

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2649

By: Glover and Benson of the
House

and

Hooper of the Senate

AS INTRODUCED

An Act relating to public health and agriculture;
amending 63 O.S. 1991, Sections 1-1301.1, 1-1301.2,
1-1301.3, 1-1301.4, as amended by Section 350,
Chapter 145, O.S.L. 1993, 1-1301.5, 1-1301.6, 1-
1301.7, 1-1301.8, 1-1301.9, 1-1301.10, 1-1301.11,
1-1301.12, 1-1301.13, 1-1301.14, 1-1301.15, 1-
1301.16, 1-1301.17, 1-1301.18, 1-1301.19, 1-1301.20
(63 O.S. Supp. 1993, Section 1-1301.4), which
relate to the Oklahoma Milk and Milk Products Act;
amending Section 6, Chapter 398, O.S.L. 1992, as
renumbered by Section 359, Chapter 145, O.S.L.
1993, and as last amended by Section 6, Chapter
324, O.S.L. 1993 (27A O.S. Supp. 1993, Section 1-3-
101), which relates to jurisdictional areas of
environmental state agencies; transferring the
Oklahoma Milk and Milk Products Act and Program
from the Oklahoma State Department of Health to the
State Department of Agriculture; conforming
language; modifying definitions; providing transfer
of funds; clarifying jurisdictional authority;
providing for transfer of employees; providing for

recodification; providing an effective date; and
declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-1301.1, is amended to read as follows:

Section 1-1301.1 ~~This~~ Sections 1 through 20 of this act shall be known and may be cited as the "Oklahoma Milk and Milk Products Act".

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1301.2, is amended to read as follows:

Section 1-1301.2 It is the purpose of ~~this act~~ the Oklahoma Milk and Milk Products Act and it is hereby declared to be the policy of this state to regulate the quality and the minimum sanitary requirements of the production, processing and distribution of milk and milk products in a manner that will ~~(a) protect:~~

1. Protect the health, safety and welfare of the consumer public; and ~~(b) allow~~

2. Allow Oklahoma milk and milk product producers, processors and distributors to enjoy free trade and commerce among sister states.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-1301.3, is amended to read as follows:

Section 1-1301.3 As used in ~~this act~~ the Oklahoma Milk and Milk Products Act:

1. "Commissioner" means the ~~State~~ Commissioner of ~~Health~~ Agriculture or his or her duly authorized employee;

2. "Dairy farm" means any place or premises, owned or operated by a "milk producer", where one or more cows or goats are kept, and

from which a part or all of the milk or milk products is sold or offered for sale;

3. "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats;

4. "Milk facility" means such producing, processing, hauling or distributing premises and facilities which operate under an appropriate and valid permit issued by the Commissioner, in compliance with ~~this act~~ the Oklahoma Milk and Milk Products Act and the rules ~~and regulations~~ of the ~~State Board of Health~~;

5. "Grade A milk and milk products" means milk and milk products at any stage from production through pasteurization and packaging, that are of the minimum quality and are produced, hauled, processed and distributed under conditions which substantially meet the requirements of ~~this act~~ the Oklahoma Milk and Milk Products Act;

6. "Inhibitor" means any chemical or antibiotic substance which inhibits or retards the growth of bacteria in milk;

7. "Milk" is defined to be the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than eight and one-fourth percent (8 1/4%) milk solids-not-fat and not less than three and one-fourth percent (3 1/4%) milkfat. The term "milk" shall be interpreted to include goat milk. Wherever the term "milk" is used in ~~this act~~ the Oklahoma Milk and Milk Products Act, it shall mean fluid market milk and milk products for the purpose of distribution to the consumer, and may contain optional ingredients defined by the ~~State Board of Health~~ and shall include ungraded and Grade A milk;

8. "Milk contact surface" means any pipe, tank, equipment or facility which contacts or may contact milk during the producing, hauling, processing or distributing of milk and milk products;

9. "Milk distribution center" means any place or premises, owned or operated by a "milk distributor", which distributes and sells or offers to sell milk and milk products but does not include an establishment which sells or offers to sell Grade A milk and milk products at retail to the ultimate consumer;

