

**TITLE 64
LEGISLATIVE RULES
DEPARTMENT OF HEALTH**

**SERIES 34
GRADE "A" PASTEURIZED MILK**

§64-34-1. General.

1.1. Scope. -- These legislative rules define "milk" and certain "milk products", "milk producer", "pasteurization", etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of milk and milk products, regulating the inspection of dairy farms and milk plants, and the examination, labeling, pasteurization, distribution, and sale of milk and milk products; providing for the construction of future dairies and milk plants, the enforcement of this regulation and the fixing of penalties.

1.2. Authority. -- W. Va. Code §16-7-5

1.3. Filing Date. -- February 1, 1980

1.4. Effective Date. -- July 1, 1980

§64-34-2. Application and Enforcement.

2.1. Application - These legislative rules apply to any person who produces, provides, sells, offers, or exposes for sale, or has in his possession with intent to sell, any milk or milk product.

2.2. Enforcement - The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee.

§64-34-3. Definitions.

Milk and milk products defined in the state agriculture laws (Article 11, Chapter 19, Sections 1 and 2) and/or regulations adopted by the West Virginia department of agriculture shall apply in the interpretation and the enforcement of this regulation. The following definitions shall, also, apply in a like manner: In absence of a definition established by the state agriculture department and/or the state board of health, definitions for all such products regulated by

this regulation shall be identical to that contained in the 1978 edition of the U.S. food and drug administration's recommended Grade A pasteurized milk ordinance and to the products defined in the Code of Federal Regulations, Title 21, Sections 131 and 133.

3.1. Milk Products - Milk products include cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, whipped coffee cream, whipped table cream, acidified sour cream, sour cream, cultured sour cream, half and half, sour half and half, cultured half and half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, frozen milk concentrate, skim milk, skimmed milk, lowfat milk, modified milk, vitamin D milk and milk products, fortified milk and milk products, homogenized milk, flavored milk or milk products, buttermilk, cultured buttermilk, cultured milk, cultured whole milk buttermilk, yogurt, acidified milk and milk products, eggnog flavored milk, eggnog, cottage cheese, creamed cottage cheese, low-sodium milk and such other products as may be designated as a milk product by the state board of health and/or the commissioner of agriculture.

3.2. Grade A Dry Milk and Whey Products - Grade A dry milk and whey products are milk products which have been produced for use in Grade A pasteurized milk products which have been manufactured under the provisions of Grade A dry milk products and condensed and dry whey. recommended sanitation ordinance and code for dry milk products and condensed and dry whey used in Grade A pasteurized milk products.

3.3. The term "sterilized" when applied to milk and milk products defined in Section 1 shall mean that such milk and milk products are hermetically sealed in a container and have been processed either before or after sealing in conformance with 21 CFR

113 so as to prevent microbial spoilage and to produce a product with extended shelf life under nonrefrigerated conditions, provided this term shall not apply to the following products which are not subject to this regulation: evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), canned eggnog in a metal container, dietary products except as defined herein, infant formula, butter, ice cream and other frozen desserts.

3.4. Adulterated Milk and Milk Products - Any milk or milk product shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (2) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulations, or in excess of such tolerance if one has been established; (3) if it consists, in whole or in part, of any substance unfit for human consumption; (4) if it has been produced, processed, prepared, packed, or held under insanitary conditions; (5) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (6) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or if one or more conditions described in Section 402 of the federal food, drug and cosmetic act

3.5. Misbranded Milk and Milk Products - Milk and milk products are misbranded (1) when their container(s) bear or accompany any false or misleading written, printed or graphic matter; (2) when such milk and milk products do not conform to their definitions as contained in these regulations; and (3) when such products are not labeled in accordance with Section 4 of this regulation, or if one or more of the conditions described in Section 403 of the federal food, drug and cosmetic act as amended.

3.6. Pasteurization - The terms "pasteurization", "pasteurized", and similar terms shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the Table 64-34A, found at the end of this regulation, and held continuously at the above that temperature for at least the corresponding specified time:

Provided further, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the food and drug administration to be equally efficient and which is approved by the state director of health and the commissioner of agriculture.

3.7. Ultra-Pasteurized - The term "ultra-pasteurized", when used to describe a dairy product, means that such product shall have been thermally processed at or above 280 1/4F (138 1/4C) for at least 2 seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

3.8. Sanitization - Sanitization is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the state health department.

3.9. Milk Producer - A milk producer is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

3.10. Dairy Farm - A dairy farm is any place or premises where one or more cows or goats are kept, and from which a part or all of the milk is provided, sold, or offered for sale to a milk plant, transfer station or receiving station.

3.11. Milk Hauler - A milk hauler is any person who transports raw milk and/or raw milk products, and samples thereof for analysis, to or from a milk plant, receiving or transfer station.

3.12. Milk Plant - A milk plant is any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

3.13. Transfer Station - A transfer station is any place, premises, or establishment where milk or milk products are transferred directly from one transport tank to another.

3.14. Receiving Station - A receiving station is any place, premises, or establishment where raw milk is

received, collected, handled, stored or cooled and prepared for further transporting.

3.15. Milk Distributor - A milk distributor is any person who offers for sale or sells to another any milk or milk products.

