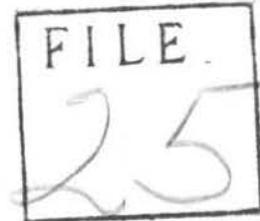


AGRICULTURE:  
DAIRY REGULATIONS:

Dairy regulations promulgated by  
Commissioner of Agriculture

February 19, 1942

Mr. C. E. Driver  
Assistant Commissioner  
Department of Agriculture  
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter of recent date, wherein you request this department to pass upon the legality of the following regulations prescribed and promulgated.

"SUGGESTED REGULATIONS COVERING  
MILK OR MILK PRODUCTS TO BE USED FOR MANUFACTURING  
PURPOSES

\* \* \* \* \*

"COWS, TUBERCULOSIS AND OTHER DISEASES.---Except as provided hereinafter, a tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every 12 months thereafter, by a licensed veterinarian approved by the State livestock sanitary authority. Said tests shall be made and reactors disposed of in accordance with the requirements approved by the United States Department of Agriculture, Bureau of Animal Industry, for accredited herds. A certificate signed by the veterinarian or attested to by the health officer and filed with the health officer shall be evidence of the above test: Provided, That in modified accredited counties in which the modified accredited area plan is applied to the dairy herds the modified accredited area system approved by the United States Bureau of Animal Industry shall be accepted in lieu of annual testing.

"All milk and milk products offered for sale for manufacturing purposes shall be from herds, or additions thereto, which have been found free from Bang's disease as shown by blood serum tests for

agglutinins against *Brucella Abortus* made in a laboratory approved by the Health Officer. All such herds shall be retested every 12 months and all reactors removed from the herd. A certificate identifying each animal by number and signed by the laboratory making the test shall be evidence of the above test.

"DAIRY BARN, LIGHTING.---A dairy or milking barn shall be required, and in such sections thereof where cows are milked, windows shall be provided and kept clean and so arranged as to insure adequate light properly distributed, and when necessary shall be provided with adequate supplementary artificial light.

"DAIRY BARN, AIR SPACE AND VENTILATION.---Such sections of all dairy barns where cows are kept or milked shall be well ventilated and shall be so arranged as to avoid overcrowding.

"DAIRY BARN, FLOORS.---The floors and gutters of such parts of all dairy barns in which cows are milked shall be constructed of concrete or other approved impervious and easily cleaned material, provided that if the milk is to be pasteurized tight wood may be used, shall be graded to drain properly, and shall be kept clean and in good repair. No horses, pigs, fowl, calves, etc., shall be permitted in parts of the barn used for milking.

"DAIRY BARN, WALLS AND CEILINGS.---The walls and ceilings of all dairy barns shall be kept clean and in good repair.

"DAIRY BARN, COWYARD.---Shall contain no pools or manure and shall be well drained and no swine shall be permitted in the cowyard.

"MANURE DISPOSAL.---All manure shall be removed daily from barn and properly disposed of, stored inaccessible to cows or piled outside until weather permits scattering on fields.

"MILK HOUSE OR ROOM, CONSTRUCTION.---There should be provided a milk house or milk room in which the cooling, handling, and storing of milk and milk products, and

storing of milk containers and utensils shall be done. The milk house or room shall be provided with a tight floor constructed of concrete or other impervious material, in good repair, and graded to provide proper drainage. It shall be well lighted and ventilated. It shall be effectively screened.

"MILK HOUSE OR ROOM, CLEANLINESS AND FLIES.--The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used.

"TOILET.--Every dairy farm shall be provided with one or more sanitary toilets conveniently located and properly constructed, operated, and maintained, so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

"WATER SUPPLY.--The water supply for the milk room and dairy barn shall be properly located, constructed, and operated, and shall be easily accessible, adequate, and of a safe sanitary quality, no cistern or surface water unless approved.

"UTENSILS, CONSTRUCTION.--All multi-use containers or other utensils used in the handling, storage, or transportation of milk or milk products must be made of smooth nonabsorbent material and of such construction as to be easily cleaned, and must be in good repair. Regulation covered milk pail should be used. Joints and seams shall be soldered flush. Woven wire or cloths of any kind shall not be used for straining milk. Approved single service milk strainers with cotton disc must be used.

"UTENSILS, CLEANING.--All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk and milk products must be thoroughly cleaned after each usage, using brush and dairy washing powder. No washcloth, soap or soap powders shall be used on any dairy equipment.

"UTENSILS, STORAGE.--All containers, and other utensils used in the handling, storage, or trans-

portation of milk or milk products shall be stored in a special definite place, preferably a rack, utensils to be inverted and not nested or stacked together.

