House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

GRADE A MILK LAW AND MANUFACTURING MILK LAW

House Bill 4820 as enrolled
Public Act 266 of 2001
Sponsor: Rep. Tom Meyer

House Bill 4829 as enrolled
Public Act 267 of 2001
Sponsor: Rep. Steve Vear

House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems
Third Analysis (1-4-02)

THE APPARENT PROBLEM:

The importance of food safety hardly needs to be stated. Each year, many people become sick, and some people die, from food contaminated with food-borne pathogens such as *E coli*, salmonella, and listeria. According to the foreword to the 1999 version of the federal Grade "A" Pasteurized Milk Ordinance, the United States Public Health Service is concerned with milk safety for two basic reasons: "First, of all foods, none surpasses milk as a single source of those dietary elements needed for the maintenance of proper health, especially in children and older citizens. . . . Second, milk has a potential to serve as a vehicle of disease and has, in the past, been associated with disease outbreaks of major proportions." Today, milk and fluid milk products are associated with less than one percent of reported disease outbreaks due to infected foods and contaminated work—down from 25 percent in 1938. Despite this impressive achievement, continued success depends on careful scrutiny of every aspect of the production, processing, pasteurization, and distribution of milk and dairy products; the safety of milk and dairy products is only as secure as the weakest link in the chain.

One threat to milk safety that has particular significance for Michigan is bovine tuberculosis. In 1994, a hunter in Alpena County shot a deer infected with the disease. Since then, a Department of Agriculture brochure on bovine tuberculosis reports, 285 deer have tested positive for bovine TB, and the disease has been found in six coyotes, two raccoons, one black bear, one red fox and two bobcats from Alcona, Alpena, and Montmorency counties. The brochure states: "At risk are Michigan's deer herd and other wildlife species with their many social, ecological, and economic values; Michigan's livestock industry; and most importantly, the health of Michigan's citizens." Animal diseases pose threats to humans because of both the direct risk of transmitting disease from animals to humans, and the more indirect but highly destructive effects that animal diseases can have on humans by destroying their livestock and livelihood.

If animal diseases pose one threat to safe food, the drugs used to treat diseased animals pose another. The federal Pasteurized Milk Ordinance requires screening for beta-lactam drug residues in milk and dairy products. According to the Concise Medical Dictionary, "beta-lactam" drugs are antibiotics that interfere with the growth of the cell walls of multiplying bacteria, which in turn can become resistant to the drugs by producing enzymes that disrupt the drugs' molecular structure. When beta-lactam drug residues remain in the final product, they can trigger reactions in those who are allergic to antibiotics, resulting in anything from mild discomfort to death. Moreover, continuous intake of antibiotics from food can result in a buildup of antibiotic-resistant bacteria in humans who are not allergic to the drug. Consumers need protection not only from animal diseases but also from treatments for those diseases that might affect them as the treatments enter the food chain.

Still, ensuring the safety of the milk supply is far more complex than making sure that the milk or dairy product does not contain an animal disease that can be transmitted to humans or contain potentially dangerous drug residues. Even the briefest reflection on the complex process that begins with taking milk from a dairy animal and ends with the consumer purchasing and ultimately ingesting the milk or dairy product yields a bewildering number of possibilities for rendering milk defective: for example, the farm employee responsible for milking the animal may forget to wash his or her hands; a thermometer used in the pasteurization process might not be accurate; a container used to store or transport milk might have corners in which milk residue builds up; or packaging equipment may have been exposed to dust containing mold or other contaminating elements. With an issue as important as milk safety, it is important that laws and regulations address these potential sources of contamination to as great an extent as possible.

While the public health risk that unsafe milk and dairy products pose is itself a sufficient reason to take these matters seriously, the state's well-being depends on the quality of its milk and dairy products in another respect: dairy farming is the largest segment of the state's agricultural economy. According to 1999 statistics, milk ranked first for commodities for cash receipts, and milk sales provided approximately $800 million to the farm economy. Moreover, in 2000, Michigan ranked eighth in the nation in milk production, number of cows, and amount of milk per cow. Having high, up-to-date standards for milk and dairy products is essential to promoting consumer confidence in the state's products, which is vital to ensuring a healthy economy.

Currently, nineteen different laws and regulations govern manufacturing milk and manufactured dairy products in the state; one law and one regulation govern Grade A milk and Grade A milk products. "Grade A milk" is intended for direct consumption and is used to make products such as yogurt, cottage cheese, and sour cream. "Manufacturing milk", also known as "Grade B milk", meets standards lower than those of Grade A milk and is used to make products such as cheese, butter, ice cream, and infant formula. Several of the laws date back to the 19th century, and although the laws have been amended over the years, many people believe that, taken collectively, the laws no longer meet the needs of the dairy industry. In particular, the Fluid Milk Act of 1965, regulating Grade A milk and Grade A milk products, still refers to the 1993 version of the federal Pasteurized Milk Ordinance. The PMO was updated in 1995, 1997, 1999, and, most recently, in 2001.

The Food Law of 2000 consolidated, updated, and streamlined twelve laws and regulations governing food establishments to reflect an increased awareness and concern with food safety issues. As a continuation of its efforts to modernize all of Michigan's food laws, the department's Food and Dairy Division has been working to substantially update the state's dairy laws with representatives from the following organizations and businesses: Michigan State University, the Michigan Farm Bureau, the Michigan Milk Producers Association, the Michigan Dairy Foods Association, the Dairy Farmers of America, Dean's, Country Fresh/Suiza Foods, Jilbert's Dairy, Michigan Dairy/Kroger, Farm Country Cheese House, Great Lakes Milk Haulers Association, Pollard Dairy, Zingerman's Deli, Beatrice Foods International, Leprino Foods, and Alto Dairy.

THE CONTENT OF THE BILLS:

House Bills 4820 and 4829 would combine and update the state's dairy laws into two acts. House Bill 4820 would replace the Fluid Milk Act of 1965 and related regulations with the Grade A Milk Law of 2001 governing Grade A milk and Grade A milk products. The bill would adopt the 2001 edition of the federal Grade A Pasteurized Milk Ordinance. Other significant changes to current law would include:

- a new requirement that bovine milk be picked up from the farm within 72 hours;
- added provisions for a drug residue avoidance control measures program;
- new record keeping and testing requirements for drug residue violators;
- increased penalties for drug residues found in milk;
- clarified requirements for handling milk from cows testing positive for bovine tuberculosis;
- greater oversight over milk tank truck cleaning facilities; and
- expanded enforcement options for violations.

House Bill 4829 would repeal 19 laws and regulations—most notably the Manufacturing Milk Act—to create the Manufacturing Milk Law of 2001,

a single, comprehensive and consistent act governing manufacturing milk and manufactured dairy products. Significant changes to current law would include:

- a complete list of pasteurization temperature and time requirements for manufacturing milk and manufactured dairy products;

- a complete list of chemical, physical, bacteriological, and temperature standards for manufacturing milk and manufactured dairy products;

- higher quality standards for raw milk used in frozen desserts;

- clarified and expanded drug residue testing requirements; and

- a new requirement that plant codes and manufacturer lot numbers be placed on package containers.

Both bills would take effect 30 days after enactment, and neither bill would take effect unless the other did as well.

House Bills 4820 and 4829 contain several provisions that are virtually identical, except that House Bill 4820 deals specifically with Grade A milk and Grade A milk products and House Bill 4829 deals specifically with manufacturing milk and manufactured dairy products. This section summarizes the provisions common to both bills; "milk and milk products" refers to Grade A milk, Grade A milk products, manufacturing milk and manufactured dairy products. "The laws" or "the acts" refers specifically to the Fluid Milk Act of 1965 and the Manufacturing Milk Law, which currently constitute the basis of the regulation of milk and milk products.

Provisions common to House Bills 4820 and 4829.

Water for milkhouse and milkroom operations. The bills would clarify that the Department of Environmental Quality was instructed to make recommendations about water for milkhouse and milkroom operations.

Local authority and reciprocity. The Fluid Milk Act of 1965 prohibits a political subdivision of the state from imposing different standards or requirements than those set forth in the act and allows the director to extend reciprocity to governmental units outside the state that accept Michigan Grade A milk and Grade A milk products. The bills would retain these provisions but would expand them to apply to all milk and milk products.

Right of entry, inspection, and seizure. The act setting forth the powers and duties of the dairy and food commissioner authorizes the director to enter, inspect, sample, investigate, and seize facilities or products for the purpose of ensuring that quality standards for the production, processing, and handling of milk and dairy products are being met. The bills would authorize the director 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, or single service manufacturers under its jurisdiction, for the purpose of inspecting, sampling, and investigating conditions relating to the enforcement of the act. The bills would also authorize the director to seize or hold for investigation any milk, milk product, or equipment that the director had reason to believe was adulterated, constituted or could be contributing to an imminent health hazard, or violated the act. Such milk, milk products, or equipment could not be disposed of until a release was secured from the director. The director would have to complete his or her action on any such seized item within a reasonable time, and the farm, plant, or station would have to be promptly notified of the director's decision. The director could collect and retain evidence to verify the determination of an imminent health hazard. Whenever the director found in any farm, plant, station, or vehicle any milk, milk product, or other product that contained any unwholesome substance or that could be poisonous or deleterious to health or otherwise unsafe, the director would declare the defective milk or product to be an imminent health hazard. The director would also have to condemn, destroy, or in some other manner render the defective milk or product unsalable as human food. Finally, the bill would prohibit both the removal of a condemnation or seizure tag attached to any container of condemned milk or cream and the transfer of condemned milk to another container for sale (or offer for sale) for human consumption.

Inspection reports. The bills would specify that the director of the department—rather than the department—was responsible for furnishing copies of inspection reports on any dairy farm producing milk to a purchaser of milk from the farm upon written request.

Temporary licenses or permits. The bills would continue to allow the director to issue a temporary license or permit if he or she determined that doing so would not be detrimental to the protection of the public health, safety, or welfare or would not cause an imminent threat of financial loss to producers.

State agencies operating under departmental memorandum. The bills would add provisions stating that a state agency operating dairy facilities under a memorandum of understanding with the department would not be required to be licensed or permitted and would not have to provide producer security.

Special license fees or taxes. The Fluid Milk Law of 1965 forbids the state or a political subdivision of the state from levying special license fees or taxes on one or more of the persons or businesses involved in the production, transportation, processing, labeling, or selling of milk or milk products. This prohibition does not apply to taxes or fees that are generally levied on persons or businesses other than dairy plants and dairy plant operators. The bills would forbid a political subdivision of the state—but not the state—from levying such special license fees or taxes.

Payment dates. Both acts currently require a person purchasing milk for resale or manufacture into another product to pay the milk's producer an advance payment on or before the *last* day of each month, for milk received during the first 15 days of the month, and a final payment on or before the *fifteenth* day after the end of the month for milk received during the previous month. The bills would require the purchaser to pay the producer in a manner and on dates set by the USDA Milk Market Administrator or as mutually agreed upon by the producers, the milk plant, and the department.

Producer security. The laws require the department to revoke or deny a license for a milk plant if the licensee or applicant does not provide a (financial) security device, as a condition of issuance of the license. This requirement applies to any Grade A milk plant that is the first receiving point for milk and any dairy plant that produces manufactured dairy products. The bills would retain the laws' security requirements, including a detailed list of acceptable security devices and conditions under which they are acceptable, clarifying that a plant would have to provide a security device as a condition of issuance *and maintenance* of a license. Milk plants that received milk only from dairy farms under the same ownership as the milk plant would be exempt from the producer security requirements. The bills would also make the following substantial modifications. First, the bills would specify that if a commercial surety bond or irrevocable letter of credit was provided as a security device—as is allowed under current law—it would have to be submitted in a form provided by or acceptable to the department. Second, if an irrevocable letter of credit was provided, it would have to provide that in the event that the financial institution gave timely notice of nonrenewal, the department would be permitted to draw on the letter of credit to cover any potential losses incurred on behalf of producers. The department would hold the money in an interest-bearing account, and any money in the account in excess of the total amount of approved claims after an adequate time period would be repaid to the bank. The excess money would be paid to the milk plant, if the bank had provided the department with a waiver of payment to the bank and had authorized payment to the dairy plant on a form approved by the department.