3.16. Regulatory Agency - The regulatory agency shall mean the state director of health, or his authorized representatives, including all full and part-time representatives of districts (regions), county or city health departments. The term "regulatory agency" whenever it appears in this regulation shall mean the appropriate agency having jurisdiction and control over matters embraced within these milk regulations.

3.17. Official Laboratory - An approved biological, chemical, or physical laboratory which is under the direct supervision of the regulatory agency.

3.18. Officially Designated Laboratory - An approved commercial laboratory contracted to do official work by the regulatory agency, or a milk industry laboratory officially designated by the regulatory agency for the examination of producer samples of Grade A raw milk for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues.

3.19. Person - The word "person" shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, association, or institution.

3.20. And/Or - Where the term "and/or" is used, "and" shall apply where appropriate, otherwise "or" shall apply.

3.21. Approved - A procedure of operation or construction which is in accordance with the standards, specifications or instructions established by the regulatory agency.

3.22. Bobtailer - Any person engaged in the distribution and/or selling of private brand labeled milk or another company's milk and milk products.

3.23. Permit - A written document issued by the regulatory agency giving a designated person permission to operate a dairy farm or milk plant and/or to distribute milk and milk products in the State of West Virginia.

3.24. Imitation Milk Products and Non-Dairy

Products - Are those products manufactured from vegetable fats (oils) or other derivatives other than milk fat and milk solids.

§64-34-4. The Sale of Adulterated, Misbranded, or Ungraded Milk or Milk Products Prohibited.

No person shall within the State of West Virginia, or its police jurisdiction, produce, provide, sell, offer, or expose for sale, or have in his possession with intent to sell, any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in his possession any adulterated, misbranded, or ungraded milk or milk product: Provided, that in an emergency the sale of ungraded pasteurized milk or pasteurized milk products may be authorized by and upon the approval of the state director of health, in which case they shall be labeled "ungraded". Any adulterated, misbranded, and/or improperly labeled milk or milk products may be impounded by the director and disposed of in accordance with state law.

§64-34-5. Permits, Hearings, Notices and Orders.

5.1. It shall be unlawful for any person who does not possess a permit from the state department of health or, in the case of raw producer dairies (direct shippers) and milk haulers, possess a permit from the regulatory agency of the county receiving the milk for processing, to send, bring, receive, have for sale, sell, offer for sale, or to have in storage in the State of West Virginia any milk or milk product as defined in this regulation. Application(s) for such permit(s) shall be made to the appropriate department of health on a form prescribed and furnished by the state department of health.

5.2. Food service establishments, vending machines and similar establishments including grocery stores where milk or milk products are served or sold at retail, but not processed, are exempt from this requirement unless they are acting as a (1) "bobtailer" or (2) engaged in "platform pickup" of milk and/or milk products.

5.3. Only a person who complies with the requirements of this ordinance shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations. Permits for milk plants, milk haulers, receiving stations, transfer stations, distribution stations and/or facilities and distributors shall expire June 30th following

the date of issuance.

5.4. The regulatory agency shall suspend such permit or shall issue an order for product suspension and removal from sales whenever he has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation; or whenever the permit holder has interfered with the regulatory agency in the performance of its duties:

5.5. June 1976 (16-7-5) Provided, that except in any case 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 an authorized inspection, that any regulations promulgated by the board of health shall provide that prior to any suspension or revocation of a permit issued to any dairy farm, milk plant, receiving station, transfer station and distribution station, the holder of such permit shall be served with a written notice to suspend or revoke such permit, which notice shall specify with particularity the violations in question and afford the holder reasonable opportunity to correct such violations: Provided, however, that the proposed order to deny, suspend or revoke a permit shall not be effective until notice in writing (inspection report SM-121) has been delivered to the holder of such permit who shall have forty-eight (48) hours therefrom in which to make application to the regulatory agency for a hearing thereon. The regulatory agency (county health officer) shall, within seventy-two (72) hours of receipt of such application, give a notice in writing to the holder of such permit setting forth the time and place of the hearing and proceed to hold a hearing to ascertain the facts of such violations and upon evidence presented at such hearing shall affirm, modify, or rescind the proposed order to suspend.

5.6. Upon repeated violation(s), the regulatory agency may revoke such permit following reasonable notice to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of court action as provided in Sections 7 and 8.

5.7. Enforcement action based upon bacteriological samples, positive antibiotic tests, positive phosphatase tests and other bacteriological and chemical tests shall be taken as required under Section 8.

§64-34-6. Labeling.

6.1. All proposed labeling standards for milk and milk products shall be submitted to and approved by the commissioner of agriculture prior to such products being offered for sale within the State of West Virginia.

6.2. Plant Identity Labeling: The product container must show the name and address of the milk plant at which the pasteurization, processing and packaging takes place or the Federal Information Processing Standards (FIPS) code to identify both the plant and the state.

6.3. All vehicles and transport tanks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents.

6.4. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the routine supervision of the regulatory agency are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for such shipment, a shipping statement shall be prepared containing at least the following information:

- (1) Shipper's name, address, and permit number;
- (2) Permit number of hauler, if not employee of shipper;
- (3) Point of origin of shipment;
- (4) Tanker identity number;
- (5) Name of product;
- (6) Weight of product;
- (7) Grade of product;
- (8) Temperature of product;
- (9) Date of shipment;
- (10) Name of regulatory agency at the point of origin;
- (11) Whether the contents are raw, pasteurized,

or otherwise heat treated.

