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Kansas Dairy Law

Rules and Regulations

Article 7. - Milk, Cream and Dairy Products

- K.A.R. 4-7-2. Health of herd
- K.A.R. 4-7-3. Production requirements
- K.A.R. 4-7-4. Handling requirements
- K.A.R. 4-7-6. Bacterial and coliform count
- K.A.R. 4-7-213. Adoption by reference
- K.A.R. 4-7-214. Additional definitions
- K.A.R. 4-7-507. Special dietary frozen desserts
- K.A.R. 4-7-510. Adoption by reference
- K.A.R. 4-7-530. Adoption by reference
- K.A.R. 4-7-531. Additional definitions
- K.A.R. 4-7-532. Examination of frozen dairy desserts and frozen dairy dessert mixes
- K.A.R. 4-7-533. Coliform and bacteria standards for frozen dairy desserts and frozen dairy dessert mixes
- K.A.R. 4-7-715. Enforcement
- K.A.R. 4-7-716. Adoption by reference
- K.A.R. 4-7-717. Additional definitions
- K.A.R. 4-7-718. Insertions
- K.A.R. 4-7-719. Additions
- K.A.R. 4-7-804. Schedule of fees for non-regulatory laboratory work
- K.A.R. 4-7-900. Civil penalty; complaint
- K.A.R. 4-7-902. Amount of proposed civil penalty
- K.A.R. 4-7-903. Criteria to determine dollar amount of proposed civil penalty
- K.A.R. 4-7-904. Informal settlement
- K.A.R. 4-7-1000. Milk hauler license

K.A.R. 4-7-2. Health of herd. (a) All ungraded raw milk shall be from herds, and additions to herds, that meet the requirements of sec. (D)(1) of "milk for manufacturing purposes and its production and processing," as adopted by reference in K.A.R. 4-7-213.

(b) Milk and cream from cows affected with mastitis or containing any residue from drugs used in the treatment of mastitis shall not be sold. (Authorized by K.S.A. 2001 Supp. 65-772 and K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65- 773; effective Jan. 1, 1966; amended Jan. 14, 1991; amended Oct. 21, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-3. Production requirements. Each business owner or operator and each person subject to the Kansas dairy law shall ensure that the requirements in this regulation are met. (a) Milk barn. The milk barn shall be kept clean, dry, well lighted, well ventilated, and well drained. The floor shall be constructed so that it is easily cleanable. No swine, fowl, or horses shall be permitted in the milk barn.

(b) Milk room. A clean, sanitary, well-constructed building or room that is free from sources of contamination and is

properly equipped to wash, sanitize, and store bottles and equipment shall be provided. The building or room shall be constructed in a manner preventing the entrance of dust, dirt, flies, and other pests or contamination. The building or room shall be well lighted and well ventilated.

(c) Utensils. All utensils used in handling milk or cream shall be easily cleanable, free of rust, and in good repair. These utensils shall be made from smooth, nonabsorbent, noncorrodible, nontoxic material. All milk pails shall be of the seamless, hooded type.

(d) Toilet. A sanitary toilet conveniently located and properly constructed shall be provided. The toilet shall be operated and maintained so that all waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

(e) Water supply. The water supply shall be easily accessible, adequate, and compliant with all applicable sanitary and quality standards. (Authorized by K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended Dec. 20, 2002.)

K.A.R. 4-7-4. Handling requirements. (a) Cooling. All milk shall be cooled to 45°F or less within one hour after milking and shall be maintained at these temperatures until delivery to the consumer.

(b) Containers. All containers shall be stored in a sanitary place and manner and protected from possible contamination. All bottles, cans, and other multiuse containers shall be thoroughly washed and sanitized before each usage. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773; effective Jan. 1, 1966; amended Jan. 14, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-6. Bacterial and coliform count. (a) Raw milk shall not have a bacterial plate count exceeding 100,000 per milliliter.

(b) Raw cream shall not have a bacterial plate count exceeding 200,000 per milliliter. (Authorized by K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended Dec. 20, 2002.)