Third, the bills would retain a provision in both laws that allows a plant that does not provide one of the forms of security specified to provide "other security" acceptable to the department. However, the term "other security" is currently defined as commercial paper that would qualify as collateral at prime, including negotiable securities, stocks, bonds, or other marketable securities at current market values. The bills would redefine "other security" as a mutually acceptable producer security agreement that was acceptable to the director and approved and signed by the milk buyer and all milk sellers selling milk to that milk buyer. Fourth, under certain conditions, which are identical in the laws and the bills, a certificate of deposit or money market certificate from a financial institution authorized to do business in the state may be used as a security device. Current laws require the deposits of the financial institution to be insured by the Federal Deposit Insurance Corporation. The bills would specify only that the financial institution's deposits had to be federally insured. Fifth, currently the department may require a milk plant to provide a change or increase in a security device if it has reason to believe that the milk plant no longer meets the minimum requirement of the act or that the milk plant can no longer make timely payments. The Manufacturing Milk Act also allows the department to require a milk plant to provide a change or increase in a security device if the value of the milk plant's security device falls below the requirements for one of the following reasons: 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 the act. Both bills would allow the department to require a change or increase in security device for any of these reasons. Sixth, both laws establish certain procedures for dealing with breaches of obligations secured by one of the specified producer security devices. After deciding whether to allow the claim, the department must notify the principal and surety of its decision by registered mail. In case the department allows the claim, the department may demand, collect, and receive from the licensee or from the licensee's surety or sureties the amount determined to be necessary to satisfy the claims plus interest. The bill would specify that the decision to allow or disallow the claim had to be sent by *certified* mail and that the department *was required to demand* and could collect and receive such payment.

Seventh, the laws require the department to notify producers delivering milk to a licensed milk plant of the type of security device used for the benefit of producers. The notice must contain certain information. The bills would retain this requirement, but the form would have to contain one piece of information that is not currently required—the amount of security that the security device provided. Eighth, one type of security device that a licensee or applicant for a license may currently provide is an audited fiscal year end financial statement and a quarterly verified financial statement. The quarterly verified financial statement must verify the licensee's ability to meet the ratio of 1.2:1 for minimum liquidity requirements of current assets to current liabilities. The bill would amend the ratio for minimum liquidity requirements of current assets to current liabilities from 1.2:1 to 1.20:1. (Although 1.2 is equivalent to 1.20, a producer whose ratio was 1.16:1 may currently argue that this met the requirement since 1.16 rounds up to 1.2.) Ninth, the laws currently permit the department to request information from the Office of Financial and Insurance Services (OFIS) regarding the financial viability of the financial institution that issues a security device. The bills would specifically that the department could also request information from OFIS regarding the financial viability of an insurance institution that issued a security device. Lastly, currently the laws specifically prohibit a dairy plant that produces milk and milk products from canceling or modifying a security device unless the plant gives the department written notice 90 days before the date of cancellation or modification. The bills would clarify that the department must have approved the cancellation or modification.

Summary suspension. The laws currently direct the department to summarily suspend the license of a licensee, if the department determines that such a suspension is necessary to protect the health, safety, or welfare of the public. The bills would list fifteen specific offenses that would undermine public health, safety, or welfare and that would justify the director's decision to summarily suspend a license or permit. Offenses include offering for sale or selling milk or milk products that were: from diseased animals, or were otherwise considered abnormal, and that had been incorporated with milk or milk products from normal healthy animals; suspected of contamination with any substance considered by the department to be an imminent or substantial health hazard; from production, transportation, packaging, or storage facilities that had such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precluded the reasonable protection of the 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 regiment and that were thick enough that they could be easily scraped to form a body of solids; stored in a container of unapproved construction; produced from cattle with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precluded the reasonable protection of the milk from contamination during the milk process; produced with excessive sediment. Other offenses would be: receiving or picking up milk or milk products stored in a container of unapproved construction; offering for sale or selling milk that was of inadequate volume to properly agitate after the first milking; interfering with inspection of milk or milk products; maintaining dead animals on the premises; maintaining a minimum of three of the last five official bacteria or somatic cell counts or official milk or milk product cooling temperatures illegal; and failing to provide milk or milk products free of violative drug residues based on tests approved by the FDA. The bills would further specify that the licensee or permittee would be allowed at least 72 hours to regain compliance and reinstatement of a summarily suspended license or permit prior to scheduling an administrative hearing. Finally, the bills would retain a provision allowing for summary suspension of a license or permit if the department determined that doing so was necessary to prevent an imminent threat of financial loss to one or more producers with whom the licensee or permittee did business.

Fine/penalty. Both laws state that a person who is found guilty of either violating the acts or rules promulgated in accordance with the acts, or providing false or fraudulent information on an application or in response to a request from the department is guilty of a misdemeanor. The misdemeanor is punishable by a fine of $50-$500 or imprisonment for not more than 90 days. This fine or penalty only applies to a producer who violates the act by selling or offering for sale milk that has a positive reaction to a drug residue test in certain circumstances. The bills would increase the range of permissible fines to $250-$2,500 and would specify that a person who violated the federal Pasteurized Milk Ordinance (PMO) would be guilty of a misdemeanor and could be punished with the fine or imprisonment as well.

"Sanitary standards". Several new requirements would impose new sanitary standards. As defined in the bills, "sanitary standards" would mean dairy equipment construction standards and accepted dairy system operating practices formulated by one of the following: 3-A Sanitary Standards Committees representing the International Association for Food Protection, the United States Public Health Service, the USDA, and the Dairy Industry Committee; standards for dairy equipment formulated by the USDA or the FDA; or, equipment or a practice approved by the director on a case-by-case basis.

Examination of books, records, and accounts. Currently, the department is authorized to examine the books, records, and accounts of a milk plant if the plant has not responded to requests from the department concerning the producer security requirements. The bills would require the director to examine the books, records, and accounts of a milk plant if the plant did not respond to the director's requests concerning the annual license or producer security requirements. The bills would further specify that all examinations had to be made within the state.

Nonelectric farms. Nonelectric farms would have to provide battery-powered lighting for farm tanks that would adequately illuminate each tank opening. Fuels used for milkhouse operations could not cause odors that impart off-flavors.

House Bill 4820. The following provisions would apply specifically to House Bill 4820. The bill would repeal the Fluid Milk Act of 1965—currently the core law regulating Grade A milk and Grade A milk products—and rescind rules 285.408.1 to 285.408.5 of the Administrative Code, governing fluid milk and milk products, effective 30 days after the bill's enactment. The summary below emphasizes differences between the Fluid Milk Act of 1965 and the bill, and "the law" and "the act" refer specifically to the Fluid Milk Act of 1965 unless explicitly stated otherwise. Also, "milk and milk products" refers specifically to Grade A milk and Grade A milk products unless specifically stated otherwise.

General authority. Currently the act directs the department to administer the act and promulgate rules governing the production, transportation, processing, labeling, and sale of Grade A milk and Grade A milk products. The law adopts and declares to be the law of the state certain federal ordinances; where the words "regulatory agency" are used in the ordinances they are amended to read the "Michigan Department of Agriculture." The bill would authorize the department to administer the act, to promulgate rules for its implementation and enforcement, and to adopt revisions of references cited in the act. "Regulatory agency" would still refer to the department.

Pasteurized Milk Ordinance. Except as otherwise specifically defined or described, the federal Pasteurized Milk Ordinance would be adopted and incorporated by reference. Specifically, this means the 2001 edition of the Grade A Pasteurized Milk Ordinance, Recommendations of the United States Public Health Service/Food and Drug Administration, with administrative procedures and appendices, set forth in the USPHS/FDA publication no. 229, and the provisions of the 1995 Grade A Condensed and Dry Milk Products and Condensed and Dry Whey-Supplement I to the Grade A Pasteurized Milk Ordinance, with administrative procedures and appendices.

Bovine tuberculosis. The bill would specify procedures for milking any dairy animals that were officially classified as tuberculosis reactors, as defined in Title 9 of the Code of Federal Regulations and in "Bovine Tuberculosis Eradication: Uniform Methods and Rules," effective January 22, 1999, and all amendments to those publications that were adopted. Any such dairy animals would have to be milked last or in separate equipment, and the milk from such animals could not be used or sold for human consumption.

License/permit requirement. The bill would retain the act's prohibition against producing, transporting, processing, labeling, and selling milk and milk products unless licensed or permitted. The bill would also require persons who washed milk tank trucks or manufactured single service containers and closures

to be licensed or permitted. All applicants for a permit or license would have to complete an application provided by the department and would have to meet the minimum requirements of the act, the PMO, and rules promulgated under the act. The application would require the same information that must be provided on an application for a license under current law.

Drug residue avoidance education. The bill would add a requirement that an applicant for an initial Grade A dairy farm permit had to complete education, acceptable to the director, on drug residue avoidance control measures, as identified in the PMO, before receiving the permit.

Milk plant licensing/permitting fee. Under current law each milk plant that is a *first receiving point* for milk must pay a $50 licensing fee. Each milk plant, receiving station, and transfer station must pay an annual fee of $5 for each dairy farm whose milk is *first received* at the plant or station. Each milk plant or transfer station must pay an annual license fee of $25 for each location that is not a first receiving point for dairy farm milk. Moreover, each plant or station must pay an additional $10 per farm shipping to it if the operator of the plant or station does not maintain an adequate number of industry personnel who are certified to conduct farm supervision and who do not, in fact, conduct farm supervision. The license fee is not charged to the producer. The bill would require each milk plant to pay a $175 annual licensing or permitting fee, and additionally, an annual fee of $5 for each dairy farm whose milk was received—whether or not it was first received—at the plant, receiving station, or transfer station. The plant would have to pay an additional $10 per farm shipping to it if the milk plant, receiving station, or transfer station operator did not maintain an adequate number of industry personnel, as determined by the director, who were approved to conduct certified industry farm inspections. The additional $10 fee would be waived if a cooperative association conducted the certified industry farm program for the milk plant operator. The department would only charge the dairy farm license fee to the producer if the producer was not assigned to a milk plant that paid the annual fee for the producer. Any unassigned producer would be charged a handling fee of $5 plus an additional $10 if certified industry farm inspectors were not assigned to the farm.

Certified industry farm inspectors. Currently each certified industry fieldman must pay an annual license fee of $10 for a license to conduct certified farm inspections. The license expires on June 30 following the date of issuance. The bill would require each certified industry farm inspector to pay a three-year fee of $60 for a license to conduct inspections. The initial fee could be prorated in six-month increments at $10 per increment. License renewal would have to take place on the completion date of the three-year period. Inspectors would have to comply with requirements for certified inspectors listed in the PMO. Further, they would have to conduct a farm inspection of all producers having the first routine count exceeding legal standards for bacteria or somatic cells or both and one routine inspection per year of all producers. The inspector would have to forward to the local area dairy inspector a copy of each required routine annual inspection. Certified industry farm inspectors could perform official inspections only with the authorization of the director.

Receiving stations and transfer stations. Each receiving station or transfer station would have to be licensed or permitted either as part of a milk plant or as a stand-alone facility. Each stand-alone facility would be licensed or permitted at a rate of $50 per year, and renewal would take place on June 30 of each year.

Milk tank truck cleaning facilities. Each milk tank truck cleaning facility that cleaned milk contact surfaces of milk tank trucks used to haul milk or milk products regulated under the act would have to be licensed or permitted under the act either as part of a milk plant, receiving station, or transfer station or as a stand-alone facility. If it was licensed or permitted as part of a plant or station—or if it was licensed under the Manufacturing Milk Law of 2001—the cleaning facility would not be charged a fee. A stand-alone facility would be licensed or permitted at a rate of $50 per year, with renewal occurring on June 30.

Milk transportation companies, milk tank trucks, and distributors. Currently the law requires each milk distributor or Grade A milk plant operator to pay an annual fee of $10 for each delivery vehicle operated. The bill would require each milk transportation company to be licensed or permitted under the act at a rate of $20 per year and each milk tank truck to be licensed or permitted at a rate of $10 per year. Further, each distributor who was primarily engaged in the distribution of finished Grade A milk products would have to be licensed or permitted under the act either as part of a milk plant or as a stand-alone facility. Stand-alone distribution facilities would have to pay an annual $50 fee. Renewal for any of

these licenses or permits would take place on June 30.

Single service containers and closures manufacturers. Each single service containers and closures manufacturer would have to be licensed or permitted under the act either as part of a milk plant or as a stand-alone manufacturer. Each stand-alone manufacturer would have to pay an annual $50 fee. Renewal would take place on June 30 of each year.

Bulk milk hauler/sampler. The law currently requires a person who picks up Grade A milk in a farm pickup milk tank from a farm bulk milk tank to be licensed by the department under either the act or the Manufacturing Milk Act. The license fee is $20 per year. Each applicant for a license is examined by the department under the provisions of the act and rules promulgated by the department to determine his or her qualifications to do each of the following: evaluate milk in a farm bulk milk tank; accurately measure milk in such a tank; obtain representative samples from a tank; properly handle and deliver the samples; and pick up milk. The bill would require a person who picked up Grade A milk in a farm pickup milk tank from a farm bulk milk tank to obtain a hauler/sampler license from the department. The director would examine each applicant for a hauler/sampler license to determine his or her qualifications for the activities listed above. The license fee would be $40 for two years. An initial license fee could be prorated in six-month increments at $10 per increment. The director could deny license renewal to any bulk milk hauler/sampler if the hauler/sampler had not had a satisfactory evaluation of his or her methods in the previous two years. License renewal would take place on June 30 every two years.

Reciprocity for hauler/sampler license. A hauler/sampler licensed or permitted in another state could apply for a license from the department without examination after submitting satisfactory proof of training and current licensing in another state, unless this requirement was waived by the director based on a reciprocal agreement with individual states.

