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BILL ANALYSIS

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Senate Bills 1007 and 1008 (as introduced 1-9-08)  
Sponsor: Senator Patricia L. Birkholz (S.B. 1007)  
Senator Gerald Van Woerkom (S.B. 1008)  
Committee: Agriculture

Date Completed: 1-30-08

## **CONTENT**

**Senate Bills 1007 and 1008 would amend the Grade A Milk Law and the Manufacturing Milk Law, respectively, to do the following:**

- Revise the requirements for licensure under each Law.
- Require the money collected from license fees, fines, and other sources under each Law to be deposited into the Dairy and Food Safety Fund, to be used to enforce and administer the Law under which it was collected.
- Permit the Michigan Department of Agriculture (MDA) Director to impose a late fee of \$10 a day, up to \$100, for each day an application for a license renewal under either Law was late; charge a convenience fee; and collect from the applicant any cost associated with the method of payment.
- Permit the MDA Director to suspend a license or permit if a licensee or permittee committed certain violations.
- Adopt common definitions of some terms.

**Senate Bill 1007 also would do the following:**

- Revise the requirements for a bulk milk hauler/sampler.
- Refer to the 2005, rather than the 2001, version of the Pasteurized Milk Ordinance (PMO).
- Revise certain definitions.

**Senate Bill 1008 also would:**

- Include new standards for the pasteurization of milk, condensed milk, and whey, and the mixing of pasteurized milk products.
- Require a milk processing plant to provide certain minimum lighting levels and sufficient electrical power, and meet other requirements.
- Revise the requirements for cleaning equipment at a dairy plant.
- Revise certain requirements for the handling of retail packages and packaged dairy products.

Each bill would take effect 30 days after it was enacted.

In the description of the bills below, common provisions of the two bills are summarized first, followed by provisions that are specific to each bill.

### **Senate Bills 1007 and 1008**

#### **Licensure**

Under the Grade A Milk Law and the Manufacturing Milk Law, a person may not produce, transport, wash milk tank trucks, process, label, or sell manufacturing milk, grade A milk, grade A milk products, or dairy products and may not manufacture single service containers and closures unless licensed or permitted under the applicable Law.

The bills would remove those provisions, and instead would prohibit a person from doing any of the following without being licensed

under the Grade A Milk Law or the Manufacturing Milk Law:

- Produce milk or Grade A milk to be offered for sale.
- Collect milk samples or Grade A milk samples for regulatory purposes.
- Operate a milk transportation company that owned or operated a bulk milk tank truck.
- Wash milk tank trucks.
- Process, label, distribute, or sell milk, Grade A milk, manufactured dairy products, or Grade A milk products, although a person operating a retail food establishment would be exempt from licensure under either Law if he or she complied with certain provisions under the bills and were licensed under the Food Law of 2000.

Those provisions would not prevent the sale, at wholesale or retail at a retail food establishment licensed under the Food Law, of milk or milk products that were packaged in final consumer packages at a facility licensed under the Grade A Milk Law or the Manufacturing Milk Law.

In all cases described above, a person dealing with Grade A milk would have to be licensed under the Grade A Milk Law. Otherwise, a person could be licensed under either Law.

A person licensed under the Grade A Milk Law and engaged in activities regulated under the Manufacturing Milk Law would be exempt from licensure under the Manufacturing Milk Law.

Under the bills, a person licensed under the Manufacturing Milk Law or under the Grade A Milk Law and engaged in activities regulated under either Law would have to comply with the requirements of either Law, where applicable, and the person would be subject to the penalties in either Law, where applicable.

The bills would define "retail" as selling or offering for sale a dairy product directly to a consumer. "Retail food establishment" would mean an operation that sells or offers to sell food directly to a consumer. The term would include both a retail grocery and a food service establishment, but would not include a food processing plant.

Under both bills, "wholesale" would mean selling or offering to sell dairy products to retailers, jobbers, or distributors rather than directly to a consumer.

