
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 434 Session of
2021

INTRODUCED BY VOGEL, SCHWANK, J. WARD, ARGALL, BARTOLOTTA,
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STREET AND AUMENT, MARCH 16, 2021

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 9, 2021

AN ACT

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

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

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

8 SUBCHAPTER C

9 MILK SELL BY DATE AND BEST BY DATE LABELING

10 Sec.

11 5741. Scope of subchapter.

12 5742. Definitions.

13 5743. Label requirement.

14 5744. Sell by date or best by date of greater than 17 days from
15 pasteurization.

16 5745. Prohibitions.

17 5746. Monitoring by milk plants and department.

1 5747. Regulations.

2 § 5741. Scope of subchapter.

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

5 § 5742. Definitions.

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

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

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

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

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

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

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

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

27 § 5743. Label requirement.

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

1 a sell by date or a best by date.

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

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

8 (2) either:

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

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

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

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

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

22 (d) Prominence of sell by date or best by date on label.--

23 The sell by date or best by date shall be separate and distinct
24 from any other number, letter or intervening material on the cap
25 or nonglass container.

26 (e) Limitation.--A sell by date or a best by date may not
27 exceed 17 days beginning after midnight on the day on which the
28 milk was pasteurized, unless the department approves a longer
29 interval in accordance with the procedure described in section
30 5744 (relating to sell by date or best by date of greater than

1 17 days from pasteurization).

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

9 (1) Ultrapasteurized milk.

10 (2) Cultured milk.

11 (3) Aseptically processed milk.

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

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

16 § 5744. Sell by date or best by date of greater than 17 days
17 from pasteurization.

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

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

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

29 (2) The applicant must specify on the form, by milk type
30 and type and volume of container, each product for which

1 approval is sought, and the specific sell by date or best by
2 date proposed for that product as packaged.

3 (3) For each milk type and type and volume of container
4 with respect to which approval is sought, the applicant must
5 include scientific documentation as the department may
6 require to confirm the following:

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

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

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

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

27 § 5745. Prohibitions.

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

1 (b) Best by date.--Pasteurized milk may not be sold or
2 offered for sale if the milk is sold or offered for sale after
3 the best by date designated on the cap or nonglass container.
4 § 5746. Monitoring by milk plants and department.

5 (a) Sampling and testing.--

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

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

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

29 (b) Methodology.--

30 (1) The samples described in subsection (a) (1) and (2)

1 shall be analyzed by a Pennsylvania-approved dairy
2 laboratory.

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

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

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

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

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

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

1 5744.

2 § 5747. Regulations.

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

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

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