Such statement shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six (6) months for the information of the regulatory agency.

§64-34-7. Inspection of Dairy Farms and Milk Plants.

7.1. Each dairy farm, milk plant, distribution station and/or facilities, receiving station, and transfer station whose milk or milk products are intended for consumption within the State of West Virginia or its police jurisdiction shall be inspected by the regulatory agency prior to the issuance of a permit. Following the issuance of a permit, each dairy farm, milk plant, receiving station, transfer station, and distribution station shall be inspected at least once every three (3) months.

7.2. Each milk hauler who collects samples of raw milk for pasteurization, for bacterial, chemical or temperature standards and hauls milk from a dairy farm to milk plant or receiving station, shall be evaluated for sampling procedures and each milk tanker hauling facility and its appurtenances shall be inspected at least once every twelve (12) months.

7.3. Should the violation of any requirement set forth in Section 9 be found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days; this second inspection shall be used to determine compliance with the requirements of Section 9. Any violation of the same requirement of Section 9 on such second inspection shall call for permit suspension in accordance with Section 5 and/or court action.

7.4. One (1) copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the establishment. Said inspection report shall not be defaced and shall be made available to the regulatory agency upon request. An identical copy of the inspection report shall be filed with the records of the regulatory agency.

7.5. Every milk producer, hauler, distributor, or plant operator shall permit access of officially designated persons to all parts of his establishment or facilities to determine compliance with the provisions of

this regulation. A distributor or plant operator shall furnish the regulatory agency, upon request, for official use only, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, and a list of all sources of such milk and milk products, records of inspections, chemical and bacteriological tests, and pasteurization time and temperature records.

7.6. It shall be unlawful for any person who in an official capacity obtains any information under the provisions of this regulation which is entitled to protection as a trade secret (including information as to quantity, quality, source or disposition of milk or milk products, or results of inspections or tests thereof) to use such information to his own advantage or to reveal it to any unauthorized person.

7.7. The regulatory agency may certify industry personnel to carry out cooperatively the provisions of these regulations with respect to the supervision of dairy farms. Reports of all inspections conducted by industry personnel to determine compliance with the provisions of these regulations shall be forwarded to the regulatory agency. All punitive actions and all inspections for the issuance or reinstatement of permits shall be performed by the regulatory agency.

§64-34-8. Sampling and Laboratory Examination of Milk and Milk Products.

8.1. Samples

8.1.1. Raw - During any consecutive six (6) months, at least four (4) samples of raw milk for pasteurization shall be taken from each producer farm and at each milk processing plant after receipt at the plant and prior to pasteurization (commingled).

8.1.2. Pasteurized - During any consecutive six (6) months, at least four (4) samples of pasteurized milk and at least four (4) samples of each applicable milk product, as defined in this regulation, shall be taken from each milk plant or distributor while in their possession and prior to final delivery. Samples of milk and milk products from retail stores, food service establishments, grocery stores and other outlets selling milk and milk products shall be examined periodically as determined by the regulatory authority. The results of such examinations shall be used to determine compliance with Sections 4, 6, and 12. Proprietors of such establishments shall furnish the regulatory agency, upon request, the names of all distrib-

utors from whom milk and milk products are obtained.

8.2. Responsibilities For Sample Collections

8.2.1. Samples

8.2.1.1. Milk Haulers - It shall be the responsibilities of milk haulers to collect representative milk samples from each farm bulk tank prior to transferring milk from a farm bulk tank to the transport truck. All samples shall be collected and held in a manner to conform with the requirements of the current edition of "standard methods for the examination of dairy products" and delivered to a milk plant, receiving station, transfer station or other location approved by the regulatory agency.

8.2.1.2. Regulatory Agency - It shall be the responsibility of the regulatory agency during any consecutive six (6) months to collect at least four (4) samples of milk and applicable milk products for examination from each producer and plant. All samples shall be collected and held in a manner to conform with the requirements of the current edition of "standard methods for the examination of dairy products."

8.3. Applicable Examinations

8.3.1. Raw Samples - Required bacterial counts, tests for abnormal milk, and cooling temperature checks shall be performed on raw milk for pasteurization at least four (4) times during any consecutive six (6) months. In addition, antibiotic tests on each producers milk and on commingled raw milk shall be conducted at least four (4) times during each consecutive six (6) months. When commingled milk is tested, all producers shall be represented in the samples. All individual sources of milk shall be tested when test results on commingled milk are positive.

8.3.2. Pasteurized Samples - Required bacterial counts, coliform counts, antibiotic tests, phosphatase tests and cooling temperature checks shall be performed on pasteurized milk and milk products at least four (4) times during any consecutive six (6) months.

8.4. Compliance Enforcement

8.4.1. Bacterial Counts, Somatic Cell Counts, Coliform Counts or Cooling Temperature Checks

8.4.1.1. Two Out of Four - Whenever two (2)

of the last four (4) consecutive bacterial counts, somatic cell counts, coliform counts or cooling temperature checks on samples taken on separate days exceed the limit of the standard for the raw milk or pasteurized milk or milk products, the regulatory agency shall send a written notice thereof to the person concerned. This notice shall be in effect as long as two (2) of the last four (4) consecutive samples exceed the standard. An additional sample shall be taken within twenty-one (21) days of the sending of such notice but not before the elapse of three (3) days.

