

CHAPTER 74

REGULATION OF DAIRY AND OTHER FOOD PRODUCTS

S.F. 525

AN ACT relating to the regulation of dairy products, providing for the repeal of certain sections, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 159.1, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "Official laboratory" means a biological, chemical, or physical laboratory which performs testing or analysis pursuant to scientific procedures, to the extent the laboratory is recognized by the department as a reliable indicator of scientific results.

NEW SUBSECTION. 1B. "Pasteurization" or "pasteurized" means the procedure of processing milk or a milk product, in order to ensure its safety from contaminants, if the procedure of pasteurization is consistent with standards adopted by the department pursuant to section 192.2.

Sec. 2. Section 190.1, subsections 4 through 6, Code 1991, are amended by striking the subsections.

Sec. 3. Section 190.1, subsections 32 through 57, Code 1991, are amended by striking the subsections.

Sec. 4. Section 190.2, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department shall adopt rules specifying standards for milk and dairy products which are consistent with the "Pasteurized Milk Ordinance", as provided in chapter 192, and applicable federal standards of identity.

Sec. 5. Section 190.3, unnumbered paragraph 2, Code 1991, is amended to read as follows:

The provisions of subsections 2 and 3 of this section shall not apply to the addition of vitamins approved by the United States Pharmacopoeia or the removal of milk fat from milk as defined in section 190.1, subsection 39.

Sec. 6. **NEW SECTION. 190.14 ADMINISTRATION OF THE CHAPTER.**

1. The department shall administer this chapter consistent with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 1989 Revision", as provided in section 192.2.

2. The department, as provided in section 192.48, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

Sec. 7. **NEW SECTION. 190.15 VIOLATIONS.**

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

Sec. 8. Section 191.2, subsection 5, paragraph j, subparagraphs (1) and (2), Code 1991, are amended to read as follows:

(1) Only the identity of the milk producer shall be required on cans delivered to a milk plant as provided in chapter 192 which receives only grade "A" raw milk for pasteurization, and which immediately dumps, washes, and returns the cans to the milk producer.

(2) The identity of both milk producer and the grade shall be required on cans delivered to a milk plant as provided in chapter 192 which receives both grade "A" raw milk for pasteurization and ungraded raw milk and which immediately dumps, washes, and returns the cans to the milk producer.

Sec. 9. **NEW SECTION. 191.9 ADMINISTRATION OF THE CHAPTER.**

1. The department shall administer this chapter consistent with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 1989 Revision", as provided in section 192.2.

2. The department, as provided in section 192.48, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

Sec. 10. NEW SECTION. 191.10 VIOLATIONS.

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

Sec. 11. NEW SECTION. 192.1 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Grade "A" Milk Inspection Law".

Sec. 12. NEW SECTION. 192.2 GRADE "A" PASTEURIZED MILK ORDINANCE.

The department shall adopt, by rule, the "Grade "A" Pasteurized Milk Ordinance, 1989 Revision", including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance's appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

Sec. 13. Section 192.5, Code 1991, is amended to read as follows:

192.5 MILK OR MILK PRODUCTS PERMIT.

It shall be unlawful for any A person who does not possess a permit ~~from issued by the secretary or authorized municipal corporation to department shall not bring into, send into, or receive into the state for sale, or to sell, or offer for sale therein, or to have in storage store~~ any milk or milk products defined product as provided in this chapter and in chapters 190 and 191; provided that, ~~However, the department may exempt from this requirement grocery stores, restaurants, soda fountains, and or similar establishments where milk or a milk products or both are product is served or sold at retail, but not processed, may be exempt from the requirements of this section.~~

Only a person who complies with the requirements of this chapter and chapters 190 and 191 shall be entitled to receive and retain such a permit from the department ~~or authorized municipal corporation.~~ Permits shall not be transferable with respect to persons or locations.