10. "Milk hauler" means the systems and any person who owns, controls or operates systems which transport raw milk or raw milk products to or from a milk plant or receiving or transfer station;

11. "Milk plant" means any place or premises, owned or operated by a "milk processor", where milk or milk products are collected, manufactured, processed, pasteurized, bottled, stored or prepared for distribution for commercial purposes including, but not limited to a receiving or transfer station;

12. "Milk products" means those products produced or obtained from milk or any component or product of milk and defined by the ~~State Board of Health~~, including Grade A milk products, ungraded raw milk and ungraded milk products;

13. "Ungraded milk products" and "manufacture grade milk products" include, but are not limited to butter, cheese, dry milk, condensed milk, filled or evaporated milk, frozen dairy dessert and mello-drink products;

14. "Pasteurized milk" means Grade A raw milk which has been pasteurized and stored in accordance with the chemical, bacteriological and temperature standards required by the ~~State Board of Health~~;

15. "Person" means any natural or artificial person including but not limited to individuals, partnerships, associations or corporations, or any other legal entity;

16. "Receiving or transfer station" means any place or premises where milk or milk products are received or shipped, except by retail to the ultimate consumers, and any premises or facilities

used for transferring milk or milk products from one tank or truck to another;

17. "Milk fat" or "butter fat" means the fat of milk;

18. "Department" means the Oklahoma State Department of Health Agriculture;

~~19. "Food establishment" means any establishment, except a private residence, which prepares or serves for profit food for human consumption, regardless of whether such food is to be consumed on or off the premises. Food establishment shall include any private or public institution which prepares or serves food for human consumption;~~

~~20. "Mello-drink" or "Mello-drink product" means a product such as or which has the appearance, taste, smell, texture or color of, but is not, a milk product; which, taken as a whole, bears resemblance to or is in imitation of a milk product, or could be mistaken for a milk product; and which contains oils or fats other than milk fat in combination with milk solids-not-fat or with milk fat, or which contains no milk solids-not-fat or milk fat. Mello-drink or Mello-drink products shall not be interpreted to include evaporated filled milk in hermetically sealed cans; and~~

~~21. "Retail food store" means any establishment which offers for retail sale packaged or bulk food goods for human consumption; and~~

20. "Board" means the State Board of Agriculture.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-1301.4, as amended by Section 350, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-1301.4), is amended to read as follows:

Section 1-1301.4 A. ~~The State Board of Health is hereby authorized and directed to enact~~ shall promulgate reasonable rules and regulations governing the:

1. The producing, transporting, processing, pasteurizing, handling, identity, sampling, examination, labeling, marking,

shipping statements, optional ingredients, definition and the sanitary conditions for milk and milk products; ~~the~~

2. The inspection and sanitary rating of dairy herds, dairy farms, milk haulers, milk plants and distribution centers engaged in the producing, hauling, processing and distributing of milk and milk products; ~~the~~

3. The issuing, modifying, suspending and revoking of permits to producers, haulers, processors and distributors of milk and milk products, ~~and the;~~

4. The approval of facilities therefor except for waste disposal therefrom, which shall be regulated by the Department of Environmental Quality;

5. All creameries, public dairies, butter and cheese factories, milk depots, milk and cream collecting stations, market houses where dairy products are sold, buildings occupied by retail dealers in milk, frozen dairy desserts, cream, butter or cheese;

6. All vehicles used for the distribution of milk and cream and all railroad cars, vehicles and other means of transporting milk and cream to market; and

7. The labeling and packaging of milk and milk products.

B. Insofar as permitted by the laws of this state, the rules ~~and regulations~~ promulgated by the ~~State Board of Health~~ shall be in reasonable accord with the minimum standards and requirements for milk and milk products currently recommended and published by the U.S. Department of Health and Human Services, Food and Drug Administration, including the Recommended Grade A Pasteurized Milk Ordinance, and successors thereto. ~~It is expressly declared that this state does not intend to prohibit the manufacture and sale of milk and milk products which conform to the federal requirements and definitions during the interim period from July 20, 1987, and the date the applicable rules of the State Board of Health first become effective.~~