8.4.1.2. Three Out of Five - Immediate suspension of permit in accordance with Section 5 and/or court action shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts, somatic cell counts, coliform counts or cooling temperatures.

8.4.2. Phosphatase - Whenever a phosphatase test is positive, the cause shall be determined. When the cause is improper pasteurization, immediate notification is to be given for appropriate remedial action. Any milk or milk product involved shall not be offered for sale until the problem is corrected.

8.4.3. The Direct Microscopic Count (for Platform Rejection) - The direct microscopic count (DMC) method is declared an official test for estimating the bacterial count of raw milk in mobile tankers. Should the DMC exceed 300,000 per ml, the regulatory or the plant personnel may reject such tank loads of milk.

8.4.4. Pesticides - Whenever pesticide residue tests are positive, an investigation shall be made to determine the cause and the cause shall be corrected. Additional samples shall be taken and tested and no raw milk shall be offered for sale until it is shown to be free of pesticide residues or is below the actionable levels established for such residues.

8.5. Laboratory and Sampling Criteria - Samples shall be analyzed at an approved official or officially designated laboratory. At least one fourth (1/4) of all producer samples of Grade A raw milk for pasteurization during any consecutive six (6) months must be collected by the regulatory agency and analyzed by the official or contracted approved commercial laboratory. All sampling procedures and required laboratory examinations shall be in substantial compliance with the current edition of "standard methods for the examination of dairy products" and/or the current edition of "official methods of analysis of the associa-

tion of official analytical chemists." Such procedures, including certification of sample collectors, and examinations shall be evaluated in accordance with evaluation of milk laboratories, 1978 recommendations of the United States public health service/food and drug administration. Examinations and tests shall be conducted to detect adulterants including pesticides as the regulatory agency shall require. Assays of milk and milk products to which vitamin(s) A and/or D have been added shall be made at least annually in a laboratory acceptable to the regulatory agency.

§64-34-9. Standards for Milk and Milk Products.

9.1. All Grade A raw milk for pasteurization and all Grade A pasteurized milk and milk products shall be produced, processed, and pasteurized to conform with the following chemical, bacteriological, and temperature standards, and the sanitation requirements of this section.

9.2. No process or manipulation other than pasteurization, processing methods integral therewith, and appropriate refrigeration shall be applied to milk and milk products for the purpose of removing or deactivating micro-organisms.

9.3. Chemical, Bacteriological, and Temperature Standards For Grade A Milk and Milk Products

9.3.1. Grade A Raw Milk For Pasteurization. (See Table 64-34B found at the end of this regulation.)

9.3.2. Grade A Pasteurized Milk and Milk Products (Except Cultured Products). (See Table 64-34C found at the end of this regulation.)

9.3.3. Grade A Pasteurized Cultured Products. (See Table 64-34D found at the end of this regulation.)

9.3.4. Bulk Shipments of Pasteurized Products For Repasteurization
Coliform limit...Less than 100 per ml. or gram.

9.4 Sanitation Requirements For Grade A Raw Milk For Pasteurization

9.4.1. Item 1r. Abnormal Milk - Cows which show evidence of the secretion of abnormal milk in one or more quarters, based upon bacteriological,

chemical, or physical examination, shall be milked last or with separate equipment; and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the regulatory agency may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the regulatory agency may direct.

9.4.2. Item 2r. Milking Barn, Stable, or Parlor - Construction - A milking barn, stable, or parlor shall be provided on all dairy farms in which the milking herd shall be housed during milking time operations. The areas used for milking purposes shall (1) have floors constructed of concrete or equally impervious material; (2) have walls and ceilings which are smooth, painted or finished in an approved manner, in good repair, ceiling dusttight; (3) have separate stalls or pens for horses, calves, and bulls; (4) be provided with natural and/or artificial light, well distributed for day and/or night milking; (5) provide sufficient air space and air circulation to prevent condensation and excessive odors; (6) not be overcrowded; and (7) have dusttight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

9.4.3. Item 3r. Milking Barn, Stable, or Parlor - Cleanliness - The interior shall be kept clean. Floors, walls, windows, pipelines, and equipment shall be free of filth and/or litter, and shall be clean. Swine and fowl shall be kept out of the milking barn.

9.4.4. Item 4r. Cowyard - The cowyard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes: Provided, that in loafing or cattle-housing areas, cow droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the cow's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a reasonable firm footing. Swine shall be kept out of the cowyard.

9.4.5. Item 5r. Milkhouse or Room - Construction and Facilities

9.4.5.1. A milkhouse or room of sufficient size shall be provided, in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be con-

ducted.

9.4.5.2. The milkhouse shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

9.4.5.3. The walls and ceilings shall be constructed of smooth material, in good repair, well painted, or finished in an equally suitable manner.

9.4.5.4. The milkhouse shall have adequate natural and/or artificial light and be well ventilated.

9.4.5.5. The milkhouse shall be used for no other purpose than milkhouse operations; there shall be no direct opening into any barn, stable, or into a room used for domestic purposes: Provided, that a direct opening between the milkhouse and milking barn, stable, or parlor is permitted when a tightfitting self-closing solid door(s) hinged to be single or double acting is provided.

