

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS

CHAPTER 435. DAIRY PRODUCTS

SUBCHAPTER A. MILK OFFERED FOR SALE AND MILK GRADING

Sec. 435.001. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Person" means an individual, plant operator, partnership, corporation, company, firm, trustee, or association. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1075, eff. April 2, 2015.

Sec. 435.0015. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.010(c), Chapter 431 applies to a person and milk or a milk product regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 3, eff. Sept. 1, 2003.

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. The executive commissioner may regulate the grading and labeling of milk and milk products. The department shall supervise the grading and labeling of milk and milk products according to the standards, specifications, and requirements adopted by the executive commissioner for each grade and in conformity with this subchapter. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1076, eff. April 2, 2015.

Sec. 435.003. MILK SPECIFICATIONS. (a) The executive commissioner by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing purposes, and dairy products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

(b) The rules must be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1077, eff. April 2, 2015.

Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY DEPARTMENT. (a) The department shall sample, test, or inspect Grade "A" pasteurized milk and milk products, Grade "A" raw milk and milk products for pasteurization, milk for manufacturing purposes, and dairy products that are offered for sale.

(b) Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization that come from beyond the limits of state inspection shall be sampled, tested, or inspected to determine if department standards and requirements for milk and milk products are met.

(c) Sampling, testing, and inspection of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk for pasteurization shall include, in addition to any other tests that may be required, tests for:

- (1) plate count or direct microscopic count;
- (2) antibiotics;
- (3) sediments;
- (4) phosphatase; and

(5) water and any elements foreign to the natural contents of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1387, Sec. 5, eff. September 1, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1078, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1079, eff. April 2, 2015.

Sec. 435.005. INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES. (a) The department may contract with a county or municipality to act as the agent of the department to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

(b) A municipality, county, or other political subdivision may test and inspect milk or milk products. In the absence of a contract under Subsection (a), the municipality, county, or other political subdivision must pay the cost of the test or inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1080, eff. April 2, 2015.

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see H.B. [1275](#), 89th Legislature, Regular Session, for amendments affecting the

following section.

Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers milk or milk products for sale or to be sold in this state must hold a permit issued by the department. The person must apply to the department for a permit.

(b) After receiving the application, the department may determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The department shall maintain a list of the names of all applicants to whom the department has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked.

(d) The department may not issue a permit to a person for a producer dairy located in an area infected with or at a high risk for bovine tuberculosis, as determined epidemiologically and defined by rule of the Texas Animal Health Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 445, Sec. 2, eff. June 4, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1081, eff. April 2, 2015.

Sec. 435.007. USE OF MISLEADING LABEL. (a) A person may not use a label, device, or design marked Grade "A," or any other grade, statement, device, or design related to the safety, sanitary quality, or food value, on milk or milk products produced, offered for sale, or sold in this state that is misleading or does not conform to the requirements of this subchapter.

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the executive commissioner for Grade "A" milk and milk products.

(c) A person may not sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit under this subchapter. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1082, eff. April 2, 2015.

Sec. 435.008. MILK FOR RESALE. A person is not required to hold a permit to resell or offer for resale in the same container any milk or milk products that are represented or advertised as a grade of milk or milk products and that are purchased from a person holding a permit authorizing that representation or advertisement. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.009. FEES. (a) A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) The department shall impose the following fees only:

(1) a permit fee of \$200 every two years for a producer dairy farm;

(2) a permit fee of \$800 every two years for a processing or bottling plant;

(3) a permit fee of \$800 every two years for a receiving and transfer station;

(4) a permit fee of \$200 every two years for a milk transport tanker;

(5) a fee of 4-1/2 cents for each 100 pounds of milk or milk products processed and distributed in this state by a processing or bottling plant in this state, or processed by an out-of-state processing or bottling plant and sold in this state; and

(6) a fee of 1-1/2 cents for each 100 pounds of dairy products processed by a processing or bottling plant in this state.

(c) The executive commissioner shall adopt rules for the department to assess and collect the fees imposed by Subsections

(b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with department rules.

(d) A permit issued under this chapter is valid for two years and must be renewed not later than September 1 of the year in which the permit expires.

(e) The department shall prorate fees paid for permits issued under this chapter after the beginning of a permit year.

(f) In this section:

(1) "Dairy farm" means a place where one or more cows or goats are kept and from which milk or milk products are provided, sold, or offered for sale to a milk plant or transfer station.

(2) "Transfer station" means a place where milk or milk products are transferred directly from one transport tank to another.

(g) Subject to legislative appropriation, the department may use money collected under Subsection (b)(5) only for milk inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 411, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. [1714](#)), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1083, eff. April 2, 2015.

Sec. 435.010. RECORDS. The executive commissioner by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1084, eff. April 2, 2015.

Sec. 435.011. HEARING. (a) The executive commissioner shall establish a procedure by which a person aggrieved by the

application of a department rule may receive a hearing under Chapter 2001, Government Code.

(b) The refusal or the suspension or revocation of a permit by the department and the appeal of that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 757, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1085, eff. April 2, 2015.

Sec. 435.012. REFUSAL TO GRANT PERMIT; SUSPENSION OR REVOCATION OF PERMIT. (a) The department may refuse an application for a permit under this chapter or may suspend or revoke a permit issued under this chapter.

(b) The department may revoke and regrade permits if on inspection the department finds that the use of the grade label does not conform to the specifications or requirements adopted by the executive commissioner under this chapter.

(c) The executive commissioner by rule shall:

(1) provide for the denial, suspension, or revocation of a permit; and

(2) establish reasonable minimum standards for granting and maintaining a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1086, eff. April 2, 2015.

Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED. A municipality by ordinance may allow only pasteurized milk and pasteurized milk products to be sold at retail in that municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$25 or more than \$200.

(c) Each violation constitutes a separate offense.

(d) The penalty prescribed by this section is subject to either the sanctions prescribed in the Grade A Pasteurized Milk Ordinance for products covered by the ordinance or any civil or administrative penalty or sanction otherwise imposed by Chapter 431 or other law for products not covered by the ordinance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK

Sec. 435.021. IMPORTED MILK. (a) In this section:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(b) A state agency or political subdivision may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States.

(c) This section does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 435.022 by Acts 1989, 71st Leg., ch. 1100, Sec. 5.06(b), eff. Sept. 1, 1989.