C. ~~The Department shall promulgate rules governing all creameries, public dairies, butter and cheese factories, milk depots, milk and cream collecting stations, market houses where dairy products are sold, buildings occupied by retail dealers in milk, frozen dairy desserts, cream, butter or cheese, all vehicles used for the distribution of milk and cream and all railroad cars, vehicles and other means of transporting milk and cream to market and the labeling and packaging of milk and milk products which are under the jurisdiction of the Department~~ rules promulgated by the State Board of Health for the powers and duties specified in the Oklahoma Milk and Milk Products Act which were in effect on June 30, 1994, shall remain effective until the promulgation of new rules by the Board.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-1301.5, is amended to read as follows:

Section 1-1301.5 The Commissioner shall have the ~~following powers and duties~~ power and duty to:

1. Administer and supervise the enforcement of the Oklahoma Milk and Milk Products Act;

2. Provide for such periodic inspection and investigation as deemed necessary to determine compliance with ~~this act~~ the Oklahoma Milk and Milk Products Act and to make a record of each inspection on a form to be approved by the Board; ~~and every.~~ Every milk producer, milk hauler, milk processor or milk distributor engaged in producing, hauling, processing or distributing of milk and milk products shall, upon request, according to law, permit access of the Commissioner to all areas of his establishment, during reasonable hours, to so evaluate compliance with the provisions of ~~this act~~ the Oklahoma Milk and Milk Products Act;

3. Secure and analyze samples of milk and milk products from any milk producer, milk hauler, milk processor or milk distributor; provided that milk and milk products packaged for retail sale to

consumers may not be taken without first paying or offering to pay for such sample;

4. Prohibit the producing, processing and sale of adulterated milk and milk products;

5. Receive and investigate complaints;

6. Issue permits to the owner or operator of dairy farms, milk haulers, milk plants, milk distribution centers and receiving or transfer stations to engage in the producing, hauling, processing or distributing of milk and milk products upon receipt of permit applications therefor and upon determining that such facilities are in compliance with ~~this act~~ the Oklahoma Milk and Milk Products Act and to modify, suspend or revoke such permits for the producing, hauling, processing or distributing of milk and milk products in accordance with ~~this act and Oklahoma law~~ the Oklahoma Milk and Milk Products Act;

7. Maintain, as public records, laboratory reports of samples collected by the Commissioner, listings of permits issued, modified, suspended and revoked;

8. Require submission of and to timely review and approve, prior to commencement of work, plans, specifications and other information relative to the construction, reconstruction or alteration of milk and milk product facilities;

9. Examine, for official use only, true statements of the actual quantities of milk and milk products purchased and sold; lists of all sources of milk and milk products; and records of cleaning, tests and pasteurization times and temperatures of appropriate facilities;

10. Examine and approve laboratories to conduct those analyses required by ~~this act~~ the Oklahoma Milk and Milk Products Act; and

11. Inspect, sample and issue permits for the retail operation of soft-serve ice cream machines.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-1301.6, is amended to read as follows:

Section 1-1301.6 A. Only Grade A pasteurized milk and milk products or Grade A raw milk shall be sold to the final consumer, provided, however, ~~that only:~~

1. Only Grade A pasteurized milk shall be sold through restaurants, soda fountains, grocery stores or similar establishments, including school lunch rooms. ~~Providing;~~

2. Grade A raw goat milk may be sold in grocery stores or drug stores. ~~Provided that, in; and~~

3. In an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the Commissioner; in which case, such milk and milk products shall be labeled "ungraded".

B. Approval by the Commissioner ~~under~~ pursuant to rules ~~and regulations adopted~~ promulgated by the ~~State Board of Health~~ for the use of Grade A label on milk and milk products processed at any milk plant in accordance with the provisions of ~~this act~~ the Oklahoma Milk and Milk Products Act shall constitute an acceptable rating for all intrastate purposes, ~~and no.~~ No sanitary requirement or standard issued ~~under this act~~ pursuant to the Oklahoma Milk and Milk Products Act or by any governmental subdivision shall prohibit the sale of Grade A milk and milk products which are produced and processed under laws or rules of any governmental unit, within or without this state, which are substantially equivalent to the requirements of ~~this act~~ the Oklahoma Milk and Milk Products Act, and which are enforced with equal effectiveness, as determined by a milk sanitation rating certified to the U.S. Department of Health and Human Services, Food and Drug Administration or the successor thereto.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-1301.7, is amended to read as follows:

Section 1-1301.7 A. Any Grade A milk or milk product shall be deemed to be adulterated ~~(1) if it~~:

1. It bears or contains any poisonous, deleterious or inhibitor substance in a quantity which may render it injurious to health; ~~(2) if it~~

2. It bears or contains any added poisonous, inhibitor or deleterious substance for which no safe tolerance has been established by state or federal regulations, or in excess of such tolerance if one has been established; ~~(3) if it~~

3. It consists, in whole or in part, of any substance unfit for human consumption; ~~(4) if it~~

4. It has been produced, processed, prepared, packed, held or transported under insanitary conditions; ~~(5) if its~~

5. Its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or ~~(6) if any~~

6. Any substance has been added thereto or mixed or packed therewith or any process applied so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

B. Grade A milk and milk products shall be deemed to be misbranded ~~(1) when their container(s) bears or accompanies~~:

1. Their containers bear or accompany any false or misleading written, printed or graphic matter; ~~(2) when such~~

2. Such milk and milk products do not conform to their definitions in accordance with ~~this act~~ the Oklahoma Milk and Milk Products Act; ~~(3) when such~~

3. Such products are not labeled in accordance with ~~this act~~ the Oklahoma Milk and Milk Products Act; and ~~(4) when such~~

4. Such products are labeled "Grade A" when such packaged products were filled from a dairy plant or milk plant which did not possess an appropriate and valid Grade A permit issued by the

Commissioner at the time the milk or milk product was produced or processed.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1301.8, is amended to read as follows:

Section 1-1301.8 A. No person shall produce, haul, process or distribute Grade A raw milk for pasteurization or milk and milk products, or hold himself out as a milk producer, hauler, processor or distributor or represent his dairy farm, milk hauler, milk plant, receiving or transfer station, milk distribution center or milk or milk products as "Grade A" unless that person possesses an appropriate and valid permit for the particular premises or facilities concerned.

B. Applications for permits for dairy farms, milk haulers, milk plants, receiving or transfer stations and milk distribution centers shall be submitted to the Commissioner on a form approved by the ~~State Board of Health~~. Each applicant shall allow the Commissioner to inspect the applicable premises, records and facilities. The Commissioner shall timely inspect said premises and facilities and issue the permit applied for when compliance is confirmed. Said permits shall be issued without either a fee or expiration date and shall not be transferable among persons or places.

C. However, the Commissioner ~~may~~, without an inspection, may issue such permits, which shall be contingent upon and subject to continuing compliance, to such facilities located without this state which comply with the provisions of subsection B of Section ~~1-1301.6~~ 6 of this ~~title act~~; provided, that if such an out-of-state facility requests, or if such facility is not so certified, then for all inspections necessary, ~~inspection(s)~~ inspection by the Commissioner and costs of such ~~inspections under~~ inspection pursuant to this subsection shall be paid by such facilities and the amounts so paid shall be deposited in the ~~Public Health Special Fund~~ State Department of Agriculture Revolving Fund.

D. The Board may establish classification for milk and milk products and the producing, processing, distribution, storing, and hauling of milk and milk products and issue permits therefor.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-1301.9, is amended to read as follows:

Section 1-1301.9 A. To determine compliance with the requirements of ~~this act~~ the Oklahoma Milk and Milk Products Act, the Commissioner shall collect, or cause to be collected, and analyze representative samples, at least four times in any consecutive six (6) months, Grade A raw milk for pasteurization and Grade A milk and milk products from each Grade A dairy farm, milk hauler, milk plant and milk distributor, as appropriate; and shall collect and analyze, from time to time, representative Grade A milk and milk products from retail establishments, as required by this act.

B. Whenever two of the last four consecutive bacteria counts, somatic cell counts, coliform determinations or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and milk products, the Commissioner shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of such notice, but not before the lapse of three (3) days.

C. Whenever a phosphatase test on Grade A pasteurized milk is positive, the cause shall be determined; and where the cause is improper pasteurization, it shall be corrected and any milk or milk product involved shall not be offered for sale as Grade A.

