

AGRICULTURE (3 PA.C.S.) - MILK SELL BY DATE AND BEST BY DATE
LABELING

Act of Jun. 30, 2021, P.L. 333, No. 62

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No. 2021-62

SB 434

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, in food protection, providing for milk sell-by date and best-by date labeling.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapter 57 of Title 3 of the Pennsylvania Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER C

MILK SELL-BY DATE AND BEST-BY DATE LABELING

Sec.

5741. Scope of subchapter.

5742. Definitions.

5743. Label requirement.

5744. Sell-by date or best-by date of greater than 17 days from pasteurization.

5745. Prohibitions.

5746. Monitoring by milk plants and department.

5747. Regulations.

§ 5741. Scope of subchapter.

This subchapter relates to milk sell-by date and best-by date labeling.

§ 5742. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Milk." As defined in section 1 of the Milk Sanitation Law.

"Milk plant." As defined in section 1 of the Milk Sanitation Law and permitted under section 2 of the Milk Sanitation Law.

"Milk Sanitation Law." The act of July 2, 1935 (P.L.589, No.210), referred to as the Milk Sanitation Law.

"Pennsylvania-approved dairy laboratory." Any of the following:

(1) A commercial or regulatory laboratory approved and certified by the department within the preceding two years to do official analyses of milk.

(2) A milk industry laboratory approved and certified by the department within the preceding two years for the examination of producer samples of milk for pasteurization, commingled milk for pasteurization or raw milk for human consumption for the detection of drug residues, bacterial limits and somatic cell count.

"Retail food facility." As defined in section 5702 (relating to definitions).

§ 5743. Label requirement.

(a) General rule.--The cap or nonglass container of pasteurized milk held in retail food facilities for resale shall be conspicuously and legibly marked in a contrasting color with a sell-by date or a best-by date.

(b) Sell-by date.--A sell-by date shall consist of:

(1) a designation of the month and the day of the month after which the product may not be sold or offered for sale, whether expressed in standard fashion (such as "August 15"), numerically (such as "8-15") or with the use of an abbreviation (such as "Aug. 15" or "AU 15"); and

(2) either:

(i) the words "Sell-by" or "Not to be sold after" preceding that designation and appearing legibly on the cap or nonglass container; or

(ii) the statement "Not to be sold after the date stamped above" following that designation and appearing legibly on the cap or nonglass container.

(c) Best-by date.--A best-by date shall consist of:

(1) a designation of the month and the day of the month in a format as provided in subsection (b) established by the milk plant as a product quality guideline; and

(2) the words "best-by," "Best if consumed by" or "Best if used by" preceding the designation and appearing legibly on the cap or nonglass container.

(d) Prominence of sell-by date or best-by date on label.--The sell-by date or best-by date shall be separate and distinct from any other number, letter or intervening material on the cap or nonglass container.

(e) Limitation.--A sell-by date or a best-by date may not exceed 17 days beginning after midnight on the day on which the milk was pasteurized, unless the department approves a longer interval in accordance with the procedure described in section 5744 (relating to sell-by date or best-by date of greater than 17 days from pasteurization).

(f) Exempt pasteurized milk and required lot number or manufacturing date code information for pasteurized milk.--The following types of pasteurized milk are exempt from the requirements of this subchapter, provided that the cap or nonglass container contains a lot number or manufacturing date code that is acceptable to the department and can be used for product traceability in the marketplace:

(1) Ultrapasteurized milk.

(2) Cultured milk.

(3) Aseptically processed milk.

(4) Milk that has undergone higher heat shorter time pasteurization.

(5) Milk sold or offered for retail sale on the same premises at which it was processed.

§ 5744. Sell-by date or best-by date of greater than 17 days from pasteurization.

(a) General rule.--A milk plant may apply to the department for approval to use a sell-by date or a best-by date that exceeds the 17-day period referenced in section 5743(e) (relating to label requirement). Approval shall be by type of milk and type and volume of the milk container.

(b) Approval process.--Approval may be obtained by the following process:

(1) The applicant must apply to the department for approval to use a specific sell-by or best-by date that exceeds the 17-day period referenced in section 5743(e), using a form provided by the department.

