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House Bill 4820 (Substitute H-1 as passed by the House)
Sponsor: Representative Tom Meyer
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 10-17-01

CONTENT

The bill would replace the Fluid Milk Act and related regulations with the "Grade A Milk Law of 2001", and would adopt the Federal Grade A Pasteurized Milk Ordinance (PMO). Proposed changes to current law would include:

- Specific requirements for the handling of milk from cows tested positive for tuberculosis (TB).**
- Additional licensing or permit requirements for manufacturers and transporters.**
- Adjusted license and permit fees.**
- Additional education, penalties, and follow-up requirements to restrict drug residue found in milk.**
- Additional specifications for revocation or suspension of licenses or permits.**
- A requirement that cow milk be collected within 72 hours.**
- Requirements that milk be cooled to the specifications of the PMO.**

Under the bill, "PMO" would mean the 1999 edition of the of the Grade A Pasteurized Milk Ordinance, the recommendations of the U.S. Public Health Service/Food and Drug Administration, and provisions of a 1995 supplement concerning condensed and dry milk. (The Fluid Milk Act adopts the 1993 version of the PMO.) "Grade A milk" would mean milk or milk products produced in compliance with the requirements of the bill. Except as specifically defined or described, the bill would incorporate the PMO by reference.

The bill is tie-barred to House Bill 4829, which would recodify the Manufacturing Milk Law.

The following is a description of the bill's proposed changes to the current Act.

Licensing

The bill would add milk transportation companies, tank truck wash stations, bulk milk tank trucks, and single service container manufacturers to those who must be issued Grade A milk licenses. (A single service container would be a single use container, or parts of single service containers that touch milk). Under the Act, producers, transporters, processors, labelers, and sellers of Grade A milk must be licensed. The bill would permit State agencies operating dairy facilities under a memorandum of understanding from the Michigan Department of Agriculture (such as correctional facilities) to be exempted from a Grade A license.

The bill would permit a milk tank truck driver from another state to apply for a hauler/sampler license in Michigan without taking an exam if he or she submitted satisfactory proof of training and current licensing to the Michigan Department of Agriculture (MDA). The bill would allow the MDA Director to waive this requirement, however, if there were a reciprocal agreement with the hauler's home state. In addition, the Director could deny license renewal to any bulk milk hauler/sampler who failed evaluations in the previous two years.

The bill would change some Grade A license and permit fees imposed under the Fluid Milk Act (Act 233 of 1965) and other laws. Table 1 illustrates the proposed adjustments.

Table 1

| License or Permit | Last Update | Current Fee per year | Proposed Fee/Charge |
|--|-------------|--|--|
| Grade A Dairy Plant Without Certified Fieldperson Act 233 of 1965 | 1982 | \$50 plus \$15 per milk producer sending milk to the plant | \$175 per plant, plus \$15 per producer (\$5 per producer if part of a co-op) |
| Grade A Dairy Plant With Certified Fieldperson Act 233 of 1965 | 1982 | \$50 plus \$5 per producer | \$175 per plant, plus \$5 per producer |
| Grade A Transfer/ Receiving Station Act 233 of 1965 | 1982 | \$25 | Include receiving/ transfer stations, bulk tanker wash stations, single service manufacturers, milk distributors; \$50 |
| Certified Fieldperson Act 233 of 1965 | 1982 | \$10 | \$60 for three years |
| Milk Plant Delivery Vehicle Act 233 of 1965 | 1982 | \$10 | Eliminate |
| Milkfat Tester Act 212 of 1935 | 1970 | \$5 | Eliminate |
| Unassigned Grade A Dairy Farm Without Certified Fieldperson | | None | \$15 annual permit fee |
| Unassigned Grade A Dairy Farm with Certified Fieldperson | | None | \$5 annual permit fee |

Revocation and Suspension of Permits and Licenses

The 1993 PMO allows for the suspension of permits or licenses if any violations of the ordinance occur. The Fluid Milk Act names the following four violations that may result in revocation or suspension:

- Failing to agitate Grade A milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the Department.
- Failing to take the sample for analysis in accordance with the procedures established by departmental rules.
- Picking up Grade A milk at a temperature that exceeds 45 degrees Fahrenheit.
- Failing to report accurately the weight or temperature of Grade A milk picked up from a farm bulk milk tank.