D. Whenever an inhibitor test is positive and confirmed, the cause shall be determined; and any milk or milk product involved shall not be offered for sale as Grade A; and the dairy farm

responsible shall not produce raw milk for Grade A purposes until such milk is found to be free of inhibitors.

E. Samples shall be analyzed in a laboratory approved by the Commissioner. All sampling procedures and required laboratory examinations shall be in substantial compliance with the latest edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association and the latest edition of Official Methods of Analyses of the Association of Official Agricultural Chemists. Such procedures including the certification of sample collectors and the examinations shall be evaluated in accordance with the Evaluation of Milk Laboratories, 1978 Recommendations of the U.S. Public Health Service/Food and Drug Administration and successors thereto.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-1301.10, is amended to read as follows:

Section 1-1301.10 A. Notwithstanding that analytical results may not become available until after the ultimate Grade A milk and milk products have reached retail stores and consumers, it is declared that the protection of public health, safety and welfare imperatively, as defined in the Administrative Procedures Act, requires such and the Commissioner, immediately upon receipt of the appropriate analysis, shall notify and suspend the permit of a dairy farm or milk plant:

1. Which produced raw milk containing an inhibitor, for at least twenty-four (24) hours and until such time as the cause is corrected and the raw milk is found to be free of inhibitors; or

2. Which produced or processed milk that, in any consecutive six (6) months, exceeded in three of the last five samples the limit of the standard for the milk, in accordance with subsection B of Section ~~1-1309.9~~ 9 of this ~~title~~ act, for at least twenty-four (24) hours and until such time as the dairy farm or milk plant is inspected and found to be in compliance with the requirements of

~~this act~~ the Oklahoma Milk and Milk Products Act; provided, that the Commissioner shall conduct such inspection as soon as is reasonably possible after request for such inspection.

B. The Commissioner shall immediately notify and suspend, and it is hereby declared that the protection of public health, safety and welfare imperatively requires such, as defined in the Administrative Procedures Act, the permit of a facility upon refusal to allow an inspection of the applicable premises as required by ~~this act~~ the Oklahoma Milk and Milk Products Act or upon second consecutive inspection, conducted not less than seventy-two (72) hours nor more than twenty-one (21) days after the first inspection, disclosing gross neglect of cleaning of milk contact surfaces. Such suspension shall continue under such grounds until such time as an inspection is allowed or the milk contact surfaces are found to be clean, respectively; provided, that the Commissioner shall conduct such inspection as soon as is reasonably possible after request for inspection.

C. The Commissioner may also suspend or revoke a permit upon a finding of continuing or multiple violations of ~~this act~~ the Oklahoma Milk and Milk Products Act, or summarily suspend a Grade A permit when public health, safety or welfare imperatively requires such, in accordance with the Administrative Procedures Act.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-1301.11, is amended to read as follows:

Section 1-1301.11 A. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the equipment involved or employees engaged in the producing, handling, storing, or transporting of milk, milk products, containers, equipment and utensils; and no milk producer or milk plant operator shall employ in any such capacity any such person, or any person suspected of having any disease in a

communicable form, or of being a carrier of such disease. Any milk producer, processor or distributor who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the Commissioner immediately.

B. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk and milk products, the Commissioner is authorized to require any or all of the following measures: ~~(1) the~~

1. The immediate exclusion of that person from milk handling; ~~(2) the~~

2. The immediate exclusion of the milk supply concerned from distribution and use; and ~~(3) adequate~~

3. Adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-1301.12, is amended to read as follows:

Section 1-1301.12 A. All milk for pasteurization and all milk for Grade A raw distribution shall be from herds which are located in a Modified Accredited Tuberculosis Area as determined by the U.S. Department of Agriculture: Provided, that herds located in an area that fails to maintain such accredited status shall have been accredited by said Department as tuberculosis-free, or shall have passed an annual tuberculosis test.

B. All milk for pasteurization and for Grade A raw distribution shall be from herds participating in a milk ring testing program for brucellosis eradication which is conducted on a continuing basis at intervals of not less than every three (3) months or more than every six (6) months with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test.