9.4.5.6. Approved water under pressure shall be piped into the milkhouse.

9.4.5.7. The milkhouse shall be equipped with a two-compartment wash vat and adequate hot water heating facilities and supplied with adequate cleaning and sanitizing compounds and mechanical cleaning aids.

9.4.5.8. When a transportation tank is used for the cooling and storage of milk on the dairy farm, such tank shall be provided with a suitable shelter for the receipt of milk. Such shelter shall be adjacent to, but not a part of, the milkroom and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control, and general maintenance.

9.4.6. Item 6r. Milkhouse or Room - Cleanliness - The floors, walls, ceilings, doors, windows, tables, shelves, cabinets, wash vats, non-product contact surfaces of milk containers, utensils, and equipment, and other milkroom equipment shall be clean. Only articles directly related to milkroom activities shall be permitted in the milkroom. The milkroom shall be free of trash, animals and fowl.

9.4.7. Item 7r. Toilet - Every dairy farm shall be provided with one or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate any water supply.

9.4.8. Item 8r. Water Supply - Water for milkhouse and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

9.4.9. Item 9r. Utensils and Equipment - Construction - All multiuse containers, equipment, and utensils, used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, stored, and handled in a sanitary manner and shall comply with the applicable requirements of Item 11p of this section. Articles intended for single-service use shall not be reused. Farm holding/cooling tanks, welded sanitary piping, and transportation tanks shall comply with the applicable requirements of Items 10p and 11p of this section.

9.4.10. Item 10r. Utensils and Equipment - Cleaning - The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

9.4.11. Item 11r. Utensils and Equipment - Sanitization - The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each usage.

9.4.12. Item 12r. Utensils and Equipment - Storage - All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use. Provided, that milk pipelines and pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers and milk pumps which are designed for mechanical cleaning may be stored in the

milking barn or parlor provided this equipment is designed, installed, and operated to protect the product- and solution-contact surfaces from contamination at all times.

9.4.13. Item 13r. Utensils and Equipment - Handling - After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

9.4.14. Item 14r. Milking - Flanks, Udders, and Teats - Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be relatively dry before milking. Wet hand milking is prohibited.

9.4.15. Item 15r. Milking - Surcingles, Milk Stools, and Antikickers - Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

9.4.16. Item 16r. Protection From Contamination - Milking and milkhouse operations, equipment and facilities shall be located and conducted to prevent any contamination of milk, equipment, containers and utensils. No milk shall be strained, poured, transferred, or stored, unless it is properly protected from contamination.

9.4.17. Item 17r. Personnel - Hand-Washing Facilities - There shall be provided adequate hand-washing facilities, including hot and cold running water, soap or detergent, and individual sanitary towels, in the milkhouse and in or convenient to the milking barn, stable, parlor or flush toilet.

9.4.18. Item 18r. Personnel - Cleanliness - Hands shall be washed clean and dried with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of any of these activities. Milkers and milk haulers shall wear clean outer garments while milking or handling milk, milk containers, utensils or equipment.

9.4.19. Item 19r. Cooling - Raw milk for pasteurization shall be cooled to a temperature of 45 1/4F (7 1/4C) within two (2) hours after milking: Provided, that the blend temperature after the first milking and

subsequent milkings does not exceed 50 1/4F (10 1/4C). The milk shall be maintained at 45 1/4F (7 1/4C) or less until delivered.

9.4.20. Item 20r. Vehicles - Vehicles used to transport milk in cans from the dairy farm to the milk plant or receiving station shall be constructed and operated to protect their contents from sun, freezing, and contamination. Such vehicles shall be kept clean, inside and out; and no substance capable of contaminating milk shall be transported with milk.

9.4.21. Item 21r. Insect and Rodent Control - Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents, and by chemicals used to control such vermin. Milkrooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

9.5. Sanitation Requirements For Grade A Pasteurized Milk and Milk Products - A receiving station shall comply with Items 1p to 15p, inclusive, and 17p, 20p, and 22p, except that the partitioning requirement of Item 5p shall not apply.

A transfer station shall comply Items 1p, 4p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 14p, 15p, 20p, and 22p; and as climatic and operating conditions require, the applicable provisions of Items 2p and 3p: Provided, that in every case, overhead protection shall be provided. Facilities for the cleaning and sanitizing of bulk transport tanks shall comply with Items 1p, 4p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 14p, 15p, 20p, and 22p; and as climatic and operating conditions require, the applicable provisions of Items 2p and 3p: Provided, that in every case, overhead protection shall be provided.

9.5.1. Item 1p. Floors - Construction - The floors of all rooms in which milk or milk products are processed, handled, or stored, or in which milk containers, equipment, and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material; and shall be smooth, properly sloped, provided with trapped drains, kept in good repair; provided, that cold- storage rooms used for storing milk and milk products need not be provided with floor drains when the floors are sloped to drain to one or more exits: Provided further, that storage rooms for storing dry ingredients and/or packaging materials need not be provided with drains; and the floors may be constructed of tightly joined wood.

9.5.2. Item 2p. Walls and Ceilings - Construction - Walls and ceilings of rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed, shall have a smooth, washable, light-colored surface, in good repair.

9.5.3. Item 3p. Doors and Windows - Effective means shall be provided to prevent the access of flies and rodents. All openings to the outside shall have solid doors or glazed windows which shall be closed during dusty weather.