~~The secretary or authorized municipal corporation~~ department shall suspend such a permit whenever there is reason to believe that a public health hazard exists, ~~or whenever the permit holder has violated any of the requirements of said chapters this chapter, chapter 190, or chapter 191, or whenever the permit holder has interfered with the secretary or authorized municipal corporation~~ department in the performance of their its duties: ~~Except.~~ However, where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health; ~~or in any case of a willful refusal to permit authorized inspection, the secretary or authorized municipal corporation~~ department shall serve upon the holder a written notice of intent to suspend the permit. The notice shall specify with particularity the violations in question and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, ~~fixed~~ established by the secretary or ~~authorized municipal corporation~~ department before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the ~~secretary or authorized municipal corporation~~ department. As used in this section, the terms "public health hazard" and "imminent hazard" shall be defined by rules adopted by the department. The rules shall include examples of public health hazards and imminent hazards.

Upon written application of any person whose permit has been suspended, or upon application within forty-eight hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the ~~secretary or authorized municipal corporation~~ department shall within seventy-two hours proceed to a hearing to ascertain the facts

of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend.

Upon repeated violation, the ~~secretary or authorized municipal corporation~~ department may revoke such a permit following reasonable notice to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of a court action as provided in sections 192.11 and 192.16 ~~this chapter, chapter 190, or chapter 191.~~

The provisions of this section are intended for the regulation of the production, processing, labeling, and distribution of grade "A" milk and grade "A" milk products under sanitary requirements which are uniform throughout the state.

Sec. 14. Section 192.11, unnumbered paragraphs 4 through 7, Code 1991, are amended by striking the paragraphs.

Sec. 15. Section 192.30, unnumbered paragraph 1, Code 1991, is amended by striking the paragraph.

Sec. 16. Section 192.30, unnumbered paragraph 2, Code 1991, is amended to read as follows: ~~Municipal corporations~~ The department may establish grade "A" standards for cottage cheese dry curd, cottage cheese, and low fat cottage cheese as a part of the ordinance required by this section; however no municipal corporation chapter. However, a governmental body, including the department, a county as provided in chapter 331, or a city as provided in chapter 364 shall not require a grade "A" rating for these products as a condition precedent to their sale within the city.

Sec. 17. Section 192.32, Code 1991, is amended to read as follows:
192.32 INJUNCTION FOR VIOLATIONS.

~~Any A person who shall violate violates any of the provisions provision of this chapter and chapters, chapter 190 and, or chapter 191, or a rule adopted under any of those chapters may be enjoined from continuing such violations. Each day upon which such a violation occurs shall constitute constitutes a separate violation.~~

Sec. 18. Section 192.33, Code 1991, is amended to read as follows:
192.33 RATING REQUIRED TO RETAIN PERMIT.

~~A pasteurized milk and milk products sanitation compliance rating of ninety percent or more calculated according to the rating system as contained in Public Health Service Publication the federal public health service publications, "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers 1989" and "Method of Making Sanitation Ratings of Milk Supplies, 1987 Revision", shall be is necessary to receive or retain a permit under section 192.5. Said publication is hereby~~ The applicable provisions of these publications are incorporated into this section by this reference and made a part hereof insofar as applicable, a. A copy of which each publication shall be on file in the office of the secretary with the department or in the office of the clerk of an authorized municipal corporation at all times the person subject to an inspection contract as provided in section 192.48.

Sec. 19. Section 192.48, Code 1991, is amended to read as follows:

192.48 ADMINISTRATION OF THE CHAPTER — INSPECTIONS REQUIRED — AGREEMENTS.

~~The department shall administer this chapter and rules adopted pursuant to this chapter. The department shall be is responsible for the inspection of a dairy farm, milk plant, or transfer station, or receiving station to ensure compliance with this chapter and chapters 190 and 191. Whenever practical, the department shall enter into an agreement inspection contract with a person, including but not limited to a municipal corporation, qualified to perform inspection services if the agreement for the services is cost-effective and the quality of inspection assures ensures compliance with state and federal law. A person entering into an agreement~~