K.A.R. 4-7-213. Adoption by reference. The United States department of agriculture's recommended requirements titled "milk for manufacturing purposes and its production and processing," effective September 1, 2005, are hereby adopted by reference, except for the following:

(a) Subpart A;

(b) subpart B, section B2, paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (k), (m), (r), (s), (t), and (u);

(c) subpart D, section D9; and

(d) subpart F.

Copies of the pertinent portions of these requirements may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-773 and 65-775; effective, E-81-24, Aug. 27, 1981; effective May 1, 1981; amended May 1, 1986; amended, T-87-21, Aug. 21, 1986; amended May 1, 1987; amended Jan. 14, 1991; amended Feb. 27, 1998; amended Feb. 11, 2000; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

K.A.R. 4-7-214. Additional definitions. Whenever the following terms are used in the United States department of agriculture's recommended requirements regarding "milk for manufacturing purposes and its production and processing," adopted by reference in K.A.R. 4-7-213, the terms shall have the meanings assigned in this regulation: (a) All references to "the act" or "act" shall mean K.S.A. 65-771 et seq., and amendments thereto.

(b) All references to "Brucellosis test" shall mean any and all requirements of the Kansas department of animal health pertaining to brucellosis.

(c) All references to any "form" shall mean a form supplied by the Kansas secretary of agriculture.

(d) All references made to an "inspector" shall mean the individual who inspects for compliance with the Kansas dairy law.

(e) All references to "official methods" shall mean the "official methods of analysis of AOAC international," adopted by reference in K.A.R. 4-7-716.

(f) All references to "regulatory agency" shall mean the Kansas department of agriculture.

(g) All references to "standard methods" shall mean the edition of "standard methods for the examination of dairy products," adopted by reference in K.A.R. 4-7-716.

(h) All references to equipment, whenever "3-A sanitary standards," "3-A standards," "3-A suggested methods," and "3-A accepted practices" are used, shall mean that the equipment referred to in that context is 3-A sanitary standards-approved before use in producing manufacturing-grade milk. (Authorized by K.S.A. 2001 Supp. 65-772 and K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773, K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16, and K.S.A. 2001 Supp. 74-568; effective, E-81-24, Aug. 27, 1981; effective May 1, 1981; amended Jan. 14, 1991; amended Feb. 11, 2000; amended Dec. 20, 2002.)

K.A.R. 4-7-507. Special dietary frozen desserts. (a) The term "special dietary frozen desserts" shall mean frozen dairy desserts for special dietary purposes that are made in semblance of ice cream or ice milk and that contain sweetening ingredients other than nutritive carbohydrate sweeteners.

(b) Special dietary frozen desserts shall be labeled to meet the requirements of the Kansas food, drug, and cosmetic act, code of federal regulations, title 21. (Authorized by and implementing K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended May 1, 1984; amended Dec. 20, 2002.)

K.A.R. 4-7-510. Adoption by reference. Except for 21 C.F.R. 135.160, pertaining to water ices, 21 C.F.R. part 135, revised on April 1, 2005, titled "frozen desserts," is hereby adopted by reference. Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1984; amended March 26, 1990; amended Oct. 21,

1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

K.A.R. 4-7-530. Adoption by reference. (a) The following sections of 7 C.F.R. part 58, revised on January 1, 2006, are hereby adopted by reference:

- (1) All of section 58.126;
- (2) all of sections 58.132 through 58.138; and
- (3) all of sections 58.605 through 58.654, except sections 58.646, 58.648, and 58.653.

(b) Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

K.A.R. 4-7-531. Additional definitions. (a) Notwithstanding any language to the contrary, all references to any "standard of identity" in 7 C.F.R. 58.605, as adopted by reference in K.A.R. 4-7-530, shall mean the corresponding standard of identity established by K.A.R. 4-7-510.

(b) All references to "standard methods for the examination of dairy products" in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the "standards for examination of dairy products" adopted by reference in K.A.R. 4-7-716.

(c) All references to "official methods of analysis of the association of analytical chemists" in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the "official methods of analysis of AOAC international" adopted by reference in K.A.R. 4-7-716. (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-532. Examination of frozen dairy desserts and frozen dairy dessert mixes. (a) A sample of any frozen dairy dessert or frozen dairy dessert mix may be taken by the Kansas secretary of agriculture as often as the secretary deems necessary to prevent the introduction of or to remove any adulterated, misbranded, or unclean frozen dairy desserts or frozen dairy dessert mixes from the marketplace.