Revocation/suspension of license/permit. Currently the law specifies procedures whereby the director may revoke or suspend a license or permit for failure to comply with the law's requirements, the PMO, or a rule promulgated under the law. The law also lists other specific grounds for the revocation or suspension of a license. The bill would continue to allow the director to revoke or suspend a license or permit and would further allow the director to impose an administrative fine; instead of establishing procedures, the bill would refer to those set forth in the Administrative Procedures Act of 1969. However, the bill would specify that the department had to notify in writing each producer with whom a milk plant did business regarding the pendency of administrative action at least five days before the date of the *formal hearing* set under the Administrative Procedures Act. This would replace the current requirement that the department notify each producer at least five days before the date of the *contested case* set under the Administrative Procedures Act. Failure to comply with the requirements of the act, the PMO, or any rule promulgated under the act would be sufficient grounds for suspension or revocation. Moreover, in addition to the specific offenses currently listed in the law, the bill would specify that failure to agitate *any* milk—as opposed to Grade A milk only—in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department was sufficient grounds for suspending or revoking a license or permit. The bill would also specify that failure to pay a final civil or administrative fine issued under the act would justify suspension or revocation of a license or permit. Finally, the bill would retain a provision authorizing the department to apply to the circuit court to obtain a permanent or temporary injunction to restrain a person from violating the act or a rule promulgated pursuant to the act.

Drug residue test failure/fine. Currently the director is required to follow certain procedures penalizing a producer who violates the law by selling or offering for sale milk which has a positive reaction to a drug residue test. For the first positive test within a 12-month period, the producer must pay a $300 fine to the department. If the producer voluntarily participated in the milk and dairy beef quality assurance program within the 36 months immediately preceding the date of the violative sample, $200 is to be suspended. The administrative fine may be paid by the milk buyer if a like amount has been deducted from the milk check. Additionally, the producer must submit written notification from the buyer of the milk in the form of a pay deduction, that the milk picked up from the farm testing positive was not paid for. In the case of a second positive test within a 12-month period, the producer must submit to the department similar written notification from the buyer and must pay a fine of $600. No part of the fine may be suspended, but the sum may be paid by the milk buyer if a like amount has been deducted from the producer's milk check. In the case of a third positive test within a 12-month period, the producer must submit to the department similar written

notification from the buyer and must pay a $1,200 fine. Again, no part of the fine may be suspended, but the sum may be paid by the milk buyer if a like amount has been deducted from the producer's milk check. The standard penalty scheme—$50-$500 or up to 90 days in jail—only applies to a producer who sells or offers for sale milk that has tested positive for drug residues, if the producer fails to pay the $300, $600, or $1,200 drug residue fines within ten days of being notified of the violation or if the producer has been fined three times within the preceding 12-month period.

The bill contains extensive provisions for penalizing producers who sell or offer for sale milk that has been found positive for violative drug residues on a drug residue test performed pursuant to the PMO. The following sanctions and administrative fines would apply for any violation: the producer's milk could not be offered for sale until a subsequent sample of the producer's milk tested negative for violative drug residues at an approved laboratory. The producer would have to pay the milk buyer the equivalent of the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. Written notification of the date and location of the contaminated load's disposal would have to be provided to the department; producers who market their own milk would be responsible for providing the notification. If the violative shipment did not cause partial or total loss of a load of milk, the producer would have to pay an administrative fine to the department. (The buyer could pay the fine if that amount was deducted from the producer's milk check.)

For the first violative drug residue within a 12-month period, the administrative fine would be $300. The fine for the second violative drug residue within a 12-month period would still be $600. Further, the producer would be required to test all milk prior to shipment with a drug residue test acceptable to the director for at least 12 months and would be required to retain records of the tests for at least 18 months. The producer would also be required to maintain complete drug treatment records for all lactating or near-lactating dairy animals for a minimum of 12 months and would have to retain the records for at least 18 months. The fine for the third violative drug residue within a 12-month period would still be $1,200. The producer's permit would be suspended for not more than 60 days after notice and the opportunity for an administrative hearing before the department. The producer would have to test all milk prior to shipment, maintain drug treatment records for all lactating or near-lactating dairy animals, and retain the records for each, for the periods of time required for the second offense. The director could accept verification from the violative producer's milk marketing cooperative or purchaser of milk as satisfying the penalty requirements and could verify the information. The disposal method and location of disposal for the violative milk on the milk tank truck would have to be reported to the director immediately, by the party making the disposal. The director would be instructed to investigate the cause of the violative drug residue and to discuss avoidance control measures, as outlined in the PMO, with the producer.

After notice and the opportunity for an administrative hearing, the director could revoke or suspend a license or permit issued under the act for any violation of the act or a rule promulgated under the act. For violations of the act or a rule, other than the first, second, or third violations of a violative drug residue test within a 12-month period, the director could impose a fine of up to $1,000 and the actual costs of investigation of the violation. All fines would have to be paid within ten days after notification of the violation or within ten days after notification of adverse findings following a hearing or appeal, or both. All funds would have to be deposited in the general fund, and the initial administrative fines for the first, second, and third violations of a violative drug residue test would have to be appropriated for the purpose of the training or education of producers in management procedures to avoid drug residue contamination. Failure to pay a load contamination or any other administrative fine imposed for testing positive for violative drug residues, without making acceptable arrangements for payment of the fine, could result in license revocation or permit suspension or court action, following notice and the opportunity for an administrative hearing. The director would advise the attorney general of the failure of any person to pay an administrative fine, and the attorney general would bring court action to recover the fine. The director's decisions regarding violations and penalties for selling or offering for sale milk that failed violative drug residue tests would be subject to judicial review. If the department believed that the public interest would be adequately served by a suitable written notice or warning, the director would not be required to issue fines or initiate court action in the case of minor violations.

The $250-$2,500 fine (see above) would apply to a producer who violated the act by selling or offering for sale milk that tested positive for violative drug residues on a test performed pursuant to the PMO

only if the producer did either of the following: failed to pay the initial administrative fines for first, second, and third violations within a 12-month period or was fined three or more times within the preceding 12-month period.

Labeling. The bill would specify that packaged milk products were to be labeled as specified in the PMO and the Food Law of 2000.

Bulk milk hauler/sampler. The bill would incorporate and revise administrative rules governing the responsibilities of bulk milk haulers. The bill would prohibit a bulk milk hauler/sampler from taking milk from a farm tank without first determining that the farmer had a valid permit if a permit was required. Milk could be picked up only from 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. A hauler/sampler could not record or report inaccurately a milk measurement taken in the farm tank. A measurement would have to be made with a measuring gauge that was clean and wiped dry with a sanitary towel or by any other measuring method meeting certain requirements. After measuring the milk in the farm tank, the hauler/sampler would have to record the following information on the pickup record: the gauge or stick reading; the converted reading in pounds; the date and time of the pickup; the milk producer's name and permit number; the temperature of the milk; the hauler/sampler's identification, including name or initials and identification number; the assigned bulk tank unit number. A hauler/sampler would have to provide the original copy of the record to the milk buyer and a duplicate copy, or other record acceptable to the director, to the producer. The milk tank truck driver engaged in direct farm pickup would have direct responsibility for accompanying official samples.

Storage of milk on dairy farm. A hauler/sampler could only pick up milk that appeared to be normal and did not contain off odors or visible foreign material and that had been stored on the farm for no more than 72 hours. Goat milk could be stored up to seven days in a tank if cooled, and sheep milk could be frozen for storage. Currently, the law does not specify how long milk may be stored on the dairy farm prior to collection.

Sampling methods. Administrative rules promulgated by the department currently govern sampling methods. The bill would require the hauler/sampler to take a sanitarily collected representative sample from each farm tank after the tank was agitated for not less than 5 minutes and for not less than 10 minutes for tanks over 1,500 gallons, or for additional time—if recommended by the manufacturer or director—to ensure a representative sample. A sample dipper would have to be rinsed at least twice in the milk prior to transferring the sample to the approved sample container. The hauler/sampler would have to use sample transfer instruments that were of sanitary construction, clean, and sterile, or transfer instruments that were sanitized with approved sanitizers and protected from contamination prior to each use. He or she would have to take a temperature control sample of the milk at his or her first sampling point and would have to place it in the refrigerated, insulated transport case with the first official sample. The hauler/sampler would identify the temperature control sample with the hauler/sampler identification, time, temperature, date, producer permit number, and the letters "T.C." He or she could not sample milk in the farm tank during emptying or in the farm tank with a sample container or any other unapproved transfer instrument or sampling device. He or she would have to place producer milk samples into approved sample containers only, properly protecting them and handling them to prevent contamination. He or she could place milk only in sample containers that were legibly marked with the milk producer's permit number, the date of pickup, the route number, and the temperature. The hauler/sampler would have to store the milk samples inside a refrigerated, insulated transport case that was kept tightly covered until the samples were delivered to the transfer point, laboratory, or other destination. Milk samples would have to be maintained in a temperature range of 32-40 degrees Fahrenheit.

Miscellaneous hauler/sampler requirements. Administrative rules promulgated by the department currently place certain requirements on bulk milk hauler/samplers. The bill would require that a bulk hauler/sampler comply with the requirements of Appendix B of the PMO, which would be incorporated by reference. The hauler/sampler could not adulterate milk in the farm tank or the milk tank truck. A bulk milk hauler/sampler would have to carry an accurate, approved dial-type or electronic thermometer with him or her on the route and could not pick up milk from a farm tank that exceeded the maximum temperature allowed by law. He or she would have to keep his or her sample transfer instrument and sample transport case clean and in good repair. Finally, the hauler/sampler would have to use the hose port provided for him or her in the milkhouse for accommodation of the pickup milk hose.

Partial pickups. A bulk milk hauler/sampler could not partially remove milk from a farm tank unless the farm tank was equipped with either a seven day recording device that complied with the specifications of Appendix H of the PMO or another recording device approved by the department; in either case, the farm milk tank would have to be cleaned and sanitized when empty and would have to be emptied every 72 hours. Partial pickups could be permitted without a temperature recording device, as long as the farm tank was completely empty, clean, and sanitized before the next milking. In the event of emergency situations, seasonal weight restrictions, or the overflow of the milk tank truck, partial pickups would also be allowed.

Cleaning requirements. The milk tank transportation company would be responsible for maintaining the tank and milk contact surfaces of a milk tank truck clean and in good repair. Milk or milk products could not be placed in such tanks unless the tanks had been properly cleaned and sanitized at the milk plant, receiving station, transfer station, or other licensed milk tank truck cleaning facility. Suitable facilities for cleaning and milk contact surfaces of the milk tank trucks would have to be provided. The washing and sanitizing of the tanks would have to be carried out by the receiving milk plant, transfer station, or other licensed cleaning facility. The milk transportation company representative or the hauler/sampler would be responsible for cleaning the hose, pump, and valves. After the cleaning and sanitizing operation was completed, a representative of the cleaning facility would have to provide a suitable record identifying who washed the truck, the license or permit identification number of the truck, the date, and the location of the facility. The representative or the hauler/sampler, after inspection of the tank, would have to indicate on the record that the tank had been cleaned to that person's satisfaction. A copy of the record would be kept with the vehicle until it was washed and sanitized again. A hauler/sampler operating with a bulk milk pickup tanker could take more than one trip daily without cleaning and sanitizing the tanker, but it would have to be cleaned and sanitized after the final trip of each day of use. A milk transport tank would have to be cleaned and sanitized each time the tank was emptied. Milk could be picked up in the milk tank truck on the return trip to the hauler/sampler's home if the truck was cool enough to maintain the milk at or below the legal storage temperature; the pickup hose and pump would have to be washed and sanitized at a licensed wash facility or a cleaning facility approved in writing by the director. A milk tank truck could be used to haul potable water, or other wholesome liquid food products, if the milk contact surfaces were properly cleaned and sanitized prior to picking up raw milk. Certain pasteurized products, as specified in the PMO, would have to be transported in milk tank trucks dedicated to hauling pasteurized products. A milk transfer station or receiving station would have to keep daily records—to be kept at the station for at least 30 days—identifying which farm loads of milk had been commingled in each transport tank. Producer samples would have to accompany the transport tank holding the largest amount of the farm bulk milk pickup tanker's milk unless the samples were transferred or held for testing at other locations.