#### Exemptions

Currently, frozen desserts manufactured from a pasteurized mix in the soft form at retail food establishments licensed under the Food Law are exempt from the Manufacturing Milk Law.

Senate Bill 1008 would retain that exemption if both of the following conditions were met:

- All ingredients contained in those products complied with the requirements of the Food Law.
- The milk products manufactured were not sold wholesale or to another business entity.

Similarly, under Senate Bill 1007, milk products manufactured at retail food establishments licensed under the Food Law would be exempt from the Grade A Milk Law if the above conditions were met.

#### Dairy and Food Safety Fund

The Grade A Milk Law requires the MDA to collect licensing and permitting fees from those required to be licensed under that Law. The Manufacturing Milk Law requires each dairy plant and each stand-alone facility to pay a \$50 annual licensing or permitting fee.

The MDA Director also may impose sanctions and administrative fines on a producer who violates either Law or a rule promulgated under that Law. In general, administrative fines received for violations of either Law must be deposited into the General Fund, and in some cases allocated for education and training.

The bills would require any fees, assessments, civil or administrative fines, and money from any other source collected by the MDA under each Law to be deposited into the Dairy and Food Safety Fund created under the Food Law, to be used to enforce and administer the Law under which the money was collected.

The bills would permit the MDA to impose a late fee for a renewal application under either Law. The fee would be \$10 for each business day an application was late, but the total late fee could not exceed \$100. The MDA could not issue or renew a license until any fees and fines had been paid. A hearing would not be required regarding the MDA's refusal to issue or renew a license under those provisions except as allowed under the Administrative Procedures Act. The MDA could charge a convenience fee and collect from the applicants any additional costs associated with the method of fee payment for the license or permit fees, not to exceed the costs of the MDA.

### Approval for Construction

Under the bills, a milk plant operator would have to submit detailed plans to the MDA for approval before beginning new construction, remodeling, and equipment changes. Plans for new construction or remodeling would have to include a plan that provided for operational or physical isolation of the milk plant from sources of potential product contamination caused by animal production facilities located in close proximity to the milk plant. Retail or public viewing areas would have to be separated from processing areas by a solid floor-to-ceiling partition, except that, as approved by the MDA Director, other equally effective means of protection could be used.

Both Laws require the MDA to issue an initial or renewal license or permit for regulated activities, other than a Grade A dairy farm or a certified industry farm inspector, within 90 days after the applicant files a completed application. The bills would add an exception to that requirement for a bulk milk hauler/sampler license or permit.

### Security Device

Under the Grade A Milk Law and the Manufacturing Milk Law, a licensee or applicant for licensure as a milk plant must provide a security device for the benefit of producers who may be damaged by a default in payment by the licensee. Accepted security devices include the following:

- An audited fiscal year end financial statement demonstrating the licensee's

ability to meet certain minimum liquidity requirements.

- A commercial surety bond made payable to the MDA; a certificate of deposit, money market certificate, or other financial instruments that are issued or endorsed to the MDA; an irrevocable letter of credit filed with the MDA; life insurance policies that are issued or endorsed to the MDA; or other security acceptable to the MDA.

A licensee or applicant for licensure as a milk plant that does not provide security under those provisions must provide an agreement in which the milk plant prepays for its milk supply by means of cash payments before or at the time of delivery of milk products. Under the bills, the agreement would have to provide for cash payments before or at the time the milk was received at the plant.

"Cash payments", regarding those requirements, would mean a payment in cash or by check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred.

Under both Laws, the MDA must revoke or deny a license for a milk plant if the licensee or applicant fails to provide one of the security devices described above. Milk plants that receive milk only from dairy farms under the same ownership as the milk plant are exempt from that requirement. The bills also would exempt milk plants that received milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant.

### Suspension of License or Permit

The Grade A Milk Law and the Manufacturing Milk Law permit the MDA Director summarily to suspend a license or permit upon determining that the licensee or permittee committed certain acts, which include offering for sale or selling milk or milk products suspected of contamination with any substance considered by the MDA to be an imminent or substantial health hazard.