(2) The applicant must specify on the form, by milk type and type and volume of container, each product for which approval is sought, and the specific sell-by date or best-by date proposed for that product as packaged.

(3) For each milk type and type and volume of container with respect to which approval is sought, the applicant must

include scientific documentation as the department may require to confirm the following:

(i) unopened samples from at least three different production days were maintained at a temperature of between 34 and 45 degrees Fahrenheit for no less than the entire proposed sell-by date or best-by date period;

(ii) after the proposed sell-by date or best-by date period ended, each sample was opened and tested for bacterial count, and the bacterial count for each sample did not exceed the bacteriological standards for milk set forth in the department's milk sanitation regulations; and

(iii) the testing was completed within three months preceding the date the application was submitted to the department.

(c) Continuation of approval.--Approval issued by the department under this section shall remain in effect as long as the milk plant continues to complete the periodic sampling and testing required in section 5746 (relating to monitoring by milk plants and department) and the bacterial test results do not exceed the bacterial limits for pasteurized milk described in section 5746.

§ 5745. Prohibitions.

(a) Sell-by date.--Pasteurized milk may not be sold or offered for sale if the milk is sold or offered for sale after the sell-by date designated on the cap or nonglass container.

(b) Best-by date.--Pasteurized milk may not be sold or offered for sale if the milk is sold or offered for sale after the best-by date designated on the cap or nonglass container.

§ 5746. Monitoring by milk plants and department.

(a) Sampling and testing.--

(1) If a milk plant labels milk with a sell-by date or a best-by date that is no later than 17 days beginning after midnight on the day on which the milk was pasteurized, the milk plant shall, at intervals of no greater than 12 months and for the highest-selling-volume milk type and each type and volume of container of that highest-selling-volume milk type bearing that label information, sample and test in accordance with the methodology specified in subsection (b).

(2) If a milk plant labels milk with a sell-by date or a best-by date that is greater than 17 days beginning after midnight on the day on which the milk was pasteurized and that has been approved by the department in accordance with section 5744 (relating to sell-by date or best-by date of greater than 17 days from pasteurization), the milk plant shall, at intervals of no longer than six months and for the highest-selling-volume milk type and each type and volume of container of that highest-selling-volume milk type bearing that label information, sample and test in accordance with the methodology specified in subsection (b).

(3) The department shall periodically sample containers of pasteurized milk in the possession of the milk plant. The sampling may occur at any time before the pasteurized milk is delivered to a retail food facility or the customer.

(b) Methodology.--

(1) The samples described in subsection (a)(1) and (2) shall be analyzed by a Pennsylvania-approved dairy laboratory.

(2) The samples described in subsection (a)(3) shall be analyzed by the department or a Pennsylvania-approved dairy laboratory.

(3) The analysis shall determine whether the bacterial test results exceed the bacterial limits for pasteurized milk described in the department's milk sanitation regulations prior to the expiration of the sell-by date or best-by date designated on the cap or nonglass container.

(c) Reporting.--A Pennsylvania-approved dairy laboratory that performs any of the testing required under this section shall report the test results to the milk plant and the department in a format and within a time period prescribed by the department.

(d) Pasteurized milk that exceeds bacterial limits.--

(1) When two or more samples of milk demonstrate a milk plant cannot produce pasteurized milk that remains consistently within the bacterial limits referenced in subsection (b) during the sell-by-date or best-by-date period, the department shall calculate a reduced sell-by-date or best-by-date period for that pasteurized milk such that bacterial growth in the milk will not exceed the referenced bacterial limits within that revised sell-by-date or best-by-date period, if the milk is maintained in accordance with the temperature standards for pasteurized milk in the department's milk sanitation regulations.

(2) The milk plant shall use the revised sell-by date or best-by date until the milk plant obtains a different sell-by-date or best-by-date period using the procedure in section 5744.

§ 5747. Regulations.

The department shall make such reasonable rules and regulations as may be deemed necessary for carrying out the provisions of this subchapter.

Section 2. The provisions of 7 Pa. Code § 59a.15 are abrogated to the extent of any inconsistency with this act.

Section 3. This act shall take effect in 30 days.

APPROVED--The 30th day of June, A.D. 2021.

TOM WOLF