Farm tanks. Administrative rules promulgated by the department currently make certain requirements of farm tanks. The bill would require a farm tank on a dairy farm to be installed so as to remain level at all times. A farm tank would have to have an accurate indicating thermometer stored in the milkhouse that could be either an integral thermometer in the farm tank or a director-approved thermometer. A farm tank would have to have a calibrated means of measurement and an accurate and legible volume to weight conversion chart unless the tank was mounted on an accurate scale. The conversion chart would have to bear the same serial number as that found on the farm tank and measuring rod. The producer would be responsible for recalibrating a farm tank that did not have an accurate conversion chart. All measuring devices, recalibrations, and adjustments, alterations, or other changes to a conversion chart would have to comply with the Weights and Measures Act of 1964 (MCL 290.601 et al.). A farm tank could not be filled to capacity that exceeded the calibrated limits as indicated by the conversion chart. If the producer wished to fill the tank nearer to the top, the tank would have to be calibrated to an additional height that still permitted proper agitation without spillage. Milk to be offered for sale would have to be cooled and stored in the farm tank equipped with cooling and agitation. Other cooling and storage vessels could be used when approved by the director on a case-by-case basis. Milk production would have to be of sufficient quantity that it could be properly agitated not later than at the completion of the first milking into the farm tank. The producer would be responsible for providing facilities for effectively sanitizing farm tanks.

Standard methods. The care and handling of milk samples by all persons in the chain of possession would have to comply with "standard methods." ("Standard methods" would refer to the sixteenth edition of the American Public Health Association's

"Standard Methods for the Examination of Dairy Products," dated 1992, which both bills would incorporate by reference.)

Milk tank truck driver. The bill would retain the current requirement that a licensed bulk milk hauler/sampler collect samples of milk from each load of milk he or she receives for transport. The bill would further clarify that a milk tank truck driver engaged in direct farm pickup had direct responsibility for accompanying official samples.

Methods of analysis. Methods of analysis, including butterfat analysis, would have to comply with the requirements of sections 6 and 7 of the PMO. Analysis required on producer, raw, and finished products samples would have to comply with the PMO.

Sampling/testing responsibilities. The buyer of raw milk would be responsible for making the quality tests on raw milk, at the producer level, that are required by law unless the director specified otherwise. It would be the responsibility of the hauler/sampler to collect the samples for analysis. In situations where the producer was not represented by a milk buyer or handler that provided an approved sample analysis and reporting service, it would be the producer's responsibility to ensure that the proper number of samples were submitted to an approved laboratory for analysis and that the results were reported to the department. In all situations, it would ultimately be the producer's responsibility to ensure that a minimum of four official sample results for the previous six months' production were reported to the department. The test results would be reported to the department as requested.

Sediment content. Methods for determining sediment content of milk would have to be those described in "standard methods." Sediment content would be based on comparison with official USDA standards, which would be incorporated by reference. If the sediment disc was classified as no. 1, no. 2, or no. 3, the producer's milk could be accepted. If the milk contained more sediment than a no. 3, it would be rejected.

Pasteurization. Only pasteurized milk and milk products could be offered for sale or sold directly or indirectly, to the final consumer or to restaurants, grocery stores, or similar establishments. All (pasteurized) milk and milk products would have to be pasteurized according to the requirements and time-temperature relationships described in the PMO. All dairy plant by-products used for feeding purposes for farm animals would still have to be pasteurized or be derived from pasteurized products.

Sell-by date. Administrative rules promulgated by the department currently make requirements concerning a recommended last day of sale of milk and milk products. The bill would require each processor and manufacturer of milk and milk products sold in the state to place on each container a recommended last day of sale by month and date. The sell-by date would have to be expressed by the first three 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. The sell-by date would have to appear on that part of the container that was most likely to be displayed, presented, or shown under customary display conditions of sale. However, a cup container could have the sell-by date on the bottom. The date on the container would have to be legible and could not interfere with the legibility of other information required to be on the product. Milk and milk products could not be offered for sale after the sell-by date unless they were advertised to the final consumer in a prominent manner as being beyond the recommended last day of sale; the final seller would be responsible for the proper advertisement of such products.

Processors and manufacturers of milk and milk products would have to register with the department—on a form provided by the department—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 by the processor or manufacturer would have to substantiate the length of time. The following information would also have to be provided on the form: the method of application and location of the sell-by date for each size and style of container and changes in the time interval of the sell-by date prior to the effective day of the change. Milk and milk products would have to maintain nutritional levels prior to the sell-by date, and the director would periodically analyze samples to ensure that the flavor had not changed prior to the sell-by date. Samples obtained for analysis by the director prior to the sell-by date would have to be stored at a temperature of 43-45 degrees Fahrenheit until analyzed. The processor or manufacturer of milk or milk products that did not maintain their flavor until the sell-by date would have to make changes necessary to improve product quality or alter the date so as to comply with the law, unless the nutritive value loss or flavor deterioration of the products could be determined to have been caused by

mishandling, improper storage, or lack of refrigeration at points beyond his or her control.

House Bill 4829. The following provisions would apply specifically to House Bill 4829. The bill would repeal the Manufacturing Milk Act, which is currently the core law regulating manufacturing milk and manufactured dairy products. The bill would repeal other acts and rescind certain rules of the Administrative Code, governing manufacturing milk and manufactured dairy products, effective 30 days after the bill's enactment, as specified below. The summary below emphasizes differences between the Manufacturing Milk Act and the bill, and "the law" and "the act" refer specifically to the Manufacturing Milk Act unless explicitly stated otherwise. Also, "milk and milk products" refers specifically to manufacturing milk and manufactured dairy products unless explicitly stated otherwise. Some provisions are similar to those in House Bill 4820, in which case the summary highlights differences between the bills.

The bill would repeal twelve laws—in addition to the Manufacturing Milk Act—and rescind six sections of the administrative code effective 30 days after the bill's enactment. The repealed laws (and the subjects they concern) include:

- P.A. 167 of 1899 (Dairy and Food Commissioner)
- P.A. 243 of 1903 (renovated butter)
- P.A. 257 of 1911 (opening or interfering with milk bottles)
- P.A. 63 of 1913 (oleomargarine or margarine)
- P.A. 93 of 1915 (pasteurization of milk by-products)
- P.A. 30 of 1923 (cheese)
- P.A. 212 of 1935 (the Milk Fat Test Law)
- P.A. 155 of 1939 (overrun in manufacture of butter)
- P.A. 293 of 1945 (pasteurization of milk and other dairy products)
- P.A. 211 of 1955 (butter grading and labeling)
- P.A. 45 of 1967 (pasteurization of milk and milk products)
- P.A. 298 of 1968 (the Frozen Desserts Act of 1968)

The rescinded rules of the Administrative Code (and the subjects they concern) include:

- R 285.400.1 (ice cream)
- R 285.402.1 (licensing of test operators and use of "Babcock Test")
- R 285.404.1 (grading butter)
- R 285.405.1 to 285.405.29 (frozen desserts)
- R 285.407.1 to 285.407.6 (milk manufacture)
- R 285.409.1 (producer security)

General authority. The department would be responsible for administering the act, promulgating rules for its implementation and enforcement, and adopting revisions of standards incorporated by reference in the act. The department's director would be required to foster and encourage the dairy industry of the state and to investigate the general conditions of dairy farms, dairy plants, single service manufacturers, receiving stations, transfer stations, bulk milk haulers/samplers, can milk trucks, milk tank trucks, milk tank truck cleaning facilities, and distributors. The director would be given full power to enter any premises for investigation, and could appoint inspectors to assist him or her, with the object of improving the quality and creating and maintaining uniformity of the dairy products of the state. Further, the director could cause instruction to be given to dairy farms and plants, single service manufacturers, stations, distributors or to any locality in the state, in order to ensure that proper procedures for manufacturing, processing, and otherwise handling manufacturing milk and dairy products were followed.

Federal standards. Federal regulations from the Code of Federal Regulations would be adopted by reference for: sanitation (7 CFR part 58); sanitizing agents (21 CFR part 178.1010); commercial sterility and sterilized or aseptic milk and dairy products processing (21 CFR part 113); examination of dairy products (7 CFR part 58); cheese manufacture (21 CFR part 133); and labeling (21 CFR part 101; 9 CFR part 317; 9 CFR part 381, subpart N). In addition, the sanitary standards of the 3-A Sanitary Standards Committees published by the International Association for Food Protection would be adopted by reference. USDA standards for dairy equipment construction, dated 2001, entitled "USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment" and the FDA standards for

dairy equipment construction, dated 2000, entitled "Milk and Milk Product Equipment, A Guide for Evaluating Construction" would be incorporated by reference. Standards for sanitizing agents complying with the federal Food, Drug, and Cosmetic Act would also be incorporated by reference.

Unsanitary, adulterated, and misbranded milk. The bill would prohibit a person from selling or offering for sale, possessing or controlling with intent to sell or offer for sale, or furnishing an unsanitary, adulterated, or misbranded milk or dairy product to a person or processor. The law currently contains such a prohibition with regards to unsanitary milk or dairy products, but the bill would add the prohibition on adulterated or misbranded milk and dairy products, reflecting the increased emphasis on adulteration and misbranding in the Food Law of 2000. (Definitions of "adulterated" and "misbranded" would be taken from the Food Law of 2000.)

Quality standards. The law currently provides quality standards for raw milk, frozen desserts, and instant nonfat milk. In general, the bill would maintain, or slightly increase the requirements for these products. A significant change is the requirement that raw milk for use in frozen desserts meet Grade A standards. The bill would also include chemical, physical, bacteriological, and temperature standards, in table form, for pasteurized condensed milk and condensed skim milk; dry whole milk, extra grade; dry whole milk, standard grade; nonfat dry milk, extra grade; nonfat dry milk, standard grade; whey for condensing; pasteurized condensed whey; dry whey, extra grade; dry whey, dry whey products; dry buttermilk and dry buttermilk products, extra grade; dry buttermilk and dry buttermilk products, standard grade; butter, whipped butter; pasteurized milk, cream, fluid dairy products for frozen desserts; sterilized or aseptic products; private water supplies for dairy farms and dairy plants; recirculated cooling water (sweet water); glycol for cooling; and condensate recovery water (cow water).

Inspection frequency. Currently the law does not specify the frequency with which the department must inspect dairy farms or dairy plants. The bill would require the department to inspect all dairy farms every 12 months and dairy plants every six months.

Soft serve exemption. Frozen desserts manufactured from pasteurized mix in the soft form at retail food establishments licensed under the Food Law of 2000 would be exempt from the bill's provisions.

Dairy product and water testing frequency. Currently the law does not specify how often dairy products, well water samples for dairy farms, water supplies for dairy plants, and recirculated water or recirculated cooling mediums are to be tested. The bill would specify that all dairy products be tested at least four out of every six months, unless the water supply was not new or reconstructed after April 1, 1994, in which case they would have to be tested annually. Well water samples would have to be tested a minimum of once every three years. Water supplies for dairy plants would have to be tested at least once every six months. Recirculated water or recirculated cooling mediums would have to be tested at least once every six months. The bill would also prohibit the use of condensate recovery water except in applications that conform to requirements and procedures accepted by the FDA or the director. The law does not—and the bill would not—specify how frequently dairy farm milk would have to be collected.

License/permit. Currently, the law requires milk plants, dairy farms, receiving stations and transfer stations, and bulk milk hauler/samplers to apply for and receive a license or permit. The bill would expand this requirement to include all persons who produce, transport, wash milk tank trucks, process, manufacture, label or sell manufacturing milk and dairy products or manufacture single service containers and closures. Current law does not address the possibility of an overlap between licensing requirements made in the Fluid Milk Act of 1965 and the Manufacturing Milk Act. The bill would specify that a person licensed or permitted under the Grade A Law of 2001, and who was performing activities regulated under that act, would be exempt from the licensing requirement of the Manufacturing Milk Law of 2001. A person licensed under the Grade A law would have to comply with the requirements of, and would be subject to the penalties set forth in, the Manufacturing Milk Law of 2001. In accordance with current law, the director could issue a temporary license or permit. The bill would retain the current law's requirement that an applicant for an initial license as a dairy plant must apply to the department on a department-supplied form and provide a statement containing specific information.

Drug residue avoidance education. The bill would add a requirement that an applicant for an initial manufacturing grade dairy farm permit had to complete education on drug residue avoidance control measures acceptable to the director before receiving the permit.

License/permit fees. Currently the law establishes annual license fees of $50 for a dairy plant, $50 for a receiving station or transfer station, and $10 for a bulk milk hauler/sampler; there is no fee for a dairy farm. The bill would retain the $50 license fee for a dairy plant and would continue to charge no fee for a dairy farm. The bill would distinguish between a receiving or transfer station that was part of a dairy plant and a station that was a stand-alone facility. A receiving or transfer station that was part of a dairy plant would be licensed or permitted as part of the dairy plant, while a stand-alone facility would be licensed or permitted for $50 per year. A milk tank truck cleaning facility would be licensed or permitted as part of a dairy plant, receiving station, or transfer station, or as a stand-alone facility; a stand-alone facility would have to pay a $50 annual licensing fee. A single service container and closure manufacturer could be licensed as part of a dairy plant or as a stand-alone manufacturer; each stand-alone facility would be licensed for $50 per year. Each milk tank truck or can milk truck would have to be licensed or permitted at a rate of $10 per year.

Bulk milk hauler/samplers, as well as any milk tank truck cleaning facility that washed the milk contact surfaces of milk tank trucks used to haul Grade A milk, would have to be licensed under the Grade A law. A person could not pick up manufacturing grade milk in a farm pickup milk tank from a farm bulk milk tank without a hauler/sampler license issued by the department under the Grade A law.