~~inspection contract with the secretary or a person entering into a subagreement with an authorized municipal corporation department for the purpose of inspecting premises, taking samples, or testing samples, shall be deemed to be an agent of the secretary or municipal corporation department, and shall have the same authority under this chapter provided to the secretary or authorized municipal corporation department, unless the agreement or subagreement contract specifies otherwise. The department shall review inspection services performed by a person under an agreement with the department or subagreement with a municipal corporation inspection contract to ensure quality cost-effective inspections. If a person is acting in a manner which is inconsistent with the provisions of the applicable chapter, agreement, or subagreement or contract, the secretary or municipal corporation entering into the agreement or subagreement with the person department may revoke the agreement or subagreement with the person inspection contract after notice and hearing, in the manner described for permit revocation in section 192.5 and perform such acts as are necessary to enforce this chapter. Except as provided in this chapter or chapter 194, a person shall not charge a milk plant, receiving station, or transfer station a fee for inspection relating to milk or milk products.~~

Sec. 20. Section 192.56, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

192.56 CONTAINER.

As used in this chapter, "container" means a rigid or nonrigid receptacle, including but not limited to a can, bottle, case, paper carton, cask, keg, or barrel.

Sec. 21. Section 192.63, Code 1991, is amended to read as follows:

192.63 CERTIFIED LABORATORIES.

To insure uniformity in the tests and reporting, an employee certified by the United States public health service of the bacteriological laboratory of the department shall annually certify, in accordance with the United States food and drug administration publication "Evaluation of Milk Laboratories" (1985 revision), all laboratories doing work in the sanitary quality of milk and dairy products for public report. ~~Such~~ The approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used, and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture, and such reports may be used by the department.

The department shall annually certify, in accordance with the United States food and drug administration publication "Evaluation of Milk Laboratories" (1985 revision), every laboratory in the state doing work in the sanitary quality of milk and dairy products for public report. The certifying officer may enter any such place at any reasonable hour to make ~~such~~ the survey. The management of the laboratory shall afford free access to every part of the premises and render all aid and assistance necessary to enable the certifying officer to make a thorough and complete examination.

Sec. 22. Section 194.20, Code 1991, is amended to read as follows:

194.20 INSPECTION FEES — GRADE "B" MILK.

A purchaser of milk from a grade "B" milk producer shall pay an inspection fee not greater than one-half cent per hundredweight. The fee is payable monthly to the secretary department at a time prescribed by the secretary department. A fee imposed by this section shall not be paid on milk subject to inspection by a municipal corporation pursuant to person administering the inspection pursuant to an inspection contract as provided in section 192.14 ~~192.48~~. Fees collected under section 192.47, subsection 2 and this section shall be deposited in the milk fund established in section 192.47.

Sec. 23. Section 548.13, subsection 5, Code 1991, is amended to read as follows:

5. Marks for dairy products, as provided for in sections 192.23 through 192.39, inclusive chapter 192.

Sec. 24. REPEALS.

1. Sections 192.7 through 192.10, Code 1991, are repealed.
2. Sections 192.12 through 192.17, Code 1991, are repealed.
3. Sections 192.19 through 192.29, Code 1991, are repealed.
4. Sections 192.39, 192.41, 192.46, and 192.65, Code 1991, are repealed.

Sec. 25. CODE EDITOR.

1. The Code editor is directed to transfer section 192.66 to chapter 194, and number the section appropriately.
2. The Code editor is directed to reorganize chapter 192 to enhance its organization and readability, but shall not make substantive changes.

Sec. 26. EFFECTIVE DATE.

1. Except as provided in subsection 2, all sections of this Act take effect on January 1, 1992.
2. This section and sections 12 and 25 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved April 30, 1991

CHAPTER 75

DECORATIVE FOUNTAINS

H.F. 91

AN ACT exempting certain decorative fountains from regulation as swimming pools and spas.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135I.1, subsection 4, Code 1991, is amended to read as follows:

4. "Swimming pool" means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, water-slide, or associated bathhouse. "Swimming pool" does not include a decorative fountain which does not serve primarily as a wading or swimming pool and the drain of which fountain is not connected to any type of suction device for removing or recirculating the water.

Approved April 30, 1991