(b) Samples shall be taken at least annually at each business or location owned or operated by any person required to obtain a license to operate a dairy manufacturing plant. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-533. Coliform and bacteria standards for frozen dairy desserts and frozen dairy dessert mixes. (a) A frozen dairy dessert product shall not contain more than 50,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples.

(b) A frozen dairy dessert mix shall not contain more than 20,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-715. Enforcement. K.A.R. 4-7-715 through K.A.R. 4-7-722 shall be enforced by the Kansas secretary of agriculture in accordance with the corresponding provisions contained in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716, a copy of which shall be on file in the office of the Kansas secretary of agriculture. (Authorized by and implementing K.S.A. 2001 Supp. 65-772; effective July 1, 1970; amended May 1, 1980; amended May 1, 1983; amended Jan. 14, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-716. Adoption by reference. (a) The following documents are hereby adopted by reference:

(1) Except for sections 1 (JJ), 2, 9, 15, 16, 17, and 18, the "grade 'A' pasteurized milk ordinance," 2009 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration;

(2) the "methods of making sanitation ratings of milk shippers," including appendices, published by the U.S. department of health and human services, public health service, and food and drug administration, 2009 revision;

(3) the 2009 revision of the "procedures governing the cooperative state-public health service/food and drug administration program of the national conference on interstate milk shipments," including pages 49 through 68;

(4) the 17th edition of the "standard methods for the examination of dairy products," dated 2004 and published by the American public health association;

(5) the 17th edition of the "official methods of analysis of AOAC international," volumes I and II, revision 1, including appendices, dated 2002 and published by the association of official analytical chemists; and

(6) the 2007 revision of the "evaluation of milk laboratories," published by the U.S. department of health and human services, public health service, and food and drug administration.

(b) Copies of the pertinent portions of the material adopted by reference shall be available from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Dec. 26, 1988; amended Jan. 14, 1991; amended Oct. 21, 1991; amended July 1, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

K.A.R. 4-7-717. Additional definitions. (a) All references to "this ordinance" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean K.A.R. 4-7-716.

(b) All references to “regulatory agency” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the department.

(c) All references to “jurisdiction” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the state of Kansas.

(d) “Cottage cheese” means the product defined in 21 C.F.R. 133.128 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(e) “Dry curd cottage cheese” means the product defined in 21 C.F.R. 133.129 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(f) All references to the “standard methods for the examination of dairy products of the American public health association” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(4).

(g) All references to the “official method of analysis of AOAC international” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(5).

(h) Whenever reference is made in the “grade ‘A’ pasteurized milk ordinance,” as adopted by reference in K.A.R. 4-7-716, to the requirements or responsibilities of a “vendor,” the reference shall obligate the processor of milk. (Authorized by and implementing K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; effective May 1, 1980; amended Jan. 14, 1991; amended Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

K.A.R. 4-7-718. Insertions. Each reference to the proper legal jurisdiction in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall be completed by insertion of the word “Kansas” or the phrase “state of Kansas,” whichever the context requires. (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective May 1, 1980; amended Jan. 14, 1991; amended Dec. 20, 2002.)

K.A.R. 4-7-719. Additions. (a) In item 10p appearing in section 7 of the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: “However, cottage cheese, cheese dressings, or cheese ingredients may be transported by other methods which protect the product from contamination.”

(b) In item 18p appearing in section 7 of the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: “However, cottage cheese, dry curd cottage cheese, and reduced-fat or low-fat cottage cheese may be transported in sealed containers in a protected sanitary manner from one plant to another for creaming or packaging.” (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective May 1, 1980; amended Jan. 14, 1991; amended March 2, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002.)

K.A.R. 4-7-804. Schedule of fees for nonregulatory laboratory work. (a) Each person who requests the Kansas department of agriculture laboratory to perform any of the following analyses shall pay the department \$15.00 for each analysis:

- (1) An analysis to determine the presence of coliforms or E. coli in water used for dairy production or dairy processing;
- (2) an analysis to determine the percentage of added water in raw milk;
- (3) an analysis to determine the percentage of butterfat in raw milk, retail milk, or milk products; and
- (4) an analysis to determine the amount of extraneous material in raw milk.