Previously denied applicants. The bill would retain the current law's requirement that the department investigate the sanitary conditions of a dairy plant or place of business, upon receiving a license application from an unlicensed dairy plant or from a plant that was previously denied a license. Currently the law *prohibits* the director from issuing a license if he or she determines that the facilities *do not meet* the law's sanitary standards. The bill would instead state that the director *must issue* a license under the act upon determining that the sanitary conditions of the applicant's plant or place of business *did comply* with the act and rules and regulations promulgated under the act.

Revocation/suspension of license/permit. The bill would retain the current law's provision allowing the director to revoke or suspend a license or permit. Instead of specifying procedures, the bill would refer to the general procedures set forth in the Administrative Procedures Act of 1969, with one exception: the bill would continue to specify that the department must notify in writing each producer with whom a dairy plant does business regarding the pendency of the administrative action not less than five days before the date of a formal hearing. The law lists both general grounds (i.e., failing to comply with the law or a rule promulgated under the law) and specific grounds for the revocation or suspension of a license. The bill would clarify that any of these offenses justify revoking or suspending a license or charging an administrative fine. In addition to the specific offenses that the law currently mentions, the bill would add the following: in the case of a dairy plant, failure to provide a required security device; adulteration of milk or dairy products; failure to provide the required number of milk quality sample results as established by the department; failure to correct violations of the act noted on inspection reports after being given a reasonable amount of time; and failure to pay a final civil or administrative fine issued under the act.

Beta lactam drug residue testing. The bill would add a requirement that all milk that either was shipped for processing or would be processed on the farm where it was produced be sampled and tested for beta lactam drug residues prior to processing. The department would be responsible for establishing procedures for collecting, handling, and testing samples. A load sample would be taken from the bulk milk pickup tanker after its arrival at the plant and prior to further commingling and processing. A load sample representing all can milk received on a shipment would be collected at the plant, using a procedure that included milk from every can. A load sample taken by the processor would be collected at the plant using a sampling procedure that included all milk produced and received. A sample that tested positive would be retained according to standards established by the department. The records of all sample test results would have to be retained for at least 12 months. If a load sample tested positive for a violative drug residue, industry personnel would be required to notify the department immediately of the positive result and of the intended disposition of the contaminated milk. All milk testing positive would be disposed of in a manner that removed it from the human and animal food chain, unless it was acceptably reconditioned under FDA compliance policy guidelines as approved by the department. Each individual producer sample represented in the violative drug residue load sample would be singly tested to determine the producer of the contaminated milk. The department would be notified immediately upon determination of the identity of the producer responsible for producing the milk. The producer identified as the source of milk testing positive for a violative drug residue would be prohibited from

shipping milk until a sample from a subsequent milking did not test positive for a violative drug residue. The dairy plant or receiving station responsible for a violative drug residue test would have to deliver a copy of the test result to the department within ten days after the dairy plant or receiving station received the result. The producer would be required to ensure that the department was provided with the required number of producer's milk quality test results. Finally, the plant or station would have to maintain an original copy of the test result for at least one year.

Drug residue test failure/fine. Currently the director is required to impose on a producer who violates the law by selling or offering for sale milk which has a positive reaction to a drug residue test as follows: $50 for the first positive test within a 12-month period; $200 for the second positive test within a 12-month period; and $500 for the third positive test within a 12-month period. The standard penalty scheme, which imposes a fine of $50-$500 and a jail sentence of up to 90 days as outlined above only applies to a producer who sells or offers for sale milk that has tested positive for drug residues under the following conditions: the producer must fail to pay a drug residue fine within ten days of being notified of the violation or must have been fined three times within a 12-month period.

The bill contains extensive provisions for penalizing producers who sold or offered for sale milk that had been found positive for violative drug residues on a drug residue test performed pursuant to the Manufacturing Milk Act of 2001. The provisions would be identical to those described above in the case of milk that was found positive for drug residues on a drug test performed pursuant to the PMO, as would be required by House Bill 4820, with one exception: the fines for the first, second and third positive results on drug residue tests performed pursuant to the Manufacturing Milk Act of 2001 would remain $50, $200, and $500, respectively. The fines would only apply if the violative shipment did not cause partial or total loss of a load of milk. If this occurred, the producer would have to pay, directly to the milk buyer, an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of the load.

Tuberculosis and brucellosis. Currently the law specifies that a person who offers milk to the public for human consumption must obtain the milk from cows or goats that are located in areas under federal or state supervision for the eradication of tuberculosis and brucellosis. The bill would allow milk offered to the public for human consumption to be obtained from sheep as well, and would consistently refer to "dairy animals" where current laws and rules refer simply to "cattle" or to "cows and goats" collectively. More significantly, the bill would require that any dairy animals officially classified as tuberculosis reactors were milked last or in separate equipment. Further, the milk from these animals could not be used or sold for human or animal consumption.

Prohibited sale of milk. Currently the law prohibits a person from selling or offering for human consumption milk that the person knows to be defective in certain ways. In addition to those defects specified under current law, the bill would prohibit the sale or offering of milk that did any of the following: showed signs of being bloody, ropy, or clumpy; was not normal and fresh in odor or appearance or contained excessively coarse sediment when examined organoleptically, visually, or by an accepted test procedure; contained excessive sediment as determined by sediment test methods provided in standard methods for the examination of dairy products and classified to USDA sediment standards as more than a no. 3; exceeded legal temperature, bacterial, or somatic cell limits.

Requirements on persons, equipment, and facilities. The law currently places many specific requirements on persons, equipment, and facilities involved with the manufacture, processing, and handling of manufacturing milk and dairy products. The bill would retain most of these requirements; changes are highlighted below.

Milker requirements. The law currently specifies that the milker must cool milk that is stored in a dairy farm bulk tank to 45 degrees Fahrenheit or less within two hours of milking. (All temperature requirements would be given in both Fahrenheit and Celsius.) After reaching this temperature, the milk may be maintained at a temperature of not more than 50 degrees. The bill would require the milker to cool milk that was stored in a dairy farm bulk tank to 50 degrees Fahrenheit within four hours or less of the commencement of the first milking, and to 45 degrees Fahrenheit or less within two hours after milking, provided that the blend temperature after the first milking and subsequent milkings did not exceed 50 degrees Fahrenheit. The milker would still be required to cool and store milk that was contained in cans and that was used exclusively for cheese manufacturing at 60 degrees Fahrenheit or lower at the farm within two hours after the milking, except for milk that was delivered to a processing plant

within two hours after the milking. The bill would also specify that the persons who obtain milk from dairy animals had to use an *approved* sanitizing solution when washing and wiping the udders and teats of the animal immediately before milking. The milker would also have to dry the udders and teats with a clean cloth or paper towel after washing. Alternatively, the milker could employ any other method of washing or drying approved by the department. (The current law simply requires that the milker wash the udders and flanks before milking with a sanitizer solution.)

Milkhouses and milkrooms. The bill would make several changes to current requirements for milkhouses and milkrooms. First, and most significantly, the bill would add a requirement that the department approve any plans for new facilities, remodeled facilities, or new equipment installations. Second, the bill would keep the current law's requirement that the milkhouse or milkroom be well-lighted and ventilated, but would make several clarifications of the requirement. Third, the bill would keep the current law's requirement that the milkhouse or milkroom must have a platform or slab constructed of concrete or other impervious material at the exterior of the milkhouse or milkroom. The bill would further specify that the platform or slab had to be a minimum of four feet by four feet to provide sufficient room and clean surface for the milk hauler to stand and handle the milk transfer hose. Fourth, the bill would keep the current requirement that the milkhouse or milkroom be designed with screens at all outside openings, unless another means is provided to prevent the entrance of insects or rodents. The bill would further specify that the screen doors would have to be tight-fitting, self-closing, and outward-opening. Toilet facilities located adjacent to the milkhouse or milking facilities would be required to have self-closing doors, and all outside openings would have to be screened.

Owner/operator of milkhouse/milkroom. Currently the law requires the owner or operator of a milkhouse or milkroom to ensure that each utensil and item of equipment used in the handling of milk is sanitized immediately before use with a sanitizer that has been approved by the department. The bill would specify instead that the utensils and equipment must be sanitized with a dairy cleaner, detergent, sanitizing agent, or other similar material labeled for dairy or food service use that did not contaminate or adversely affect the milk. The law also requires the owner or operator to ensure that a pesticide is not stored in the milkhouse or milkroom. The bill would specify that an *unapproved* pesticide could not be stored in the milkhouse or milkroom.

Shipping milk in cans. Currently the law requires a licensed bulk milk hauler to ensure that each milk can used in transporting milk from a dairy farm to a plant is seamless with an umbrella lid for easy cleaning and to inspect, repair, and replace milk cans as necessary. The bill would transfer the responsibilities for these duties from the bulk milk hauler to the producer who shipped milk in cans. Under current law a licensed bulk milk hauler is also responsible for ensuring that vehicles used for the transportation of milk contained in cans comply with certain requirements. The bill would retain the requirements but transfer the responsibility for ensuring compliance to the owner of trucks used to transport milk in cans.

Producer who ships milk from a farm bulk tank. Currently farm tanks must conform to rules issued by the department. The bill would specify that a producer who shipped milk from a farm bulk tank would be responsible for compliance with the requirements, which would be identical to those specified for farm tanks in House Bill 4820.

Licensed bulk milk hauler/sampler. Currently the law requires a licensed bulk milk hauler to collect samples of milk from each load of milk he or she receives for transport. At least once every 45 days, the licensed bulk milk hauler must deliver collected samples to a dairy plant or receiving station. The dairy plant or receiving station, or a laboratory that is selected by the plant or station and approved by the department, must test the milk for several specific defects in accordance with the latest edition of the standard methods for dairy product examination approved by the department. With the exceptions of responsibilities with respect to shipping milk in cans, which would be transferred to others (see above), all duties formerly delegated to licensed bulk milk haulers would be the duties of the licensed bulk milk hauler/sampler or milk transportation company. The hauler/sampler or transportation company would be responsible for delivering producer samples to the dairy plant or receiving station as specified by the department—rather than every 45 days—and for licensing or permitting the milk tank truck as provided for by the Grade A law. The bill would also clarify that a licensed or permitted milk tank truck could only be used for the transportation of milk or dairy products or for other food or potable commodities approved by the department.

Dairy plant, receiving station, or transfer station. Currently, the dairy plant or receiving station, or a

laboratory selected by the dairy plant or receiving station and approved by the department, is required to test milk for certain defects. The plant, station, or laboratory must perform tests for the presence of bacteria, drug residues, and somatic cells, as well as the Wisconsin mastitis test. The law specifies acceptable levels of bacteria and somatic cells for raw milk; it further states that raw milk may not contain drug residue at a level that exceeds department limits for drug residue content. The bill would require the dairy plant, receiving station, or *transfer station* (or an approved laboratory) to test milk for defects at least four out of every six months, in accordance with "standards methods." The plant or station (or laboratory) would still have to test for bacteria, *violative beta lactam* drug residue, and somatic cells but would not have to perform the Wisconsin mastitis test. For raw milk, acceptable levels of bacteria and somatic cells would remain as they are under the current law, and the bill would continue to authorize the department to set acceptable limits of violative drug residues. (Acceptable standards for other forms of milk and milk products are listed in a chart in section 70 of the bill.) The bill would allow any test approved by the FDA or by the department to be used for testing for violative drug residues. Currently, the law states that the test must be either the bacillus-stearothermophilis disc-assay test or a test approved by the department. The dairy plant, transfer station, or receiving station would also be required to report the presence of sediment in the milk. Finally, the plant or station would have to report either the temperature at the time of the bulk hauler pickup on the farm or the temperature of milk in cans when delivered to the plant or station. Procedures for positive results on drug residue tests would have to be followed as specified above.

Requirements for buyer response. Under current law, a milk processor who receives notice or determines that a producer's milk is abnormal—i.e., exceeds legal somatic cell levels or fails the Wisconsin mastitis test—or that it contains unacceptable levels of bacteria is required to take certain steps in response. The bill would require any milk buyer who received notice or determined that a producer's milk exceeded legal somatic cell levels, temperature standards, or bacteria levels to take several of the same steps in response. ("Milk buyer" would include milk processors--i.e., the owner or operator of a dairy plant--as well as any other milk producer, milk producer marketing organization, receiving or transfer station, or bulk milk hauler that either takes delivery of raw milk or a raw milk product or manages the sale of the raw milk or product.) The bill would, however, specify that the milk buyer would have to refrain from obtaining any further milk from the producer once the director suspended the producer's permit, until the permit was reinstated. Currently the law states that the processor must refrain from obtaining milk from the producer *absent approval of the department or department's designee*. The bill would also add a step to the response process requiring the buyer to examine sediment levels in each producer's milk using "standard methods." Sediment content would be taken from a bulk milk tank sample or from one or more cans. Further, sediment content would be based on comparison with applicable USDA sediment standards for milk and milk products, which would be incorporated by reference. The buyer would have to report results of sediment tests to the department.

