percent of the fee for the first month of delinquency and one hundred percent of the fee for the second month of delinquency.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

(9) A person holding a permit or license and regulated under the Nebraska ~~Manufacturing Milk Act or the Nebraska Pasteurized Milk Law~~ and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

Sec. 30. Original sections 2-3903, 2-3904, 2-3909, 2-3911, 2-3913, 2-3916, 2-3919, 2-3920, 2-3921, 2-3922, 2-3923, 2-3925, 2-3935, 2-3937, and 2-3942, Reissue Revised Statutes of Nebraska, and sections 2-3901, 2-3902, 2-3906, 2-3907, 2-3908, 2-3910, 2-3914, 2-3915, 2-3917, 2-3917.01, 2-3924, and 81-2,270, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 31. The following sections are outright repealed: Sections 2-3905, 2-3918, 2-3926, 2-3927, 2-3931, 2-3932, 2-3934, 2-3936, 2-3937.01, 2-3939, 2-3940, 2-3941, 2-3943, 2-3944, 2-3945, and 2-3946, Reissue Revised Statutes of Nebraska, and sections 2-3917.02, 2-3928, 2-3929, 2-3930, and 2-3938, Revised Statutes Cumulative Supplement, 2006.