C. For diseases other than brucellosis and tuberculosis, the Commissioner shall require such physical, chemical or bacteriological tests as are deemed necessary. The diagnosis of

other diseases in dairy cattle shall be based upon the findings of a licensed veterinarian or a veterinarian in the employ of an official agency.

D. Any diseased animal disclosed by such ~~test(s)~~ test shall be disposed of as the State Veterinarian directs.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 1-1301.13, is amended to read as follows:

Section 1-1301.13 ~~No person shall and~~ A. It shall be unlawful for any person who to knowingly attempts:

1. Attempt to produce, haul, process or distribute milk or milk products without an appropriate and valid permit; ~~or sells, offers~~

2. Sell, offer or exposes ~~expose~~ for sale as Grade A any adulterated or misbranded milk or milk product; ~~or sells, offers~~

3. Sell, offer or exposes ~~expose~~ for sale or ~~serves~~ serve milk and milk products which have not been maintained at or below the temperature specified by the State Board of Health; ~~or dips~~

4. Dip or ~~ladles~~ ladle Grade A milk and milk products; ~~or transfers~~

5. Transfer Grade A milk and milk products at any location other than a permitted Grade A facility designed and equipped for such purpose; ~~or prevents, interferes~~

6. Prevent, interfere with or ~~attempts~~ attempt to impede the Commissioner from investigating and enforcing ~~this act~~ the Oklahoma Milk and Milk Products Act; ~~or sells~~

7. Sell or ~~serves~~ serve Grade A milk and milk products from other than the individual container, or approved bulk dispenser, received from the distributor; or ~~violates~~

8. Violate any provision of ~~this act~~ the Oklahoma Milk and Milk Products Act.

B. Any person convicted of violating the provisions of this section shall be deemed guilty of a misdemeanor.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-1301.14,
is amended to read as follows:

Section 1-1301.14 A. The provisions of the Oklahoma Milk and Milk Products Act shall not be construed to ~~include:~~

1. Include incidental sales of raw milk directly to consumers at the farm where the milk is produced ~~nor to preclude;~~

2. Preclude the advertising of such incidental sale of goat milk. ~~Nor shall this act prohibit;~~ and

3. Prohibit any farmer or producer from making cheese of milk or cream produced on his own farm.

B. For purposes of this section, incidental sales of goat milk are those sales where the average monthly number of gallons sold does not exceed one hundred (100).

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-1301.15,
is amended to read as follows:

Section 1-1301.15 A. There is hereby assessed a fee of one cent (\$0.01) on each one hundred (100) pounds of raw milk produced in Oklahoma. Each co-op or marketing agent, or processing plant where the raw milk is not collected by a co-op or marketing agent, doing business in Oklahoma shall pay such fees each calendar month to the Commissioner ~~of Health~~ to be remitted to the State Treasury to be credited to the Milk and Milk Products Inspection Revolving Fund of the State Treasury.

B. There is hereby assessed a fee of one cent (\$0.01) on each one hundred (100) pounds of Grade A milk or milk products processed or offered for retail sale in Oklahoma. Each milk plant doing business in Oklahoma shall pay such fees each calendar month to the Commissioner ~~of Health~~ to be remitted to the State Treasury to be credited to the Milk and Milk Products Inspection Revolving Fund in the State Treasury.

SECTION 16. AMENDATORY 63 O.S. 1991, Section 1-1301.16,
is amended to read as follows:

Section 1-1301.16 A. There is hereby created in the State Treasury a revolving fund to be known as the "Milk and Milk Products Inspection Revolving Fund". Said fund shall be a continuing fund not subject to fiscal year limitations and is hereby appropriated and may be budgeted and expended by the Commissioner of Agriculture for the purpose of administering and enforcing the Oklahoma Milk and Milk Products Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. Any unencumbered monies remaining in the Milk Inspection Revolving Fund on June 30, 1994, shall be transferred to the credit of the Milk and Milk Products Inspection Revolving Fund.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-1301.17, is amended to read as follows:

Section 1-1301.17 No person shall produce, haul, process or distribute ungraded raw milk or milk products or hold himself out as an ungraded milk producer, hauler, processor or distributor unless ~~that~~ such person possesses an appropriate and valid permit for the particular premises or facilities concerned. The processing of permit applications and inspections shall be similar to the Grade A permit process.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 1-1301.18, is amended to read as follows:

Section 1-1301.18 Any person or persons, firm or corporation who shall hinder or obstruct or in any way interfere with the Commissioner or any authorized agent of the Department while discharging his duties of inspection, or who shall refuse or fail to make any report required or provided for by the Oklahoma Milk and Milk Products Act, or who shall refuse or neglect to conform to the rules ~~and regulations~~ of the Board, or who shall in any way obstruct or hinder the Commissioner, or any authorized agent of the

Department, from performing any of his official duties or from carrying out the full meaning and intent of the Oklahoma Milk and Milk Products Act, upon conviction thereof, shall be guilty of a misdemeanor.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 1-1301.19, is amended to read as follows:

Section 1-1301.19 A. Whenever the Commissioner, or any authorized agent of the Department, finds or has probable cause to find that any dairy product, in whole or in part, does not meet the requirements of the standards as required by the Oklahoma Milk and Milk Products Act, or that such product is handled in violation of law or rules ~~and regulations~~ of the Board, he shall affix to such article a tag or other appropriate marking, which shall thereby give notice that such article is, or is suspected of, being manufactured, produced, handled, sold or offered for sale in violation of law or rules ~~and regulations~~ of the Board, and is quarantined, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the Department. It shall be unlawful and a misdemeanor for any person to remove or dispose of such quarantined article by sale or otherwise without such permission.

B. If the Department finds that an article quarantined ~~under the preceding paragraph~~ pursuant to subsection A of this section does not meet the requirements of law, or such rules ~~and regulations~~, the Department may institute an action in the district court in whose jurisdiction the article is quarantined, for the condemnation and destruction of such article. If, however, the Department finds that an article so quarantined does meet the requirements of law and such rules ~~and regulations~~, the Department shall forthwith remove the quarantine. In any court proceeding because of such quarantine, the Department or any authorized agent

thereof, or the Commissioner, shall not be held liable if the court shall find there was probable cause for such quarantine.

C. If any court finds that a quarantined article, in whole or in part, is in violation of law or such rules ~~and regulations~~, such article shall, after an entry of a decree, be destroyed at the expense of the owner or defender thereof, under the supervision of the Department, and all court costs and fees and cost of storage and other proper expenses shall be taxed against the owner or defender of such article, or his agent; ~~but if.~~ If the violation can be corrected by proper processing of the article, the court, after an entry of the decree, and after such costs, fees and expenses have been paid, and a good and sufficient bond conditioned that such article be so processed has been executed, may by order direct that such article be delivered to the owner or defender thereof for appropriate labeling or processing under the supervision of the Department. The expense of supervision shall be paid to the Department by the person obtaining release of the article under bond.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-1301.20, is amended to read as follows:

Section 1-1301.20 ~~A.~~ Except as otherwise provided in this section, all powers, duties and responsibilities of the State Board of ~~Agriculture~~ Health and the State Department of ~~Agriculture~~ Health, as they relate to ungraded milk and milk products, are hereby transferred to the Oklahoma State Board of Agriculture and to the Oklahoma State Department of Health Agriculture, as appropriate, together with all unexpended funds, property, records, personnel and any outstanding financial obligations or encumbrances exclusively or principally pertaining to ungraded milk or milk products. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in this

subsection. The Department of Agriculture, the Department of Health and the Office of Personnel Management shall cooperate in the necessary transfers of personnel pursuant to this section in such a manner that minimal disruptions occur.