The bills also would permit the MDA Director summarily to suspend a license or permit issued under either Law if a licensee or permittee offered for sale or sold milk or

milk products that presented an imminent or substantial health hazard due to improper or unknown storage temperature or improper allergen labeling.

Under Senate Bill 1008, the MDA Director also could suspend a license or permit issued under the Manufacturing Milk Law upon determining that the licensee or permittee had offered for sale or sold milk or dairy products that were not pasteurized according to the requirements in the Law, except as otherwise permitted. (The Manufacturing Milk Law permits unpasteurized milk to be used in the manufacture of cheese, only as allowed in certain Federal regulations.)

In addition, Senate Bill 1007 would permit the MDA Director summarily to suspend a license or permit issued under the Grade A Milk Law if a licensee or permittee did either of the following:

- Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that had been condemned under the Law.
- Offered for sale or sold packaged milk or milk products that presented an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the requirements set forth in the Pasteurized Milk Ordinance (PMO).

Under the Grade A Milk Law, "PMO" means the 2001 edition of the Grade A pasteurized milk ordinance, recommendations of the U.S. Department of Health and Human Services, Public Health Service/Food and Drug Administration, with administrative procedures and appendices, and the provisions of the 1995 Grade A condensed and dry milk products and condensed and dry whey supplement I to the PMO, with administrative procedures and appendices.

Senate Bill 1007 would refer to the 2005 edition of the Grade A PMO, and would remove the reference to the 1995 supplement. (The 2005 edition incorporates provisions previously found in that supplement into the main body of the ordinance.)

## Milk Processing

The Grade A Milk Law and Manufacturing Milk Law require all dairy plant by-products used for feeding purposes for farm animals to be pasteurized or derived from pasteurized products. The bills would require such pasteurization when specified by the MDA Director.

Under the bills, milk and milk products could be aseptically processed as low-acid foods provided that they complied with the following requirements:

- All thermally processed milk and milk products that were packaged in hermetically sealed containers would have to be processed in a milk processing facility licensed under the Grade A Milk Law, the Manufacturing Milk Law, or the Food Law.
- All processors of acidified milk and milk products packaged in hermetically sealed containers would have to comply with the regulations of the Food and Drug Administration (FDA) in 21 CFR Parts 108, 110, and 114.
- All thermally processed milk and milk products that were packaged in hermetically sealed containers would have to comply with the regulations of the FDA in 21 CFR Parts 108, 110, and 113.
- Hermetically sealed packages would have to be handled to maintain product and container integrity.

(In Title 21 of the Code of Federal Regulations, Part 108 provides for an emergency permit that may be required if a food manufacturer, processor, or packer does not meet regulatory requirements regarding that food, before it may be introduced or delivered for introduction into interstate commerce. Part 110 relates to current good manufacturing practice in manufacturing, packing, or holding human food. Part 113 deals with thermally processed low-acid foods packaged in hermetically sealed containers. Part 114 provides good manufacturing practice for dealing with acidified foods.)

Both bills would prohibit packaged fluid dairy products that exceeded the sell-by date from being reused in any dairy products regulated by the Grade A Milk Law or the Manufacturing Milk Law unless the MDA

approved a protocol for such reprocessing. The protocol would have to include consideration of storage temperatures, bacterial counts, age past the sell-by date, sight and smell grading qualities, added ingredients, and any other factors the MDA Director considered critical.

Packaged fluid dairy products that had left the control of a dairy plant but were returned or delivered to a dairy plant, commonly referred to as "returned products", could not be reprocessed into milk or milk products regulated under the Grade A Milk Law or the Manufacturing Milk Law.

The bills would require milk and milk products to be advertised as specified in the Food Law.

### Definitions

The bills would add a definition for the term "advertise" or "advertisement" to the Grade A Milk Law and the Manufacturing Milk Law. The term would mean a presentation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that was likely to induce, directly or indirectly, the purchase of milk or milk products.