9.5.4. Item 4p. Lighting and Ventilation - All rooms in which milk and milk products are handled, processed, or stored and/or in which milk containers, equipment, and utensils are washed shall be well lighted and well ventilated.

9.5.5. Item 5p. Separate Rooms - There shall be separate rooms for (1) pasteurizing, processing, cooling, and packaging; (2) cleaning of milk cans and bottles; (3) dry storage; and (4) cleaning and sanitizing facilities in plants receiving milk in bulk transport tanks.

Unless all milk and milk products are received in bulk transport tanks, a receiving room, separate from rooms (1), (2), and (3) above, shall be required. Rooms in which milk or milk products are handled, processed, or stored, or in which milk containers, utensils, and equipment are washed or stored, shall not open directly into any stable or any room used for domestic purposes.

9.5.6. Item 6p. Toilet-Sewage Disposal Facilities - Every milk plant shall be provided with toilet facilities conforming with the national plumbing code. Toilet rooms shall not open directly into any room in which milk and/or milk products are processed. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing doors. Dressing rooms, toilet rooms, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted. Sewage and other liquid wastes shall be disposed of in a sanitary manner.

9.5.7. Item 7p. Water Supply - Water for milk plant purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

9.5.8. Item 8p. Hand-Washing Facilities - Con-

venient hand-washing facilities shall be provided, including hot and cold and/or warm running water, soap, and individual sanitary towels or other approved hand-drying devices. Hand-washing facilities shall be kept in a clean condition and in good repair.

9.5.9. Item 9p. Milk Plant Cleanliness - All rooms in which milk and milk products are handled, processed, or stored, and/or in which containers, utensils, or equipment are washed or stored, shall be kept clean, neat, and free of evidence of insects and rodents. Pesticides shall be safely used. Only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, shall be permitted in the pasteurizing, processing, cooling, packaging, and bulk milk storage rooms.

9.5.10. Item 10p. Sanitary Piping - All sanitary piping, fittings, and connections which are exposed to milk and milk products, or from which liquids may drip, drain, or be drawn into milk or milk products, shall consist of smooth, impervious, corrosion-resistant, nontoxic, easily cleanable material. All piping shall be in good repair. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping: Provided, that cottage cheese, cheese dressings, or cheese ingredients may be transported by other methods which protect the product from contamination.

9.5.11. Item 11p. Construction and Repair of Containers and Equipment - All multiuse containers and equipment with which milk or milk products come into contact shall be of smooth, impervious, corrosion-resistant, nontoxic material; shall be constructed for ease of cleaning; and shall be kept in good repair. All single-service containers, closures, gaskets, and other articles with which milk or milk products come into contact shall be nontoxic, and shall have been manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

9.5.12. Item 12p. Cleaning and Sanitizing of Containers and Equipment - The product-contact surfaces of all multiuse containers, utensils, and equipment used in the transportation, processing, handling, and storage of milk and milk products shall be effectively cleaned and shall be sanitized before each use. Farm bulk tank truck pickup hose and pumps are not required to be washed and sanitized before each use: Provided, no more than two (2) hours have lapsed between use in pickup and/or unloading opera-

tions. Further provided, all newly installed storage tanks and silo tanks which are used to store raw milk longer than twenty-four (24) hours shall be equipped with a seven (7) day temperature recording device.

9.5.13. Item 13p. Storage of Cleaned Containers and Equipment - After cleaning, all multiuse milk or milk product containers, utensils, and equipment shall be transported and stored to assure complete drainage, and shall be protected from contamination before use.

9.5.14. Item 14p. Storage of Single-Service Containers, Utensils and Materials - Single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk and milk products shall be purchased and stored in sanitary tubes, wrappings, or cartons; shall be kept therein in a clean, dry place until used; and shall be handled in a sanitary manner.

9.5.15. Item 15p. Protection From Contamination - Milk plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of milk or milk products, ingredients, equipment, containers, and utensils. All milk or milk products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than milk and milk products in the pasteurization plant shall be performed to preclude the contamination of such milk and milk products.

The storage, handling, and use of poisonous or toxic materials shall be performed to preclude the contamination of milk and milk products or ingredients of such milk and milk products or the product-contact surfaces of all equipment, containers or utensils.

9.5.16. Item 16p. Pasteurization - Pasteurization shall be performed as defined in Section 3, Definitions 3.6 and 3.7 of these regulations.

9.5.17. Item 17p. Cooling of Milk - All raw milk and milk products shall be maintained at 45 1/4F (7 1/4C) or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled immediately prior to filling or packaging in approved equipment to a temperature of 45 1/4F (7 1/4C) or less. All pasteurized milk and milk products shall be stored at a temperature of 45 1/4F (7 1/4C) or less. On transport delivery vehicles the tempera-

ture of milk and milk products shall not exceed 45 1/4F (7 1/4C) and on local home delivery vehicles the temperature of milk and milk products shall not exceed 50 1/4F (10 1/4C). Every room or tank in which milk or milk products are stored shall be equipped with an accurate thermometer.

9.5.18. Item 18p. Bottling and Packaging - Bottling and packaging of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment: Provided, that cottage cheese and creamed cottage cheese may be transported in sealed containers in a protected, sanitary manner from one plant to another for creaming and/or packaging.