The bill would include language to allow the Director to revoke or suspend a license or

permit issued under the proposed Act for *any* violation of the proposed Act, the PMO, or a rule promulgated under the proposed Act. The bill specifies the violations that would be cause for revoking or suspending a license or permit or charging an administrative fine. In addition to the four infractions above, they would include:

- Failing to provide supplementary or interim information or information required to be supplied to the Department.
- Failing to provide a security device (such as a verified financial statement) in the amount and manner required by the Director under the bill.
- Knowingly providing false or fraudulent information or making a material misrepresentation on an application.
- Knowingly providing false or fraudulent information or making a material misrepresentation in response to a request for information by the Department.
- Failing to pay a producer in the manner

- provided under the bill.
- Adulterating milk or milk products.
- Failing to pay a final civil or administrative fine.

The MDA Director also could summarily suspend a license or permit if the licensee or permittee offered for sale or sold any of the following:

- Milk or milk products from diseased animals, or animals otherwise considered abnormal, that had been incorporated with milk or milk products from normal healthy animals.
- Milk or milk products suspected of contamination with any substance considered by the Department to be an imminent or substantial health hazard.
- Milk products from production, transportation, packing, 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 from contamination.
- Milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues left after a cleaning regimen and thick enough that they could be scraped to form a body of solids.
- Milk or milk products stored in a container of unapproved construction.
- Milk or milk products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precluded the reasonable protection of the milk from contamination during the milking process.
- Milk that was of inadequate volume to agitate properly after the first milking.
- Milk or milk products produced with excessive sediment.

In addition, the following would be cause for summary suspension of a license or permit:

- Receiving or picking up milk or milk products stored in a container of unapproved construction.
- Interfering with inspection of milk or milk products.
- Maintaining dead animals on the premises inconsistent with Public Act 239 of 1982.
- Maintaining a minimum of three of the last

- five official bacteria counts illegal.
- Maintaining a minimum of three of the last five official somatic counts illegal.
- Maintaining a minimum of three of the last five official milk or milk product cooling temperatures illegal.
- Failing to provide milk or milk products free of violative drug residues based on tests approved by the Food and Drug Administration.
- Any other condition that created an imminent threat to the public health, safety, or welfare.

A person whose license or permit had been suspended, revoked, or denied immediately would have to discontinue operation of the business for which the license or permit was issued or requested, and would not be eligible for reinstatement of the license or permit until the Director determined that all violations had been corrected.

Except for drug residue violations discussed below, the Director could, upon finding that a person violated a provision or rule, impose an administrative fine of not more than \$1,000 and the actual cost of the investigation of the violation. The fine would be deposited in the General Fund. Failure to pay this fine would result in the action described below (under "Failure to Pay Administrative Fine").

Drug Residue Penalties, Sanctions, and Education

The current law imposes fines on producers whose milk tests positive for residues of drugs, such as antibiotics. The bill would maintain fines in some circumstances, and enact additional sanctions and tracking requirements.

For example, any time that drug residue was found in a batch of milk, that producer's milk would not be available for sale until a subsequent sample tested negative at an approved laboratory. For each incident, 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 MDA. 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. Currently, for each 12-month period, the

administrative fines are \$300 for the first incident, \$600 for the second, and \$1,200 for the third; the bill would maintain these fine amounts. The current Act does not contain sanctions, nor does it require producers to pay buyers for lost milk; rather, it requires the producer to pay the Department for each drug residue violation.

Also, the bill would impose tracking requirements on milk producers who violated the drug residue provisions multiple times in a 12-month period. In addition to the penalties and sanctions imposed on first-time offenders, second-time offenders would be required to test all milk prior to shipment for at least 12 months, and retain records of the tests for at least 18 months. The producer also would be required to maintain complete drug treatment records for all lactating or near-lactating dairy animals for the same amount of time.

Each additional violation would result in a maximum 60-day suspension of the producer's permit (after notice and the opportunity for an administrative hearing before the Department). The Director would be instructed to investigate the cause of the violative drug residue and discuss avoidance control measures, as outlined in the PMO, with the producer. The sanctions and tracking requirements imposed on second-time offenders also would apply.

The payment for administrative fines would be required within ten days after notification of the violation or within 10 days after notification of adverse findings following a hearing or appeal, or both. The fines would be deposited in the General Fund and appropriated for the purpose of training producers on avoiding drug residue contamination.

Further, the bill would require an initial applicant for a initial Grade A Dairy Farm Permit to complete education, acceptable to the Director, on drug residue avoidance control measures prior to receiving the permit. Producers with one or more incidents of drug residue contamination also would be required to complete the education program. Currently, only milk producers with prior drug contamination infractions must complete the education program.