Under the bills, "dairy animal" would mean any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, that was managed and milked to obtain milk for human consumption.

"Dairy farm" would mean any place or premises where one or more dairy animals were kept for milking purposes, and from which a part or all of the milk was provided, sold, or offered for sale.

Under the Grade A Milk Law and the Manufacturing Milk Law, "distributor" means a person other than a producer or processor who offers for sale or sells to another for resale at retail milk or milk products. Under the bills, that term would mean a person other than a producer or processor who offers for sale, holds for sale, or sells at wholesale milk or milk products.

The bills would define "food service establishment" as a fixed or mobile restaurant, coffee shop, cafeteria, short

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

- A motel that serves continental breakfasts only.
- A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, one or more of which are available for rent to transient tenants.
- A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.
- A child care organization regulated under the child care licensing Act, unless the establishment is carrying out an operation considered by the Director to be a food service establishment.

(That definition is the current definition of "food service establishment" under the Food Law.)

Under the bills, "milk plant" or "dairy plant" would mean any place premises, or establishment where milk or milk produces are collected, handled, processed, stored, pasteurized, aseptically processed, packaged, or prepared for distribution. (That definition is similar to the current definition of "milk plant" under the Grade A Milk Law, except that the present definition refers to "bottled" rather than "packaged".)

That definition would replace the current definition of "dairy plant" under the Manufacturing Milk Law, i.e., a milk plant, transfer or receiving station, cheese plant, frozen desserts plant, or other plant receiving dairy products or processing dairy products into manufactured dairy products.

Under the bills, "registered name" would mean either a name that is registered as "doing business as" at the county clerk's

office in the county in which the producer or processor resides or a name that is registered with the State of Michigan as a legal entity registered to do business within the State under an assumed name. The term would include incorporations, corporations, limited liability companies, limited liability partnerships, and similar entities.

### **Senate Bill 1007**

#### **Hauler/Sampler**

Under the Grade A Milk Law, except as provided for goat milk and sheep milk, a bulk milk hauler/sampler may pick up only milk that appears to be normal and does not contain off odors or visible foreign material and that has been stored on the farm for not more than 72 hours. The bill would retain that provision, but specifies that milk produced under the Manufacturing Milk Law could be stored as provided under that Law.

The Grade A Milk Law requires a bulk milk hauler/sampler, after measuring the milk in the farm tank, to record certain information on the pickup record, including the hauler/sampler's identification, which must include his or her name or initials and MDA-issued hauler/sampler identification number. The bill instead would require the hauler/sampler to record his or her permit identification, which would be the first and last name, or the hauler/sampler's identification number printed on the license.

The Law requires a bulk milk hauler/sampler to place producer milk samples into approved sample containers only. The containers must be legibly marked with the following information:

- The milk producer's permit number.
- The date of pickup.
- The route number.
- Temperature.

The bill would remove the requirement to record the route number.

The Law prohibits the partial removal of milk from a farm tank by a bulk milk hauler/sampler except under certain circumstances, including emergency situations, seasonal weight restrictions, or the overflow of the milk tank truck. The bill

would delete the exception for the overflow of the milk tank truck.

#### **Definitions**

The bill would define "milk" as the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, or other dairy animals.

Currently, "milk product" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, low-fat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured low-fat milk, cultured skim milk, yogurt, low-fat yogurt, nonfat yogurt, acidified milk, acidified low-fat milk, acidified skim milk, low-sodium milk, low-sodium low-fat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced low-fat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milk fat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Unless a product is considered a milk product under those provisions, the term does not include dietary products, infant formula, ice cream or other desserts, cheese, or butter.

The bill would add cottage cheese, dry curd cottage cheese, reduced fat cottage cheese, low-fat cottage cheese, and flavored milk to that definition. That definition also would apply to "dairy product".

