

4-3-14. Sale of raw milk -- Suspension of producer's permit -- Severability not permitted.

(1) As used in this section:

(a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

(b) "Self-owned retail store" means a retail store:

(i) of which the producer owns at least 51% of the value of the real property and tangible personal property used in the operations of the retail store; or

(ii) for which the producer has the power to vote at least 51% of any class of voting shares or ownership interest in the business entity that operates the retail store.

(2) Raw milk may be sold if:

(a) the producer obtains a permit from the department to produce milk under Subsection 4-3-8(5);

(b) the sale and delivery of the milk is made upon the premises where the milk is produced, except as provided by Subsection (3);

(c) it is sold to consumers for household use and not for resale;

(d) it is bottled or packaged under sanitary conditions and in sanitary containers on the premises where the milk is produced;

(e) it is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

(f) it is:

(i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being drawn from the animal;

(ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and

(iii) maintained at 41 degrees Fahrenheit or a lower temperature until it is delivered to the consumer;

(g) the bacterial count of the milk does not exceed 20,000 colony forming units per milliliter;

(h) the bacterial plate count and the coliform count of the milk meet the bacterial and coliform enforcement standards for grade A pasteurized milk;

(i) the production of the milk conforms to departmental rules for the production of grade A milk;

(j) all dairy animals on the premises are:

(i) permanently and individually identifiable; and

(ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

(k) any person on the premises performing any work in connection with the production, bottling, handling, or sale of the milk is free from communicable disease.

(3) A producer may sell raw whole milk at a self-owned retail store, which is properly staffed, if, in addition to the requirements of Subsection (2), the producer:

(a) transports the milk from the premises where the milk is produced to the self-owned retail store in a refrigerated truck where the milk is maintained at 41 degrees Fahrenheit or a lower temperature;

(b) retains ownership of the milk until it is sold to the final consumer, including transporting the milk from the premises where the milk is produced to the self-owned retail store without any:

- (i) intervening storage;
- (ii) change of ownership; or
- (iii) loss of physical control;
- (c) stores the milk at 41 degrees Fahrenheit or a lower temperature in a display case equipped with a properly calibrated thermometer at the self-owned retail store;
- (d) places a sign above the display case at the self-owned retail store that reads, "Raw Unpasteurized Milk";
- (e) labels the milk with:
 - (i) a date, no more than nine days after the milk is produced, by which the milk should be sold;
 - (ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";
 - (iii) handling instructions to preserve quality and avoid contamination or spoilage;
- and
 - (iv) any other information required by rule;
 - (f) refrains from offering the milk for sale until:
 - (i) each batch of milk is tested for standard plate count and coliform count from an official sample taken at the self-owned retail store and tested by a third party certified by the department; and
 - (ii) the test results meet the minimum standards established for those tests;
 - (g) (i) maintains a database of the milk sales; and
 - (ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;
 - (h) refrains from offering any pasteurized milk at the self-owned retail store;
 - (i) ensures that the plant and retail store complies with Title 4, Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section 4-5-9;
 - (j) participates in a hazard analysis critical control point system as established by the United States Food and Drug Administration;
 - (k) conducts monthly tests on a sample taken from a batch of milk for:
 - (i) *Listeria monocytogenes*;
 - (ii) *Salmonella typhimurium*;
 - (iii) *Salmonella dublin*;
 - (iv) *Campylobacter jejuni*; and
 - (v) *E. Coli* 0157:H7; and
 - (l) complies with all applicable rules adopted as authorized by this chapter.
- (4) The person conducting the tests required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are available.
- (5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the sale of raw whole milk at a self-owned retail store.
 - (b) The rules adopted by the department shall include rules regarding:
 - (i) permits;
 - (ii) building and premises requirements;
 - (iii) sanitation and operating requirements, including bulk milk tanks requirements;
 - (iv) additional tests, including a test for pathogens;
 - (v) frequency of inspections, including random cooler checks;

- (vi) recordkeeping; and
- (vii) packaging and labeling.

(c) (i) The department shall establish a fee for the tests and inspections required by this section and by rule by following the procedures and requirements of Section 63J-1-504.

(ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this section.

(6) (a) The department shall suspend a permit issued under Section 4-3-8 if a producer violates any provision of this section or any rules adopted as authorized by this section.

(b) The department may reissue a permit that has been suspended under Subsection (6)(a) if the producer has complied with all of the requirements of this section and rules adopted as authorized by this section.

(7) For 2008 and 2009, the Department of Health and the Department of Agriculture and Food shall report on or before November 30th to the Natural Resources, Agriculture, and Environment Interim Committee and the Health and Human Services Interim Committee on any health problems resulting from the sale of raw whole milk at self-owned retail stores.

(8) (a) If any subsection of this section or the application of any subsection to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of the section may not be given effect without the invalid subsection or application.

(b) The provisions of this section may not be severed.

Amended by Chapter 183, 2009 General Session