Penalty for Failure to Pay Administrative Fine

Under the bill, failure to pay the administrative fines associated with drug residue

contamination or license revocation within 120 days without making acceptable payment arrangements could result in license revocation, permit suspension or court action, following notice and the opportunity for an administrative hearing. The Director would have to advise the Attorney General of a producer's failure to pay an administrative fine, and the Attorney General would have to bring an action in a court to recover the fine. The Director would not be required to issue an administrative fine or initiate court action for minor violations whenever the Department believed that the public interest would be adequately served under the circumstances by a suitable written notice or warning.

Civil Fines

If a producer were fined three or more times in a 12-month period, and/or the producer failed to pay the administrative fines associated with drug residue contamination, the producer would be guilty of a misdemeanor punishable by a fine of not less than \$250 and not more than \$2,500 or imprisonment for up to 90 days, or both.

These civil penalties also would apply to anyone who provided false or fraudulent information on an application or in response to a request from the Director. Any other violator of this proposed Act would be guilty of a misdemeanor and subject to the same fine and imprisonment. Under the current law, the civil fine ranges from \$50 to \$500.

Other Provisions

Water for Milkhouse and Milking Operations. Water used for these operations would have to follow recommendations for safety and accessibility set by the Department of Environmental Quality. The current Act names the Michigan Department of Public Health as the recommending agency.

TB Cows. Cows tested positive for TB would have to be milked last or in separate equipment, and the milk from these animals could not be used or sold for human or animal consumption. The current Act does not specify requirements for the handling of TB milk.

(The 1993 PMO mandated that a state with a less than modified-accredited bovine TB status test every dairy farm for TB. The current PMO does not require the whole state to be tested

if there is a Federally approved testing protocol in place. Instead, it allows for random sampling.)

Milk Collection Frequency. The bill would require bulk milk hauler/samplers to pick up milk that had been stored on the farm for no more than 72 hours. The current Act contains no time restriction.

Dairy Farm Construction Requirements. The bill would require that nonelectric farms provide battery-powered lighting for each bulk tank opening. The current Act contains no such requirement.

Monthly Producer Milk Test Requirement. Under the current Act, the milk buyer is responsible for testing the milk, and the milk hauler, who represents the buyer, collects the samples. It is the buyer who is responsible for ensuring that the correct number of milk samples are sent to the Department. Under the bill, it would become the producer's responsibility to ensure that the correct number of samples were reported to the Department.

Consumption of Raw Milk. Currently, only farm employees are allowed to consume unpasteurized, or raw, milk. The bill provides that only on-farm family members of milk producers could consume raw milk.

Farm Milk Maximum Temperature. The current Act requires that farm milk be cooled to 45 degrees within two hours after the first milking, then allowed to get no warmer than 50 degrees Fahrenheit. The bill would amend this to require that milk be cooled to 50 degrees Fahrenheit within four hours after the start of the first milking, then to 45 degrees Fahrenheit within two hours of the completion of milking, not to exceed 50 degrees Fahrenheit on subsequent milkings. This would bring the time and temperature requirements into alignment with the PMO standards.

Transportation of Pasteurized Product. The 2001 PMO requires that pasturized milk transported in a container previously used for transportation of raw milk be repasturized. This does not apply to certain products transported in dedicated tankers. The bill would adopt this PMO requirement.

Repealed

The bill would repeal the Fluid Milk Act (MCL 288.21-288.29a) and sections R 285.401.8-485.408.5 of the Michigan Administrative Code, which regulates the sale of Grade A milk, including date-of-sale requirements.

Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would result in an estimated loss in State revenue of nearly \$32,000 associated with the provisions regarding drug residue testing. Under the bill, penalty fines under certain conditions would no longer be paid to the Director of the Michigan Department of Agriculture; instead the bill would require producers to pay buyers for lost milk.

The bill would modify and eliminate a number of the current fees as well as create new fees. There would be no net annual fiscal impact on State revenues from these changes. The bill would change the terms of a number of the licenses from one year to two and three years. However, these changes would not affect the annual revenues generated from these fees.

The bill could result in additional State revenue from the provision allowing administrative fines of up to \$1,000 and the costs of investigation. This fine revenue would be deposited in the General Fund for the purpose of the training or education of producers in management procedures to avoid drug residue contamination.

Fiscal Analyst: C. Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.