The bill would define "misbranded" as food to which any of the following apply:

- Its labeling is false or misleading in any particular.
- It is offered for sale under the name of another food.
- It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

- Its container is so made, formed, or filled as to be misleading.
- It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as permitted and exemptions for small packages as established by rules prescribed by the MDA.
- Any word, statement, or other labeling required by the Law is not placed prominently on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by the Law or under the Federal Food, Drug, and Cosmetic Act, unless it conforms to that definition and standard and its label bears the name of the food specified in the definition and standard, and insofar as is required by the rules, the common names of optional ingredients, other than spices, flavorings, and colorings, present in the food.
- It purports to be or is represented to be a food for which a standard of quality has been prescribed under the Law or rules and its quality falls below that standard, unless its label bears, in a manner and form specified in the rules, a statement that it falls below the standard.
- It purports to be or is represented to be a food for which a standard or standards of fill of container have been prescribed by the Law and it falls below the standard, unless its label bears, in a manner and form specified in the rules, a statement that it falls below the standard.
- It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from two or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, could be designated as spices, flavorings, and colorings without naming each, and under other circumstances established by rules regarding exemptions based on practicality, potential deception, or unfair competition.

- It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based on practicality.
- If it is a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under the Food, Drug, and Cosmetic Act.
- It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.
- It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to that color additive prescribed under the Food, Drug, and Cosmetic Act.

### **Senate Bill 1008**

#### Inspection

The Manufacturing Milk Law requires the MDA, at a minimum, to inspect all dairy farms every 12 months and dairy plants every six months. The bill also would require receiving stations and transfer stations to be inspected every six months. All inspections would have to be conducted at the indicated frequency or at time intervals as specified by the MDA Director.

#### Violations

The MDA Director may revoke or suspend a license or permit issued under the Law or impose an administrative fine upon determining that the licensee or permittee has committed certain violations of the Law, including knowingly possessing, selling, offering for sale, or purchasing any milk or cream dairy product for use in a human food product that has been condemned under the Law. The bill would refer to milk product, rather than cream dairy product.

#### Pasteurization

The Law provides standards for the pasteurization of milk and milk products, including required temperatures and pasteurization times. The bill also would require all milk and milk products, including milk solids, whey, nonfat dry milk,

condensed milk, cream, skim milk, and other milk products, as well as eggs, egg products, cocoa, cocoa products, emulsifiers, stabilizers, vitamins, and liquid sweeteners to be added before pasteurization. All those additions would have to be done in a sanitary manner that prevented the contamination of the added ingredient or the milk or milk product. Ingredients that could be added after pasteurization would be those flavoring ingredients and other ingredients that had been found to be safe and suitable, and would include:

- Ingredients permitted by the CFR standards of identity when considering a standardized milk or milk product.
- Fresh fruits and vegetables added to cultured milk and milk products, if the resultant equilibrium pH level (4.6 or below when measured at 75° F) of the finished product were reached without undue delay and were maintained during the shelf life of the product.
- Ingredients subjected to prior heating or other technology that had been demonstrated to the FDA to be sufficient to destroy or remove pathogenic microorganisms.
- Ingredients having a water activity of 0.85 or less.
- Ingredients having a high acid content (pH level of 4.6 or above when measured at 75° F) or high alkalinity (pH level greater than 11 when measured at 75° F).
- Roasted nuts.
- Dry sugars and salts.
- Flavor extracts having a high alcohol content.
- Safe and suitable bacteria cultures and enzymes.
- Ingredients that had been found to be safe and suitable by the FDA.

All milk and milk products would have to be pasteurized, prior to the entrance into reverse osmosis (RO), ultra-filtration (UF), evaporator, or condensing equipment, and would have to be performed in the milk plant where the processing was done. If the product were whey, however, pasteurization would not be required if the product were acid whey (with a pH of less than 4.7) or if it were processed in RO or UF equipment at temperatures at or below 45° F.