Department response. If the department received notification that a producer's milk contained somatic cells, temperature, or bacteria at a level exceeding department limits in two of the four most recent tests the department would have to provide the producer with a written warning notice of intent to suspend permit. Such notification and written warning notice are currently required as one of the steps that a milk processor must take upon receiving notice or determining defective milk. The bill would, however, add a requirement that another sample would be collected after three days but within 21 days. If the sample exceeded the limit for that parameter while the milk producer was on warning notice, the milk producer's permit would be suspended until the problem was corrected to the department's satisfaction, after being provided notice and an opportunity for an administrative hearing. Four samples would then be taken at the rate of not more than two per week on separate days within a three-day period, and the department would reinstate the permit upon compliance with the appropriate standard.

Violation of somatic cell count standard. Special provisions would be added for a permit suspension due to a violation of the somatic cell count standard. The department could issue a temporary permit whenever a resampling of the herd's milk supply indicated the milk supply to be within acceptable limits as listed in the table of chemical, physical, bacteriological, and temperature standards. Four samples would be taken at the rate of not more than two per week on separate days within a three-week period, and the department would reinstate the permit upon compliance with the appropriate standard.

Inspection responsibilities of milk buyer's representative. The law currently requires a

representative of a dairy farm or receiving station to annually inspect, and complete an inspection form for, all farms shipping milk to the plant or station. The law states that if adverse conditions persisted after the inspection, permit suspension could occur. The law fails to specify who has responsibility for notifying the department and what the grounds of suspension are. The bill would specify that the *milk buyer's representative* bears responsibility for inspecting a dairy farm or receiving station and for completing the inspection form. Procedures would remain the same, except that the representative of the milk buyer would also have to provide a copy of the completed form to the department. If adverse conditions continued after an inspection, the milk buyer's representative would bear responsibility for notifying the department, and the department could suspend or revoke the farm's permit for failure to rectify a condition that adversely affects milk quality.

Incoming raw milk and manufactured dairy products. The bill would specify that incoming raw milk and manufactured dairy products could not exceed the standards set forth in the table of chemical, physical, bacteriological, and temperature standards. (See section 70 of the bill.) Plants receiving commingled raw milk, heat-treated, or pasteurized milk would be sampled at least four out of every six months. If two of the last four samples exceeded the given standard, a warning notice would be issued and the plant would remain on warning notice as long as any two of the last four consecutive samples exceeded the limits. Another sample would be collected after three days but within 21 days. If any sample exceeded the limit of that parameter while the plant was on warning notice, the plant permit would be suspended for the violative product until the problem was corrected, after being provided notice and an opportunity for an administrative hearing. Four samples would then be taken at the rate of not more than two per week on separate days within a three-week period, and the department would reinstate the permit for that product upon compliance with the appropriate standard.

Sterilized or aseptically processed milk. Sterilized or aseptically processed milk and dairy products would have to comply with processing and biological standards established by a scheduled process contained in the Code of Federal Regulations (21 CFR part 113). ("Sterilized or aseptically processed milk and dairy products" refers to products hermetically sealed in a container and processed thermally or otherwise, so as to render the product free of microorganisms capable of reproducing in the product under normal nonrefrigeration conditions of storage and distribution and free of viable microorganisms including spores of public health significance.)

Pasteurization requirement. Currently the law states that only pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores or similar establishments. The law makes an exception for milk, cream, skimmed milk or other milk products furnished by persons primarily engaged in agricultural production to employees working on farms operated or controlled by such persons. Also, this provision does not apply to Cheddar cheese, Italian cheese, Swiss cheese, Colby cheese, washed curd cheese or soaked curd cheese that have been cured or ripened for not less than 60 days at a controlled temperature of not less than 35 degrees Fahrenheit. The bill would retain the prohibition on the sale of unpasteurized milk and dairy products but would eliminate the provision dealing with milk or milk products furnished to employees. The bill would also state that unpasteurized milk could be used in *any* cheese that was both allowed by federal regulations and cured or ripened for more than 60 days at a controlled temperature of not less than 35 degrees Fahrenheit, or as specified by the FDA. All other milk and dairy products would have to be pasteurized before the milk or dairy products entered into the evaporator or condensing equipment, the cheese-making process, the cheese culture making process, the frozen dessert mix freezing, or the cultured product culturing.

Temperature and time standards. The act requiring the pasteurization of milk and milk products currently defines "pasteurization" as the process of heating every particle of milk or milk products to at least 145 degrees Fahrenheit and holding it continuously at or above this temperature for at least 30 minutes, or to at least 161 degrees for at least 15 seconds. Milk products that have a higher milk fat content than milk or contain added sweeteners would have to be heated to at least 150 degrees for at least 30 minutes or to at least 166 degrees for at least 15 seconds. The Frozen Desserts Act of 1968 specifies that frozen dessert mix must be pasteurized by heating to at least 155 degrees for 30 minutes or 175 degrees for 25 seconds. The Manufacturing Milk Act specifies that cream for butter making must be pasteurized by heating to at least 165 degrees for 30 minutes or 185 degrees for 15 seconds and that milk or cream for plastic or frozen cream must be heated to at least 170 degrees for 30 minutes or 190 degrees for 15 seconds.

The bill would clarify the various categories and provide additional temperature and time relationships that would qualify as pasteurization. Any equivalent process approved by the FDA and accepted by the department could be substituted for the temperature and time standards provided. For whole milk, skim milk, cheese milk, whey, and other products with less than 10 percent butterfat or without added sweeteners: 145 degrees Fahrenheit for 30 minutes; 161 degrees for 15 seconds; 191 degrees for one second; 194 degrees for .5 second; 201 degrees for .1 second; 204 degrees for .05 second; or 212 degrees for .01 second. For cream, condensed products, and other products with 10 percent or more butterfat or with added sweeteners: 150 degrees for 30 minutes; 166 degrees for 15 seconds; 196 degrees for 1 second; 199 degrees for .5 second; 206 degrees for .1 second; 209 degrees for .05 second; or 217 degrees for .01 second. For eggnog and frozen dessert mix: 155 degrees for 30 minutes; 175 degrees for 25 seconds; or 180 degrees for 15 seconds. Temperature and time requirements for the pasteurization of cream for butter making and of milk or cream for plastic or frozen cream would remain the same. The bill would also recognize ultra-pasteurized products as products heated to at least 280 degrees for 2 seconds. The bill would eliminate special temperature and time requirements for the pasteurization of by-products used for feeding farm animals, though such by-products would still have to be pasteurized or be derived from pasteurized products.

Location. Currently the act regulating the pasteurization of milk and milk products requires that all condensed milk and milk products to be dried be pasteurized at the plant at which they are dried. This requirement does not ban the transportation of pasteurized condensed milk or milk products to another drying plant for repasteurization and drying. The act requires that a plant that processes milk or cream into the finished product pasteurize the milk or cream at the processing site with the following exceptions: condensed whey and acidified buttermilk containing 40 percent or more solids may be transported to another plant for drying without repasteurization. The bill would combine these requirements so that all milk and dairy products would have to be pasteurized at the plant at which they were processed or dried except for crystallized condensed whey and other high solids/low water activity products, which would be transported in tankers or containers dedicated to transporting pasteurized products. These requirements would not ban the transportation in nondedicated tankers of pasteurized milk or dairy products to another processing or drying plant for repasteurization or drying.

Cooling requirements. Currently all pasteurized milk and milk products, except those to be cultured and those to receive immediate additional heat treatment in subsequent processes of manufacture, must be cooled immediately to 50 degrees or less. Grade A milk and Grade A milk products are to be cooled to 45 degrees or less. The bill would specify cooling requirements in the table of chemical, physical, bacteriological, and temperature standards. (See section 70 of the bill.) Alternatively, milk could be maintained at or above 145 degrees.

Airspace temperature in vat pasteurizer. The bill would require that the airspace temperature in a vat pasteurizer be maintained at least five degrees above the minimum pasteurization temperature for the product being pasteurized for the entire thirty minute vat pasteurization cycle.

Owner/operator of dairy plant receiving milk for manufacturing into a dairy product. The bill would make several changes to the requirements that the current law places on the person who owns or operates a plant receiving milk for manufacturing into a dairy product. Several requirements refer to sanitary standards for certain elements, parts, and equipment involved in the production of milk or dairy products that must be established or approved by the department. For many of these requirements, the bill would instead specify that the owner or operator must ensure compliance with "sanitary standards." All of the following would have to comply with "sanitary standards": culinary steam used in direct contact with milk or dairy products; product contact surfaces of all equipment and utensils; nonmetallic parts—other than glass—that have product contact surfaces; cleaned-in-place systems; air agitation systems; plate-type heat exchangers; internal return tubular heat exchangers; pumps used for milk and milk products; homogenizers and high pressure pumps of the plunger type; new equipment and replacements; steam used in a vacuum chamber. The bill would additionally require that glass parts that have product contact surfaces comply with "sanitary standards."

The bill would make several other changes to the owner or operator's responsibilities. First, the law requires the owner or operator to ensure that, with the exception of piping approved by the department, all parts or interior surfaces of equipment, pipes, or fittings are accessible for inspection. The bill would require that all parts or interior surfaces of

equipment, *pipes other than cleaned-in-place pipes*, or fittings were accessible for inspection and also had to meet "sanitary standards." Second, the bill would replace the requirement that the owner or operator ensure that product storage tanks or vats are well-insulated and either fully enclosed or tightly covered with the requirement that the owner or operator ensure the tank or vats meet "sanitary standards." Third, the law currently requires the owner or operator to prevent the emission of an odor, smoke, or pollutant that exceeds department guidelines. The bill would specify that the owner or operator must prevent the emission of an odor, smoke, or pollutant within the plant that could adulterate or negatively impact the quality of the milk or dairy products, as determined by the department. Fourth, the law currently requires the owner or operator to maintain plant driveways and adjacent vehicular traffic areas pursuant to department guidelines. The bill would specify only that those sites had to be maintained in good repair. Fifth, the law requires the plant owner or operator to ensure that all openings to the outdoors meet certain specifications. The bill would further specify that on new construction, window sills would have to be slanted downward at a 45 degree angle. Sixth, the law requires that the owner or operator protect from potential broken glass contamination all milk or dairy products located beneath a suspended light bulb, fixture, window, or other glass. The bill would extend this required protection to cover dairy product ingredients as well.

Seventh, the law requires the owner or operator to retain a department-approved laboratory to conduct a bacteriological examination of the sanitary water supply at least twice a year, or after any construction or repair of the water supply system. The department decides how the results of the test are to be filed. The bill would require instead that the owner or operator make an examination of the sanitary water supply and recirculated product cooling mediums at least every six months or as often as necessary to determine purity and suitability for use in manufacturing dairy product systems. Such tests would have to be made and approved by the department, except for supplies that were regularly tested for purity and bacteriological quality. The most recent results of all water and cooling medium tests would have to be kept on file at the plant for which the test was performed. Eighth, the bill would add a requirement that the owner or operator submit detailed plans to the department for approval before commencing new construction, remodeling, and process or equipment changes. Ninth, currently the owner or operator must ensure that product storage tanks or vats are equipped with thermometers in good operating order. The bill would further specify that all raw milk storage tanks or silos installed after the effective date of the act that were not cleaned daily would have to be provided with an approved recording thermometer and would have to be cleaned and sanitized at least every 72 hours except as approved by the director in writing. Tenth, the bill would add a requirement that the owner or operator ensure that bulk storage and distribution equipment in dairy plants for handling liquid sweetening agents, edible oils, or other ingredients be made of materials that withstand corrosive action by the ingredients and that the equipment and ingredients were protected from contamination. Pipelines containing liquid sweetening agents and liquid chocolate would have to remain flooded with the ingredient to prevent mold growth or could be dismantled and washed. Eleventh, the bill would require that the owner or operator ensure that the plant was provided with adequate ventilation that was acceptable to the director, in order to minimize possible product with condensation, dust, and odors.

Batch pasteurizer requirements. The law currently requires the owner or operator to ensure that each batch pasteurizer has a temperature indicator and recording device and conforms to department specifications. The bill would require further that the batch pasteurizer conform to "sanitary standards." Moreover, the bill would add requirements that batch pasteurizers comply with the following: have an air-space indicating thermometer that is accurate within 1 degree Fahrenheit for the proper temperature range at least one inch above the surface of the products pasteurized in a vat; have surface coolers equipped with leak-proof gaskets and connections and with hinged or removable covers for the protection of the product and have edges of the covers that are designed to divert condensate on non-product-contact surfaces away from product contact surfaces; and use recording temperatures accurate within two degrees to record holding and cooling time. Surface coolers could only be used with specific written approval of the director.