~~B. The Oklahoma State Department of Agriculture shall continue to sample, grade and inspect such products and plants as provided under the Federal/State Inspection and Grading Service of Dairy Products contract with the United States Department of Agriculture.~~

SECTION 21. AMENDATORY Section 6, Chapter 398, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 6, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1993, Section 1-3-101), is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency. The jurisdictional areas of responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional responsibilities specified by this section is hereby superceded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction,

trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Surface water and groundwater quality and protection and water quality certifications;

4. Waterworks and wastewater works operator certification;

5. Public and private water supplies;

6. Underground injection control except for brine recovery, saltwater disposal or secondary or tertiary oil recovery;

7. Air quality under the Federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

8. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

9. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

10. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

11. Water, waste, and wastewater treatment systems including but not limited to septic tanks or other public or private waste disposal systems;

12. Emergency response as specified by law;

13. Environmental laboratory services and laboratory certification;

14. Hazardous substances other than branding, package and labeling requirements;

15. Freshwater wellhead protection; and

16. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the Federal Clean Water Act as specified by law; and

9. Statewide water quality standards.

D. State Department of Agriculture. 1. The State Department of Agriculture shall have the following jurisdictional areas of environmental responsibility except as provided in subsection B of this section and paragraphs 2 and 3 of this subsection:

- a. point and nonpoint source discharges from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer, ~~and~~
- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals, and
- f. dairy waste and wastewater associated with milk production facilities.

2. In addition to the areas of jurisdictional responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (2) ~~dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,~~
- ~~(3)~~ slaughterhouses, but not including feedlots at such facilities, and
- ~~(4)~~ (3) animal aquiculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and

- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

3. Any point source and nonpoint source discharges related to agriculture from sources specified in paragraph 1 of this subsection which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 2 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

E. Corporation Commission. 1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata lying below three hundred (300) feet in depth from the surface,

- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,

- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, and
- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

2. The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department regulated facilities and activities are concerned.

4. For purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation

Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tank regulation assigned to the Commission pursuant to other Oklahoma statutes, including but not limited to the Leaking Underground Storage Tank Trust Fund and Indemnity Fund programs, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality, and
- b. aboveground storage tanks used in connection with the retail sale of flammable liquids into fuel tanks, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,

- b. manufacturing of oil and gas related equipment and products,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection,
- d. other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or the Department of Agriculture as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the Federal Clean Air Act as amended.

F. Conservation Commission. The Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

- 1. Soil conservation and erosion control;
 - 2. Monitoring, evaluation and assessment of waters to determine the extent of nonpoint source pollution and the development of conservation plans. Serve as the technical lead agency for Section 319 of the Federal Clean Water Act, except for activities related to industrial and municipal stormwater;
 - 3. Wetlands strategy;
 - 4. Abandoned mine reclamation;
 - 5. Cost share program for land use activities;
 - 6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;
 - 7. Complaint data management;
 - 8. Coordinate environmental and natural resources education;
- and
- 9. Federal upstream flood control program.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation; and
2. Mining reclamation of active mines.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills; and
2. Wildlife protection and seeking wildlife damage claims.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Vehicle inspection for air quality;
2. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and
3. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;
2. Asbestos monitoring in public and private buildings; and
3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

Such programs shall be a function of the Department's occupational safety and health jurisdiction.

K. Department of Civil Emergency Management. The Department of Civil Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' life and property pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act;
and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

SECTION 22. RECODIFICATION 63 O.S. 1991, Sections 1-1301.1, as amended by Section 1 of this act, 1-1301.2, as amended by Section 2 of this act, 1-1301.3, as amended by Section 3 of this act, 1-1301.4, as last amended by Section 4 of this act, 1-1301.5, as amended by Section 5 of this act, 1-1301.6, as amended by Section 6 of this act, 1-1301.7, as amended by Section 7 of this act, 1-1301.8, as amended by Section 8 of this act, 1-1301.9, as amended by Section 9 of this act, 1-1301.10, as amended by Section 10 of this act, 1-1301.11, as amended by Section 11 of this act, 1-1301.12, as amended by Section 12 of this act, 1-1301.13, as amended by Section

13 of this act, 1-1301.14, as amended by Section 14 of this act, 1-1301.15, as amended by Section 15 of this act, 1-1301.16, as amended by Section 16 of this act, 1-1301.17, as amended by Section 17 of this act, 1-1301.18, as amended by Section 18 of this act, 1-1301.19, as amended by Section 19 of this act, and 1-1301.20, as amended by Section 20 of this act, shall be recodified as Sections 7-401 through 7-420 of Title 2 of the Oklahoma Statutes.

SECTION 23. This act shall become effective July 1, 1994.

SECTION 24. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-7906

KSM