In addition, if the product were raw milk for pasteurization, it could be concentrated by

the use of RO or UF membrane filtration without pasteurization before entering the equipment, provided that the following sampling, testing, design, installation, and operational criteria were met:

- Before processing, all raw milk supplies were sampled and tested for antibiotic residues in accordance with the provisions of the Law.
- The RO or UF filtration system was designed and operated to assure that milk or milk product temperature was maintained at or below 45° F throughout the process, provided that the product temperature could rise above 45° F for not more than 15 minutes, and provided that should the product temperature rise above 50° F, the product would have to be diverted immediately until it again was below 45° F. The diverted product would have to be discarded, immediately cooled to below 45° F, or immediately pasteurized.
- The RO or UF system would have to be equipped with temperature monitoring and recording devices that complied with the applicable specifications outlined in the Grade A Milk Law. At a minimum, milk or milk product temperature would have to be monitored and recorded before entering the system, before entering each stage of the modules in series that contained cooling, and the retentate stream before any final cooler and upon exiting the system.
- If the RO or UF system were not designed, installed, and operated in accordance with the above criteria, the raw milk or milk product would have to be pasteurized before entering the RO or UF system.

All condensed milk and milk products transported to a milk plant for drying would have to be repasteurized at the milk plant before they were dried.

If condensed whey containing at least 40% total solids had been partially crystallized by cooling, it could be transported to a separate milk plant for drying without repasteurization, provided that the following conditions were met:

- The condensed, partially crystallized whey was cooled and maintained at 45° F or less.



- Milk tank trucks used to transport the whey were washed and sanitized immediately before filling and were sealed after filling until unloading.
- Separate unloading pumps and pipelines were provided and used only for the unloading of the condensed, partially crystallized whey. Those pumps and pipelines would have to be cleaned and sanitized as a separate cleaning circuit.

The design and operation of pasteurization equipment and all appurtenances would have to comply with the applicable standards, specifications, and operational procedures of the Law.

The Law requires dairy products made or sold in the State to comply with certain standards for holding temperature, bacterial limits, somatic cell count, drug residues, sediment, and other factors. The bill would require raw milk for frozen desserts to have a maximum freezing point of  $-0.530^{\circ}\text{H}$ .

The bill would remove requirements that pasteurized condensed milk, condensed skim milk, and pasteurized condensed whey contain less than a certain amount of phosphatase.

The bill would revise the temperature requirements for whey for condensing, which currently must be held at  $45^{\circ}\text{F}$  or less, or  $145^{\circ}\text{F}$  or greater, with some exceptions. The bill would reduce the minimum hot holding temperature from  $145^{\circ}\text{F}$  to  $135^{\circ}\text{F}$ .

Currently, pasteurized condensed whey must be cooled to  $45^{\circ}\text{F}$  or less during crystallization, within 18 hours of condensing. The bill would require pasteurized condensed whey and whey products to be cooled to  $50^{\circ}\text{F}$  or less during crystallization, within 72 hours of condensing.

The bill also would eliminate the bacterial limit for pasteurized condensed whey, which currently may not exceed 50,000 bacteria per gram.

Under the Law, sterilized or aseptic products may contain no viable bacteria. The bill instead would refer to 21 CFR 113.3(e)(1). (Under that Federal regulation, commercial sterility of thermally processed food means the condition achieved by the application of

heat that renders the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution and viable microorganisms, including spores, of public health significance.)

#### Milk Processing Plant

The Law requires a person who owns or operates a plant receiving milk for manufacturing into a dairy product to meet certain requirements, including equipping the plant with adequate and well-distributed lighting. The bill would add that the lighting be of at least 50 foot-candles where dairy products were graded or examined for condition and quality such as a can milk receiving room dumping area; 20 foot-candles at working surfaces in rooms for manufacturing, processing or packaging of dairy products or washing of equipment and utensils; five foot-candles in all other rooms, including storage rooms and coolers; or as specified by the MDA Director. Light intensity would have to be measured at a distance of 30 inches from the floor with a light meter.

The Law also requires a person who owns and operates a milk processing plant to maintain conveniently located and adequate toilet facilities that comply with certain requirements. The bill would require the toilet facilities to be located in the processing plant.