(b) Each person who requests any of the following analyses by the department shall pay the department \$30.00 for each analysis:

- (1) An analysis to determine the total bacteria count in raw milk, pasteurized milk, or milk products, using the standard plate count method;
- (2) an analysis to determine the total coliform plate count in pasteurized milk or milk products;
- (3) an analysis to determine the total bacteria count in water used for dairy production or dairy processing; and
- (4) an analysis to determine the total bacteria and coliform plate count in food-grade packaging materials used for dairy foods.

(c) Each person who requests any of the following analyses by the department shall pay the department \$50.00 for each analysis:

- (1) An analysis to determine the presence of beta-lactam antibiotic drug residues in raw milk, pasteurized milk, or milk products;
- (2) an analysis to determine the percentage of protein in raw milk;
- (3) an analysis to determine the manual count of somatic cells in raw milk; and
- (4) an analysis to determine the presence of tetracycline antibiotic drug residue or sulfonamide antibiotic drug residue in raw milk.

(d) Each person who requests any of the following analyses by the department shall pay the department \$80.00 for each analysis:

- (1) An analysis to determine the electronic count of somatic cells in raw milk;
- (2) an analysis to determine the proportion of alkaline phosphatase in pasteurized milk; and
- (3) an analysis to determine the quantification of aflatoxin in raw milk.

(e) Each person who requests the department to perform an analysis to determine the quantification of vitamins A and D₃ in pasteurized milk shall pay the department \$130.00 for each analysis.

(f) The performance of any analysis for nonregulatory purposes may be refused by the secretary. (Authorized by and implementing K.S.A. 65-777; effective Dec. 20, 2002; amended May 20, 2022.)

K.A.R. 4-7-900. Civil penalty; order. Each order assessing a civil penalty shall include the following: (a) A general statement citing the section of the act authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty; and

(e) notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 22, 1990; amended Dec. 12, 1994; amended Dec. 20, 2002; amended July 18, 2008.)

K.A.R. 4-7-902. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of the Kansas dairy law, K.S.A. 65-771 *et seq.*, and amendments thereto, that results from each independent act or failure to act by any dairy manufacturing plant or agent or employee of the plant or agent. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) A penalty of not more than \$300 may be assessed by the secretary if a violation ultimately could result in harm or danger to the public health or is a repeat violation identified in subsection (c).

(c) For the second occurrence and for each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed shall be the maximum amount allowed by law. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 22, 1990; amended Dec. 20, 2002; amended July 18, 2008.)

K.A.R. 4-7-903. Criteria to determine dollar amount of the civil penalty. In determining the amount of civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered may include the following: (a) The potential of the act to injure or endanger the health of any consumer, or the general public;

(b) the severity of actual or potential injuries;

(c) the respondent's history of compliance with K.S.A. 65-789, and amendments thereto, and the regulations adopted thereunder;

(d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects that were the result of the violation; and

(e) any misrepresentation or fraud associated with the violation. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 20, 1990; amended Oct. 29, 1990; amended Dec. 20, 2002; amended July 18, 2008.)

K.A.R. 4-7-904. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 22, 1990; amended Dec. 12, 1994; amended Dec. 20, 2002; amended July 18, 2008.)

K.A.R. 4-7-1000. Milk hauler license. (a) Each milk hauler shall sample, weigh, handle, and transport milk or cream samples in accordance with the "standard methods for examination of dairy products," the "official methods of analysis of AOAC international," and the provisions of the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716.

(b) Before the initial issuance of the milk hauler license, each applicant shall pass a written examination on the proper procedures for sampling, testing, and weighing milk or cream, and on the state laws and regulations pertaining to milk and dairy products.

(c) Each milk hauler license shall be renewed when the applicant pays the required fees and attends renewal training provided by the secretary at least once during any three consecutive licensing periods. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-778; effective Jan. 14, 1991; amended Dec. 20, 2002.)