High-temperature, short-time pasteurization equipment. Currently, the owner or operator of a plant receiving milk for manufacturing into a dairy product has certain responsibilities with regard to high temperature, short-time pasteurization equipment. The owner or operator must ensure that such equipment is sealed by the department and complies with several requirements. The bill would specify instead that the owner or operator had to ensure that high-temperature, short-time pasteurization equipment was tested and sealed by

the department, upon installation and quarterly thereafter, and complied with "sanitary standards." Other requirements would be changed as follows. First, the law requires the owner or operator to install in each high-temperature, short-time pasteurizer a short-stem indicating thermometer that is accurate within .5 degrees Fahrenheit for the applicable temperature range. The bill would require the owner or operator to ensure that each such pasteurizer had a short-stem or equally acceptable indicating thermometer that is accurate with .5 degree for the applicable temperature range. Second, all new or replacement plate-type heat exchangers would have to meet "sanitary standards." Currently, the owner or operator is required to ensure that all plate-type heat exchangers meet sanitary standards established or approved by the department. The bill would also eliminate certain responsibilities that the owner or operator currently has with regard to high-temperature, short-time pasteurizing equipment. Specifically, the owner or operator would no longer be required to: install air-space indicating thermometers; use recording thermometers accurate within 2.0 degrees, under certain conditions; equip surface coolers with leak-proof gaskets and connections and with hinged or removable covers; and, ensure that the edges of the covers are designed to divert condensate on non-product contact surfaces away from product contact surfaces.

Owner/operator of dairy plant. The bill would make several changes to the requirements that the current law places on the person who owns or operates a dairy plant. First, currently the law states that the owner or operator must ensure that the bacteriological content of commingled milk in storage tanks is 1 million or less total bacteria per milliliter. The bill would clarify that this is the acceptable bacteriological content for commingled *raw* milk. It would further specify that the acceptable bacteriological content for raw milk for frozen desserts is 300,000 or less total bacteria per milliliter. Second, currently the owner or operator must ensure that milk or dairy products comply with the federal Food, Drug, and Cosmetic Act. The bill would additionally require the owner or operator to ensure compliance with the Code of Federal Regulations (Title 21). (Note: Apparently, this provision was intended to refer to the chemical, physical, bacteriological, and temperature standards that would be established by the bill, as well as federal standards.) Third, the bill requires the owner or operator to dismantle and clean most equipment after each day's use. The bill would further specify that the cleaning materials must be approved for dairy and food service. Fourth, the bill would require owners and operators of dairy plants to treat product contact surfaces with an approved sanitizer—rather than a bactericidal, as is currently required—after performing cleaning-in place cleaning and immediately before starting the product flow. Fifth, the bill would require the owner or operator to ensure that all CIP installations complied with "sanitary standards"—rather than standards established or approved by the department. Sixth, the law currently requires the owner or operator of a dairy plant to provide a covered or enclosed receiving, washing, and sanitizing facility at each site that receives or ships milk in tanks. The bill would clarify that such a facility had to be provided to any site that received or shipped milk *or dairy products* in *milk tank trucks*. Further, the bill would not require the dairy plant to provide milk tank truck wash facilities if milk tank trucks were cleaned and sanitized at another approved facility. In addition to information that must be recorded under current law when washing and sanitizing milk tank trucks, the bill would state that the owner or operator of the plant had to record the identification number of the tank. Seventh, the bill would eliminate a requirement that the owner or operator retain the most recent copy of an employee's health certificate until the employee is no longer employed by the plant. Finally, the bill would add a requirement that the owner or operator purchase and store caps, parchment paper, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers only in sanitary tubes, wrappings, or cartons that were kept in a clean, dry place until used and handled in a sanitary manner.

Retention of quality test results. The bill would alter the requirements for retaining quality test results, for which the owner or operator of a dairy plant would still be responsible. First, in addition to retaining sediment and bacterial test results, as currently required, the owner or operator would also have to retain temperature and drug residue test results for 12 months. Second, the bill would eliminate the requirement that the owner or operator keep a monthly summary of all producers' test results. Third, the owner or operator of a dairy plant would have to retain retest results for 12 months, if an initial test placed the producer in permit suspension status. Currently the law requires such results to be retained, if an initial test places the producer in *probationary* status. Fourth, the bill would eliminate the requirement that the owner or operator retain the most recent copy of an employee's employee health certificate until the employee is no longer employed by the plant. Fifth, the bill would add a requirement that the owner or operator retain the most recent

water sample and recirculated cooling medium test results for at least 12 months.

Dairy plant employee. The bill would alter the requirements for dairy plant employees as follows. Currently the law requires each employee whose work brings him or her in contact with the processing or handling of milk products, containers, or equipment to have a medical and physical examination by a physician licensed under the Public Health Code (MCL 333.16101 et al.) or by a local health department at the time of employment. The bill would state instead that each such employee had to comply with requirements for employee health as specified in the food code, adopted under the Food Law of 2000. The bill would eliminate the requirement that a person returning to work at a plant receiving milk for manufacture into a milk product after an illness from a communicable disease must provide a certificate from a physician to establish proof of complete recovery.

Labeling requirements. Under current law the owner or operator of a dairy plant is responsible for ensuring that labels meet certain requirements. The bill would change some of these requirements. First, the law currently requires the owner or operator to legibly mark each commercial bulk package containing milk products manufactured under the act with the following information: the name of the product; the net weight; the name and address of the processor, manufacturer, or distributor; any other identifying information required by the department. The bill would replace the requirement to record the net weight with a requirement to record the quantity of the contents and would require the following additional information: a list of ingredients, including known allergens; the manufacturer lot number; and, the plant code issued by the department identifying where the product was manufactured. The bill would further specify that all manufactured dairy products had to meet any applicable definitions and standards of identity as promulgated under the Code of Federal Regulations (21 CFR part 131-135). Second, the bill would adopt by reference certain regulations from the Code of Federal Regulations (21 CFR part 101; 9 CFR part 317; 9 CFR part 381, subpart N) governing the labeling of retail packages and also require that retail packages meet the labeling requirements contained in the food code as adopted by the Food Law of 2000. Third, the bill would require that commercial bulk packages of frozen desserts with removable lids were labeled on the body of the container. Fourth, the bill would add a requirement that bulk shipments of milk or dairy products be accompanied by a bill of lading containing the following information: shipper's name, address, and permit number; permit identification of hauler if not an employee of the shipper; point of origin of shipment; tanker identity number; name of product; weight of product; grade of product; temperature of product; date of shipment; name of supervising regulatory agency at the point of origin; whether the contents are raw, pasteurized, or, in the case of cream, lowfat, or skim milk, whether it was heat treated; and, seal number on inlet and outlet. Finally, cheese and cheese products would have to be labeled according to the labeling requirements of the act and the Code of Federal Regulations (21 CFR part 133).

Owner or operator of plant manufacturing, processing, or packaging dry milk products. The bill would make several changes to the requirements that the current law places on the person who owns or operates a plant manufacturing, processing, or packaging instant nonfat dry milk, dry whole milk, dry buttermilk, dry whey, or other dry milk products. First, currently the owner or operator must either equip each open-type evaporator or vacuum pan with an automatic condenser water level control, barometric leg, or ensure that each evaporator or pan is constructed to prevent water from entering the product and meets standards established or approved by the department. The bill would require the owner or operator to either equip each evaporator and pan as currently specified or ensure that each evaporator or pan was constructed to prevent water from entering the product and met "sanitary standards." Second, currently the owner or operator must ensure that a dryer has auger troughs and related shields of stainless steel that are readily cleanable. The bill would permit the troughs and shields to be constructed of stainless steel or other equally acceptable materials approved by the department that are readily cleanable. Third, currently the owner or operator must ensure that the mesh size of the sifter screen used for various dry milk products is the size recommended in the appendix of the 3-A standards approved by the department for sifters. The bill would instead specify that the mesh size must be that recommended in the "sanitary standards." Fourth, the owner or operator is currently required to pasteurize all milk, buttermilk, and whey used in the manufacture of dry milk products at the plant where dried, except that condensed whey and acidified buttermilk containing 40 percent or more solids, which may be transported to another plant for drying without repasteurization. The bill would specify that the exception for condensed whey and acidified buttermilk containing 40 percent or more solids applies only if the whey or buttermilk was transported in a milk tank truck dedicated to hauling

pasteurized product. Fifth, the owner or operator is currently required to pasteurize milk or skim milk to be used in the manufacture of nonfat dry milk prior to condensing. The bill would require the owner or operator to pasteurize milk, dairy product blends, or skim milk to be used in the manufacture of dry milk or dry milk blends prior to condensing, using the temperature and time standards given above. (See "temperature and time standards" above.) The bill would also specify that dry milk blends had to be pasteurized at temperature and time standards approved for equivalent solids and fat content dairy products.

Condensed products. The law currently establishes certain requirements for the condensation process. The bill would make several changes to those requirements. First, the law permits a person to transport to a drying plant condensed skim made from pasteurized skim milk, and the bill would permit this as well. However, the law states that the condensed skim must be effectively repasteurized at the drying plant, prior to drying, at not less than 175 degrees for 25 seconds or the equivalent period in bacterial destruction approved by the department. The bill would change the temperature and time requirement to not less than 166 degrees for 15 seconds. Second, the temperature and time requirement for pasteurizing buttermilk or a substance from which the cream is derived would be changed from 185 degrees for 15 seconds to 161 degrees for 15 seconds. Third, the law currently states that a person may use surge tanks or balance tanks between evaporators and a dryer only to hold the minimum amount of condensed product necessary for a uniform flow to the dryers. Further, in doing so, the person must both ensure that each tank holds the condensed product at temperatures below 145 degrees and completely empty and wash each tank after each four hours of operation or less. The bill would require the person to *either* ensure that each tank holds the condensed product at temperatures specified in the table of chemical, physical, bacteriological, and temperature standards *or* completely empty and wash each tank after each four hours of operation or less. Fourth, the bill would refer to the table of chemical, physical, bacteriological, and temperature standards in case production of a condensed product that exceeded the amount a dryer took continuously from pans was bypassed through a cooler into a storage tank. The current law specifies a temperature of not more than 50 degrees for the process.

Dryers, conveyors, sifter, and storage bins. The bill would add a requirement that all dryers, conveyors, sifters, and storage bins be cleaned as often as is necessary to maintain such equipment in a clean and sanitary condition. The kind of cleaning procedure, either wet or dry, and the frequency of cleaning would be based on observation of actual operating results and conditions.

Butter. Currently the act authorizes the department to inspect all ingredients used in the manufacture of butter and related products to ensure that each ingredient is wholesome and practically free from impurities. The act dealing with butter grading and labeling prohibits a person, firm, association or corporation from selling, offering for sale or exposing for sale, or having in possession with intent to sell any butter that does not conform to the definition given in the act or from selling to the consumer any butter that has not been graded and labeled as required by the act. It further requires that butter be graded or scored by graders approved and licensed by the department. Rules promulgated by the department currently govern the grading of butter. The bill would specify that a person could not sell, offer for sale or expose for sale, or have in possession with intent to sell any butter that did not conform to the act and could not sell to the consumer any butter that had not been churned from wholesome cream and properly labeled. The bill would require that graders be approved by the department but would eliminate the requirement that graders be licensed. Butter would be graded according to standards contained in the Code of Federal Regulations (7 CFR 58).

Manufacturing/processing cheese. Under current law a person who manufactures or processes cheese bears certain responsibilities. The bill would make several changes to those responsibilities. First, the bill would eliminate the requirement that the person ensure that there is adequate ventilation in the room where cheese is manufactured. Second, the law requires that a the manufacturer or processor of cheese ensure that each bulk starter vat—if used—contains adequate controls such as valves, indicating thermometers, and recording thermometers. The bill would further specify that these controls had to meet the requirements for vat pasteurization unless pasteurization of the starter culture was completed prior to entry into the bulk starter vat. Third, the law specifies a temperature and time requirement—not less than 161 degrees for not less than 15 seconds—for pasteurizing milk to be used for making cheese. The bill would qualify this requirement by allowing the milk to meet the temperature and time standards for pasteurization, or by allowing for the use of unpasteurized milk in the manufacture of cheese as

specified above. (See "temperature and time standards" and "pasteurization requirement" above.) Fourth, the bill would specify that a person that manufactured or processed cheese and engaged in vat pasteurization could only use equipment meeting the requirements of "sanitary standards" rather than equipment meeting department specifications.