9.5.19. Item 19p. Capping - Capping or closing of milk and milk product containers shall be done in a sanitary manner by approved mechanical capping and/or closing equipment. The cap or closure shall be designed and applied in such a manner that the pouring lip is protected to at least its largest diameter and with respect to fluid product containers, removal cannot be made without detection. Provided, that the existing plants with the glass bottling operations will be exempt; however, all new operations and all major replacement of this type of equipment will have to comply with the "tamper proof" requirement.

9.5.20. Item 20p. Personnel - Cleanliness - Hands shall be thoroughly washed before commencing plant functions and so often as may be required to remove soil and contamination. No employee shall resume work after visiting the toilet room without thoroughly washing his hands. All persons engaged in the processing, pasteurization, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils shall wear clean outer garments. The use of tobacco by any person while engaged in the processing of milk or milk products is prohibited. All persons engaged in the processing of milk and milk products shall wear approved head coverings.

9.5.21. Item 21p. Vehicles - All vehicles used for transportation of pasteurized milk and milk products shall be constructed and operated so that the milk and milk products are maintained at 45 1/4F (7 1/4C) or less, and are protected from sun, from freezing, and from contamination.

9.5.22. Item 22p. Surroundings - Milk plant surroundings shall be kept neat, clean, and free from

conditions which might attract or harbor flies, other insects, and rodents, or which otherwise constitute a nuisance.

64-34-10. Animal Health.

10.1. All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis area as determined by the United States department of agriculture. Modified accredited tuberculosis area shall be interpreted as requiring all dairy herds to be tested every six years with an allowable maximum grace period of two (2) months. Provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by said department as tuberculosis free, or shall have passed an annual tuberculosis test.

10.2. All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

10.2.1. Located in a certified brucellosis-free area as defined by the United States department of agriculture and enrolled in the testing program for such areas; or

10.2.2. Located in a modified certified brucellosis area as defined by the United States department of agriculture and enrolled in the testing program for such areas; or

10.2.3. Meet United States department of agriculture requirements for an individually certified herd; or

10.2.4. Participating in a milk ring testing program which is conducted on a continuing basis at intervals of not less than every three (3) months or more than every six (6) months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

10.2.5. Have an individual blood agglutination test annually with an allowable maximum grace period not exceeding two (2) months.

10.3. For diseases other than brucellosis and tuberculosis, the regulatory agency shall require such physical, chemical, or bacteriological tests as he deems necessary. The diagnosis of other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of

an official agency. Any diseased animal disclosed by such test(s) shall be disposed of as the state veterinarian directs.

§64-34-11. Milk and Milk Products Which May Be Sold.

11.1. In the State of West Virginia, only Grade A pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments: Provided, that in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the regulatory agency during a temporary period not exceeding thirty (30) days or such longer periods as he may deem necessary; in which case, such milk and milk products shall be labeled "ungraded."

NOTE - Certified pasteurized milk is derived from certified raw milk which meets the latest requirements of the American Association of Medical Milk Commissions, Inc., 2266 North Prospect Avenue, Milwaukee, Wisconsin 53202.

§64-34-12. Transferring - Delivery Containers - Cooling.

12.1. Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container or tank truck to another on the street, in any vehicle, store, or in any place except a milk plant, receiving station, transfer station, or milkhouse especially used for that purpose. The dipping or lading of milk or fluid milk products is prohibited.

12.2. It shall be unlawful to sell or serve any milk or fluid milk product except in the individual, original container received from the distributor, or from an approved bulk dispenser: Provided, that this requirement shall not apply to milk for mixed drinks requiring less than one-half pint of milk, or to cream, whipped cream, or half-and-half which is consumed on the premises and which may be served from the original container or not more than one-half gallon capacity, or from a bulk dispenser approved for such service by the regulatory agency.

12.3. It shall be unlawful to store, sell, or serve any pasteurized milk or milk product which has not been maintained at a temperature of 45 1/4F (7 1/4C) or less. If containers of pasteurized milk or milk prod-

ucts are stored in ice, the storage container shall be properly drained.

§64-34-13. Milk and Milk Products From Points Beyond The Limits of Routine Inspection.

13.1. Milk and milk products from points beyond the limits of routine inspection of the State of West Virginia may not be sold in the State of West Virginia or its police jurisdiction, unless produced and/or pasteurized under provisions which are substantially equivalent to the requirements of this regulation, and which are enforced with equal effectiveness, as determined by a milk-sanitation rating: Provided, that the regulatory agency may satisfy itself that conditions shown by the milk sanitation survey continually remain substantially the same. Further provided, the receiving regulatory agency may sample at a frequency of its discretion.

13.2. Reciprocity should prevail when the requirements of this regulation are satisfied as determined by the dairy having been awarded an official milk sanitation compliance and enforcement rating of 90 per cent or better provided the responsible governmental agency or agencies extend the same rights and privileges to milk plants located in West Virginia.

§64-34-14. Future Dairy Farms and Milk Plants.

14.1. Properly prepared plans for all milkhouses, milking barns, stables, parlors, transfer stations, receiving stations, distribution stations and/or facilities, and milk plants regulated under these regulations which are hereafter constructed, reconstructed, or extensively altered, shall be submitted to the regulatory agency for written approval before work is begun.