The bill also would require a person who owned and operated a milk processing plant to provide adequate electrical power for on-demand support of lighting, cooling, heating, agitation, and ventilation systems.

Currently, a milk processing plant owner or operator must ensure that product storage tanks or vats comply with certain requirements. The bill would require an owner or operator to ensure that pasteurized milk and milk product storage tanks were cleaned and sanitized at least every 72 hours, except as approved by the MDA Director in writing, on a case-by-case basis.

#### Dairy Plant

Except as otherwise provided under the Law, a dairy plant owner or operator must dismantle all equipment after each day's

use, except for that designed for clean-in-place (CIP) cleaning, and thoroughly clean the equipment by using dairy cleaners, detergents, sanitizing agents, or other similar materials approved for dairy or food service use that will not contaminate or adversely affect the dairy products.

The bill would revise that provision to require an owner or operator to dismantle all equipment that was not designed for mechanical or clean-in-place cleaning, and thoroughly clean and sanitize all equipment after each day's use, using the same cleaning agents currently provided, except that the bill would remove the reference to dairy cleaners.

The Law requires a dairy plant owner or operator to provide a covered or enclosed receiving, washing, and sanitizing facility at each site that receives or ships milk or dairy products in milk tank trucks. The bill would retain that provision for all newly licensed or newly or extensively remodeled facilities. An owner or operator would have to meet that requirement or provide means to protect the milk during the sampling and transferring process that were acceptable to the MDA Director.

#### Packaging Requirements

Currently, retail packages must be labeled as specified in 21 CFR Part 101 (which pertains to food labeling), 9 CFR Part 317 (which includes standards of identity and composition), and subpart N of 9 CFR Part 381 (dealing with poultry products inspection), all of which are adopted by reference, and as specified under certain sections of the Federal Food Code adopted by the Food Law.

The bill instead would require retail packages to be labeled as specified in 21 CFR Part 101, which would be adopted by reference, and as specified under the Food Law.

Currently, a person who packages dry milk must ensure that a lined container is not lined more than one hour before the container is filled. Under the bill, that provision would not apply if the container were provided adequate protection from contamination.

The Law requires a person who owns or operates a plant to keep all products under refrigeration at temperatures of 40° F or lower after packaging and until ready for shipment. The bill would increase the maximum allowable temperature to 45° F.

#### Definitions

The bill would define "approved laboratory" as a laboratory that had been evaluated by the MDA and was approved to perform tests on manufactured milk and milk products.

Under the Law, the definition of "dairy product" or "manufactured dairy product" includes certain milk products, evaporated milk products, cheese products, frozen desserts, infant formula manufactured with dairy ingredients, whey and whey cream, and other products for human consumption not regulated under the Grade A Milk Law. Under the bill, "milk product" also would have the same definition.

Currently, "sanitary standards" includes standards for dairy equipment formulated by the United States Department of Agriculture (USDA) or the FDA. The bill instead would include general sanitary construction standards for dairy equipment formulated by the USDA or the FDA, if sanitary standards were not available for a particular piece of equipment.

MCL 288.472 et al. (S.B. 1007)  
288.570 et al. (S.B. 1008)

Legislative Analyst: Curtis Walker

#### **FISCAL IMPACT**

The bills would result in a small saving for the State since they would allow the Michigan Department of Agriculture to assess a late fee and pass on the costs of convenience charges for transactions to fee payers. The bills also would redirect revenue from all fees, assessments, fines, or money collected under these provisions to the Dairy and Food Safety Fund, instead of the General Fund, where it currently is deposited. According to the MDA, approximately \$60,000 is collected annually in fee revenue, \$15,000 is collected in fines, and it expects to collect less than \$1,000 annually in late fees. This means that about \$75,000 would be deposited into the Dairy and Food Safety Fund instead of into the

General Fund. The Dairy and Food Safety Fund is used to administer dairy and food programs in the MDA.

The bills would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of violating the Grade A Milk Law or the Manufacturing Milk Law under the proposed changes in the bills. To the extent that the bills resulted in increased convictions, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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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.