Equipment and utensils used for processing and packaging evaporated, condensed, or sterilized dairy products. Currently the law makes certain requirements of a person who manufactures, processes, or packages evaporated, condensed, or sterilized dairy products with respect to equipment and utensils used in the process. The bill would make the following changes to those requirements. First, the bill would require that the person ensure that homogenizers meet "sanitary standards" instead of standards established or approved by the department. Second, the bill would change a requirement that currently applies to a person who manufactures, processes, or packages evaporated, condensed, or sterilized dairy products to apply to any owner or operator of a plant receiving milk for manufacturing into a dairy product. The bill would require that the owner or operator of such a plant use homogenizers to reduce the size of fat particles and to evenly disperse those particles in the product. The bill would also specify that the homogenizers must meet "sanitary standards" rather than standards established or approved by the department. Third, the bill would specify that pasteurization had to be performed by systems and equipment meeting "sanitary standards" and had to be tested every three months for proper construction and operation. Finally, the bill would add a requirement that all sterilized or aseptically processed product comply with the requirements set forth by the scheduled process and the FDA under federal regulations referred to above. (See "sterilized or aseptically processed milk")

Frozen desserts. The Frozen Dessert Act of 1968 contains requirements for frozen desserts. The bill would make the following changes. First, currently the law states that frozen desserts may be made by reconstituting the frozen dessert from a properly pasteurized dry mix using a potable water source approved by the (former) Department of Public Health and prepared in a clean and sanitary manner. The bill would change the reference to refer instead to the Department of Environmental Quality. Second, the bill would change pasteurization requirements as follows to reflect changes to the new temperature and time standards for frozen dessert mix, as outlined above and including sweeteners, emulsifiers, and stabilizers. (See "temperature and time standards" above.) The bill would further require that after pasteurizing the frozen dessert mix, the mix be cooled promptly to a temperature of 45 degrees—instead of 50 degrees, as specified in current law. Third, the law states that the frozen dessert mix must be pasteurized in equipment approved by the director and with the use of an accurately operating self-recording thermometer. The charts for the thermometer must be dated and held for a period of at least 60 days. The bill would specify that the pasteurization equipment must be provided with an indicating thermometer and approved recording thermometer, the charts for which would have to be dated and held for a period of at least 180 days. Fourth, the bill would retain a provision in the current law allowing another pasteurization process to be used as long as it has been recognized by the department to be equally efficient and has been approved by the department. Finally, the bill would add a requirement that all frozen dessert mixes be pasteurized at the final freezing location unless the pasteurized mix was packaged in approved single service containers of five gallons or less, or as approved by the director. Frozen dessert plants that transported pasteurized bulk mix in bulk milk tankers dedicated to hauling pasteurized products on the effective date of the bill could continue the practice with the written approval of the director on a case-by-case basis.

Sanitation for ice cream plants. Currently the law specifies that the entire ice cream plant, including fixtures, furnishings, machinery, apparatus, implements, utensils, receptacles, and all equipment used in production, keeping, storing, handling, or distributing must be maintained and operated in a clean sanitary manner. The equipment, containers, and piping must be constructed of a smooth, nontoxic, impervious, corrosion-resistant material and fabricated in such a manner that there is no contamination of the products handled in them and they can be easily sanitized. The bill would require that all new equipment met applicable "sanitary standards." Equipment and utensils coming into contact with milk, dairy products, mix or frozen desserts would have to be constructed of stainless steel or other equally corrosion-resistant material. Other metals properly coated or plated would have to be approved in writing by the director on a case-by-case basis. Nonmetallic parts having product contact surfaces would have to meet "sanitary standards."

Miscellaneous frozen dessert requirements. The bill would incorporate language from several rules promulgated by the department. The bill would

require that milk, cream, and dairy products in fluid form received at a frozen dessert plant for use in mixes was immediately cooled to a temperature of 45 degrees or less and maintained at that temperature until pasteurized. Mixes must be assembled and pasteurized in a dairy plant. Spilled frozen desserts and ingredients would have to be discarded. Rerun would have to be handled in sanitary containers properly covered and stored at or below 45 degrees or be piped directly back to vats. Rerun that had been strained to remove nuts, fruits, or other ingredients would have to be repasteurized and could be used only as mix for products that contained the same ingredients. Frozen desserts that had been distributed could not be returned to the manufacturer for repasteurization and processing. Flavoring and bulky ingredients could be added to mix after pasteurization. Frozen desserts and mix would have to be packaged in commercially acceptable containers and packaging material that protected the quality of the contents in regular channels of trade. The packaging, cutting, molding, dispensing, and other handling or preparation of mix or frozen desserts and their ingredients would have to be done in a sanitary manner. Plastic or rubber gloves would have to be worn when handling frozen desserts for molding, cutting, or similar hand contact work. Frozen desserts would have to be labeled as specified above. (See "labeling requirements.") Bulk ice cream containers with removable lids would have to be labeled on the body of the container.

New frozen desserts. The bill would incorporate language from a rule, promulgated by the department, concerning new frozen desserts. New frozen desserts not conforming to existing standards would have to be manufactured in accordance with sanitation standards set forth in the bill and would have to comply with the bacteria count standards, coliform determinations, and storage temperatures where applicable, contained in the table of chemical, physical, bacteriological, and temperature standards in the bill. A person, firm, or corporation, before manufacturing and marketing any frozen dessert or mix that varied from the standards set forth in the bill, would have to notify the department of its intent to manufacture or market a frozen dessert or mix and would have to submit for review and approval a proposed copy of the label for the new dessert or mix.

Mobile frozen dessert plants. The bill would incorporate language from a rule, promulgated by the department, concerning mobile frozen dessert plants. First, a vehicle including a mobile frozen dessert plant used for the transportation of mix, frozen desserts, and their ingredients would have to be constructed and operated so as to protect the contents from heat, sun, and contamination. Second, the vehicle would have to be kept clean, and no substance capable of contaminating mix, frozen desserts, and their ingredients could be transported in the vehicle. Third, where applicable, a frozen dessert plant would have to be provided an area for unloading vehicles—surfaced with concrete or blacktop—that could be maintained in a sanitary condition. Fourth, it would have to meet all requirements of the act exclusive of toilet facilities. Fifth, it would have to have a potable water supply tank, of sufficient capacity, tilted toward a capped drain cock. The water inlet pipes would have to be of removable flexible copper or other approved tubing with the nozzle for the hose connection capped and fully protected when not being used. A hose for connection to a potable water supply would have to be provided and used exclusively for that purpose. Sixth, a mobile frozen dessert plant would have to have a suitable waste tank with a capacity at least equal to the water supply tank that was tilted toward a drain cock with an adequate method of gauging the contents. It would have to be emptied and flushed as often as necessary at an approved location, in order to maintain sanitary conditions. Seventh, it would have to have a refrigerated box of ample capacity for storage of the various ingredients carried that needed refrigeration and would have to be constructed of non-corrosive material, the floor of which was pitched toward a drain. Temperature would have to be maintained at 45 degrees or lower in the refrigerated box, and it would have to be equipped with an indicating thermometer. Eighth, mix to be frozen in a mobile frozen dessert plant would have to be packaged in a single service container of five gallons or less at the place of manufacture. Ninth, a mobile frozen dessert plant would have to have a refrigerated syrup rail with a holding plate to maintain temperatures of 50 degrees or below. Tenth, the plant would have to have a refuse can located within the mobile plant and a waste can or container for deposit of cups, papers, or other refuse by customers outside the mobile plant. Both would have to be kept clean and so located as not to create a nuisance. Finally, utensils, equipment, and multiuse containers in a mobile frozen dessert plant would have to be washed and sanitized in the mobile plant after each day's use.

FISCAL IMPLICATIONS:

Concerning House Bill 4820, the House Fiscal Agency reports that revenues from proposed fees would lead to a slight reduction in overall revenue from what is currently collected. Fines and fees from

courts for violation of the act would depend upon the number and types of violations.

Concerning House Bill 4829, the House Fiscal Agency reports that the bill is revenue neutral from the various fees and that fines and fees from courts for violation of the act would depend upon the number and types of violations. (1-4-02)

ARGUMENTS:

For:

By updating and combining 21 current laws and regulations into two clear, consistent laws governing the production, processing, storage, and distribution of milk and dairy products, the bills would help promote both public health and the dairy industry. Perhaps the most significant step in this direction would be the adoption of the 2001 version of the Pasteurized Milk Ordinance, which reflects the U.S. Public Health Service's most up-to-date quality standards. Adoption of the ordinance is essential for providing consumers throughout the state, nation, and world assurance that Michigan's milk and dairy products are wholesome and safe. Although the Department of Agriculture reports that it has kept up with the relatively minor changes made by the 1995, 1997, and 1999 versions of the PMO, the Fluid Milk Act of 1965 still refers to the 1993 version. Interstate commerce depends upon other states' confidence that Michigan milk and dairy products meet the highest quality standards.

The bills would also promote public health by clarifying current requirements, addressing issues where the law is currently silent, adding licensing provisions, and adopting new sanitary standards. For instance, House Bill 4820 would prohibit a bulk milk hauler/sampler from collecting bovine milk from a dairy farm if the milk had been stored for more than 72 hours. Currently the law does not specify how often milk must be collected. Although other provisions of the law might help to ensure that milk not show signs of being spoiled, this provision would help ensure that the milk was fresh. New licensing requirements for tank truck cleaning facilities, single service plants, milk transportation companies, and bulk milk tank trucks would provide the department with increased oversight. It is important that the department have the authority to issue, suspend, and revoke licenses for all persons involved in the process. Some additions may seem less crucial when considered individually—e.g., clarification about what constitutes a "well-lighted" milkhouse or milkroom, or the new requirement that window sills on new constructions must be slanted downward at a 45-degree angle. Still, such requirements must be viewed collectively, as part of an overarching plan that recognizes the potential for threats to public health at any step in the process.

The benefits of streamlining the 19 separate laws and regulations governing manufacturing milk and dairy products should not be underestimated. By consolidating and organizing provisions dealing with the various different elements of the industry into one clear, coherent act, House Bill 4829 would transform a labyrinthine regulatory "nightmare" into a more intelligible, transparent system.

For:

Requiring drug residue avoidance education for all new dairy farms, as well as increasing recording and testing requirements following a positive drug residue test, would help focus attention on preventing and rectifying drug residue problems. The bills would also increase penalties for milk that failed a drug residue test by requiring the producer to pay the value of the entire load of milk and costs associated with its disposition. Currently, the producer must only pay the value of the milk that the producer contributed to the load and the administrative fine in the case of Grade A milk, and just the administrative fine, in the case of manufacturing milk. Milk tank trucks often pick up milk from several producers en route to the dairy plant, and a full load can cost several thousand dollars. It is unfair for the plant to suffer the loss of value for milk that is not contaminated when it is picked up but becomes contaminated from being mixed with another producer's milk.

Against:

House Bill 4829 would retain the requirement that canned milk be cooled and stored to 60 degrees or lower. In 1999 the USDA issued a report to the National Association of State Departments of Agriculture entitled "Re-evaluation of the USDA Recommended Requirement for the Cooling of Can Milk with Particular Consideration for its Effect on Non-Electric Dairy Farms." (At that time, Michigan, Ohio, and Indiana had laws requiring canned milk to be cooled and stored to 60 degrees or lower, and New York required that such milk be stored at 55 degrees or lower.) The USDA upheld its recommendation that canned milk "be cooled immediately after milking to 50 degrees or lower and stored at 50 degrees Fahrenheit unless delivered to the plant within two hours after milking." The report summarized evidence for four conclusions offered in

support of its recommendations. First, in order to keep the bacteria count down, milk should be "obtained in a sanitary manner then cooled quickly and stored cold until delivered to the processing facility." Second, it is widely accepted that pasteurization destroys bacteria, including pathenogenic bacteria. Still, pathenogenic bacteria produce heat stable toxins that are not destroyed by pasteurization, and the toxins present a threat to the milk's safety. Third, raising the temperature limit could have a negative effect on the international marketability of products. Fourth, non-electric farms have several options that allow them to comply with the 50 degree temperature requirement without using electricity, including: using diesel generators, transporting milk to milkhouses with cooling tanks soon after it has been obtained and canned, and using cold water or ice to supplement cooling. The law should require lower temperatures for canned milk, as specified by the USDA's recommendations.

Response:

The department reports that there are 350 manufacturing milk farms (as opposed to 2,816 Grade A dairy farms) in the state, of which approximately 300 are owned and operated by Amish farmers. In 1919 leaders of the Amish community banned the use of electricity from public utility lines, as a connection with outsiders that would violate the Bible's injunction against being "conformed to the world." In general, the Amish approach new technologies with concern about potentially deleterious effects on their deep-rooted sense of community. Thus, for religious reasons connected with a sense of social identity, a considerable number of the state's dairy farmers do not use electricity and thus would have difficulty meeting the 50-degree temperature requirement. Moreover, the USDA report notes that there are problems with each of the alternatives to electricity. For instance, purchasing or gathering ice can be extremely expensive and labor-intensive, and water can be used to cool milk only if there is an adequate supply of water that is cooler than 50 degrees to begin with.

The department reports that the current 60-degree standard has caused no consumer safety problems in the years since it has been in effect. Further, to a segment of the consumer market, the fact that a product comes from an Amish farm is a selling point, since some people believe that the organic methods of Amish farmers result in a safer, higher quality product than that standard agricultural methods. If the current requirements have not led to complaints about food safety attributable to those requirements, and lowering the required temperature would threaten the very existence of an important and large portion of the manufacturing milk farms, the bill should not require that lower temperature.

Analyst: J. Caver

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.