§64-34-15. Personnel Health.

15.1. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transportation of milk, milk products, containers, equipment, and utensils; and no dairy farm or milk plant operator shall employ in any capacity any such person, or any person suspected of having any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products, upon whose dairy farm, or in whose milk plant any communicable dis-

ease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the regulatory agency immediately.

§64-34-16. Procedure When Infection is Suspected.

16.1. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk and/or milk products, the regulatory agency is authorized to require any or all of the following measures: (1) the immediate exclusion of that person from milk handling; (2) the immediate exclusion of the milk supply concerned from distribution and use; and (3) adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges.

§64-34-17. Enforcement.

17.1. This regulation shall be enforced by the regulatory agency in accordance with the Grade A pasteurized milk ordinance with administrative procedures - 1978 recommendations of the United States food and drug administration, a certified copy of which is on file with the Secretary of State's office and each county clerk's office. Where the mandatory compliance with the provisions of the appendixes is specified, such provisions shall be deemed a requirement of this regulation.

§64-34-18. Imitation Milk and Milk Products and Non-Dairy Products.

18.1. All plants processing imitation milk and/or imitation milk products or non-dairy products must comply with Section 9, Items 1p through 22p of this regulation.

18.2. All products and ingredients used in the manufacturer of same shall be clean and wholesome. Finished product(s) must meet the bacteriological standards established herein for pasteurized milk and milk products.

18.3. Imitation milk and/or imitation milk products and non-dairy products must be processed after the completion of the day's processing and bottling or packaging of all Grade A milk or milk products. Should operational practices require that such products be processed during other periods, all equipment, piping, etc, common to such products must be disas-

sembled, washed, and sanitized or cleaned and sanitized by an approved C.I.P. system before processing or allowing Grade A milk or milk products to come in contact with such equipment.

§64-34-19. Provisions For Contractual Agreements.

19.1. Chapter 16, Article 2, Section 5 (West Virginia public health laws) authorizes the local boards of health to negotiate agreements for providing health services and facilities. If in the opinion of the local board of health a contractual agreement with the state board of health or another local board of health is necessary to the proper administration of this regulation, a contractual agreement may be negotiated. The state board of health shall establish a definite policy, criteria, and approve all such contracts. All contractual agreements shall be reviewed annually and may be terminated by either party by providing the other or others with a ninety (90) day written notice of its intent to terminate the agreement.

§64-34-20. Penalty.

20.1. A violation of these regulations, or any part thereof, shall be a misdemeanor and punishable under the provisions of Chapter 101, Article 1, Section 20, Acts of West Virginia Legislature, 1949. (Section 18, Article 1, Chapter 16, West Virginia Code, 1949).

§64-34-21. Date of Effect and Repeal.

21.1 This regulation shall be in full force and in effect on July 1, 1980, and all regulations and parts of regulations in conflict with this regulation are hereby repealed.

§64-34-22. Severability.

If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.

TABLE 64-34A

TEMPERATURE	TIME
145 1/4F (63 1/4C)**.....	30 minutes
161 1/4F (72 1/4C)**.....	15 seconds
191 1/4F (89 1/4C).....	1 second
194 1/4F (90 1/4C).....	0.5 seconds
201 1/4F (94 1/4C).....	0.1 seconds
204 1/4F (96 1/4C).....	0.05 seconds
212 1/4F (100 1/4C).....	0.01 seconds

(Ref.***) If the fat content of the milk product is ten percent (10%) or more, or if it contains added sweeteners, the specified temperature shall be increased by 5 1/4F (3 1/4C).

Provided, that eggnog shall be heated to at least the following temperature and time specifications:

TEMPERATURE	TIME
155 1/4F (69 1/4C).....	30 minutes
175 1/4F (80 1/4C).....	25 seconds
180 1/4F (83 1/4C).....	15 seconds

TABLE 64-34B

- Temperature.....Cooled to 45 1/4F (7 1/4C) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 50 1/4F (10 1/4C).
- Bacterial limits....Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization.
- Antibiotics.....Individual producer milk. No detectable zone with the bacillus stearothermophilus disc assay method or the sarcina lutea cylinder plate method or equivalent. Commingled milk: (Same as for individual producer milk).
- Somatic cell count..Individual producer milk not to exceed 1,500,000 per ml. DMSCC.

TABLE 64-34C

Temperature.....Cooled to 45 1/4F (7 1/4C) or less and maintained thereat in storage. Maintained at 45 1/4F (7 1/4C) or less on transport vehicles and shall not exceed 50 1/4F (10 1/4C) on local home delivery vehicles.

Bacterial limits....Milk and milk products - 20,000 per ml.

Coliform limit.....Not exceeding 10 per ml.

Phosphatase.....Less than 1 ug per ml. by scharer rapid method (or equivalent).

Antibiotics**.....No detectable zone by the bacillus stearothermophilus disc assay or the sarcina lutea cylinder plate method or equivalent.

*01ot applicable to cultured products.

TABLE 64-34D

Temperature.....Same as temperature requirements of 9.3.2 (above).

Coliform limit.....Not exceeding 10 per ml. or gram.

Phosphatase.....Less than 1 ug per ml. by scharer rapid method (or equivalent by other means).

Bacterial limits.. Exempt. Not applicable.