"UTENSILS, HANDLING.---After bactericidal treatment no container or other milk or milk product utensil shall be handled in such manner as to permit any part of any person or his clothing to come in contact with any surface with which milk or milk products come in contact. Milk containers or utensils shall not be used for any other purpose.

MILKING, UDDERS AND TEATS, ABNORMAL MILK.---The udders and teats of all milking cows shall be clean at the time of the milking. Udders and teats should be wiped with a cloth which has been dipped in chlorinated water. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils.

"MILKING, FLANKS.---The flanks, bellies, and tails of all milking cows shall be brushed free from visible dirt at the time of milking.

"ODORS AND DUST.---No dry, dusty or strong odor feeds should be fed to cows during milking.

"MILKER'S HANDS.---Milkers' hands shall be washed clean. Wet-hand milking is prohibited.

"MILK HANDLING.---All milk must be removed from barn before pouring or filtering.

"MILK STOOLS.---All milk stools shall be kept clean and hung in a clean place.

"COOLING.---Milk is to be cooled in fresh, cold water deep enough to reach the neck of the can. The smallest container to be used is one-half of a fifty gallon wooden barrel. This cooling of milk with water must be continued throughout the year. Milk must be maintained at that water temperature until delivery unless delivered to a milk plant or receiving station for pasteurization or separation within two hours after completion of milking. Cans of milk set along

side of highway shall be protected from dust, sun and freezing.

"SEDIMENT TESTS.---It shall be the duty of the factory operator to make sediment tests on milk of each producer once each month. If this test shows No. 4 such milk shall be rejected and sale of all milk discontinued until improvement is made.

"REDUCTAS TEST.---Reductas tests may be used as a basis for quality grading by plants if desired, and unsatisfactory reductas tests shall be basis of forced discontinuance of sale of milk until improvement is made.

"MILKING MACHINE.---Milking machine pails should be handled in the same manner as other utensils. Satisfactory treatment of rubber parts consists of thorough rinsing following each milking and filling with one-half per cent lye solution (one 12 oz. can of lye to 18 gals. of water) until the next milking. Racks serve this purpose more satisfactorily than the practice of immersing rubber parts in the solution.

RETURNED MILK PRODUCTS.---When whey, skimmed milk, buttermilk, or other milk products intended for animal feed is returned to the producer, it shall be immediately removed from the can upon arrival, the can thoroughly washed and rinsed with a chloride solution and placed on a can rack.

"MISCELLANEOUS.---All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from freezing, direct rays of sun, and contamination. No stock, poultry, or other contaminating elements shall be hauled in the same truck with the milk or milk products.

PERIODIC INSPECTION.---All milk product manufacturing plants are subject to rigid periodic inspection by the Department of Agriculture."

Article 6 of Chapter 102 R.S. Mo., 1939 containing sections 14097 to 14132 inclusive, contains the Missouri dairy laws.

This article makes numerous provisions for the protection and supervision of the dairy industry and provides penalties for violations thereof. It contains the following provisions with reference to the Commissioner of Agriculture administering the law and particularly prescribing and promulgating the regulations. Section 14104 R. S. Mo., 1939, is as follows:

"The commissioner is hereby authorized to prescribe and promulgate such reasonable regulations (not contrary to the purpose of this law) as are necessary to properly enforce this law."

This section is a standard by which the proposed regulations are to be judged if they are reasonably within the purpose and spirit of the act, not arbitrary not in violation of the Constitution, and are necessary to properly enforce the law, then they are authorized by the Act.

The rule to determine the legality of a regulation promulgated by an administrative officer or board is stated as follows in the case of State ex rel. Wabash Railway Company v. Public Service Commission 306 Mo. 149, 167:

"\* \* \*The findings of the commission are by statute made prima-facie lawful, and we will ascribe to them the strength due to a judgment of a tribunal created by the Legislature and informed by experience. While the conclusion reached is subject to review, nevertheless, if the power of the commission has not been arbitrarily exercised \* \* \* \* and if the order made is not violative of the Constitution, or wanting in conformity to statutory authority, and is supported by substantial evidence, we accept it as final."

The Public Service Commission Act is broader than the Act concerning the Commissioner of Agriculture in respect to the making and promulgating of rules and regulations, but we think the same principles of law apply to both.

CONCLUSION

Applying the foregoing principle of law to these regulations, it is the opinion of this department, that they are reasonable regulations, that they are not contrary to the purposes of the law and that they are necessary to properly enforce the dairy law.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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