

**THE RESPONSIBILITY OF STATE AGENCIES
FOR MILK INSPECTION**

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
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A Report
of the
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

RICHMOND, VIRGINIA, November 1, 1961

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Since 1948 the inspection of dairy farms, dairy plants, and other establishments wherein milk is produced, processed and distributed to the public has been a responsibility of the State Department of Agriculture and Immigration, but municipalities were also authorized to adopt ordinances on the same subject. This dual responsibility worked satisfactorily for a number of years, but recently it became apparent that duplication of inspection was causing trouble. At the 1960 session of the General Assembly two bills were offered to end this: one of them would have fixed entire responsibility in the State Health Department and the other would have fixed entire responsibility in the Department of Agriculture. Neither passed, but the General Assembly directed the Virginia Advisory Legislative Council to make a study and report upon milk inspection with a view to recommending a plan whereby duplication of inspection might be avoided. The resolution directing the study follows:

HOUSE JOINT RESOLUTION NO. 59

Directing the Virginia Advisory Legislative Council to study matters relating to milk inspection.

Whereas, the present session of the General Assembly is beset by many issues of great magnitude and far-reaching consequence; and

Whereas, among these matters is the responsibility of certain State agencies for milk inspection, with a decision being required as to whether such activity should be the responsibility of the State Department of Health or of the State Department of Agriculture and Immigration; and

Whereas, a decision on this question involves a review of the operations of each of these departments, the financial consequences involved in any change in the responsibility for milk inspection, and the General Assembly should have more information before acting upon this matter; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study and report upon the responsibility for milk inspection and to make a recommendation as to whether the State Department of Health or the State Department of Agriculture and Immigration should be vested with the responsibility for milk inspection and matters in connection therewith. The Council is further directed to obtain the advice of the heads of these

two agencies in arriving at its recommendation. All agencies of the State shall assist the Council in its study. The Council shall conclude its study and make its report to the Governor and General Assembly not later than September one, nineteen hundred sixty-one.

The Council assigned this study to John H. Daniel, member of the House of Delegates, Charlotte County, as Chairman of a committee to make the initial investigation and report. The following were appointed to serve on the Committee with Mr. Daniel: W. C. Elliott, member of the House of Delegates, Lebanon, Vice-Chairman; Ralph A. Beeton, Arlington; Parke C. Brinkley, Commissioner of Agriculture and Immigration, Richmond; Curry Carter, member of the Senate of Virginia, Staunton; Waverly S. Green, dairyman, Crewe; John T. T. Hundley, Director of Public Health and Welfare, Lynchburg; Thomas E. Neale, Jr., milk distributor, Norfolk; Mack I. Shanholtz, State Health Commissioner, Richmond; and E. C. C. Woods, dairyman, Hanover. John B. Boatwright, Jr., and W. S. Kincheloe, Jr., served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee compiled considerable material concerning the facilities, personnel, services and functions of the Department of Agriculture and the Department of Health, including local health departments, in the field of milk inspection from the farm to the consumer. Data were obtained concerning the pattern of milk production and distribution throughout the State. After appropriate publicity, two public hearings were held, one in Richmond and one in Roanoke.

Generally there were three points of view expressed at the hearings. Representatives of the dairy farms indicated that they desired responsibility for milk inspection from the farm to the consumer to be vested exclusively in the Department of Agriculture. Representatives of local health departments pointed out their responsibility for the production and distribution of pure and wholesome milk and recommended that such departments be given the responsibility for inspecting the production and distribution of milk and milk products.

Representatives of the dairy plants who appeared stated generally that they were opposed to duplicate inspection; they emphasized the need for uniform State-wide laws and regulations governing the production and distribution of milk and milk products. Instances were pointed out in which a milk product could be sold in one locality but not in another even though sanitary conditions in its production and processing met all requirements of the inspecting authority having jurisdiction; some localities were said to have adopted standards which, in their operation, prevented the distribution within such areas of milk products produced elsewhere in the State and which were pure and wholesome.

The Committee reviewed and carefully considered all the material made available to it, and deliberated upon the recommendations presented at the public hearings and elsewhere, and made its report to the Council. Having studied the report at length, and realizing the importance of the dairy industry to the State of Virginia, the necessity of protecting the public health, and the interest of all in an economical and efficient means of insuring the production and distribution of a safe and wholesome supply of milk and milk products, the Council makes the following recommendations.

RECOMMENDATIONS

We recommend that the bill attached to this report be enacted into law. The bill provides essentially as follows:

1. The Department of Agriculture is responsible for inspecting the production and distribution of milk from the farm to the platform of the milk plant. The State Health Department and local health departments are responsible for inspecting the processing and distribution of milk from the platform of the milk plant to the consumer. A definition is provided for point of delivery to the milk plant so as to make certain that there will be no duplication of function or uncertainty as to the line of demarcation of responsibility.

2. The State Board of Agriculture and Immigration and the State Board of Health acting jointly are authorized to adopt rules and regulations concerning the production and distribution of milk.

3. The bill establishes one standard for milk and milk products which may be produced, distributed and sold throughout the State.

4. Existing local ordinances and rules and regulations, insofar as they do not fall below, or go beyond, the standards required by this bill, are continued in force. Localities are authorized to adopt the standards set forth in the recommended bill and may not depart therefrom. They are authorized to parallel the rules and regulations adopted by the two State Boards jointly and may not depart therefrom.

REASONS FOR RECOMMENDATIONS

In 1934 legislation was adopted under which the State Department of Agriculture was given sole and exclusive responsibility for inspecting the production and distribution of milk throughout the State; this legislation also authorized control of milk products. In 1948 this legislation was repealed and a new statute of a far more comprehensive nature was adopted. The State Department of Agriculture was again given responsibility for inspecting the production and distribution of milk; however, one section of the law stated that it did not prohibit municipalities which maintained their own inspection services from adopting local ordinances, the requirement of which were not below the minimum requirements of the new law. The application of this act eventually gave rise to the present study.

The business of milk production and distribution is a complex one. Originally, milk was consumed where it was produced. Later, farmers who had surpluses furnished milk for their neighbors, or sold it to nearby grocery stores. With the coming of refrigeration and pasteurization, the present production and distribution pattern evolved, so that a milk plant within a city or county does not necessarily or even usually get its milk from the dairy farms nearby, but the sources of supply are frequently some distance away.

Experience has shown that because of the extremely perishable nature of milk, in order to insure safe and wholesome fluid milk a continuous system of quality control must be maintained, which means that the product must be inspected from the farm all the way to the consumer. Elaborate requirements have been established concerning the sanitary conditions which must be observed on the farm, the manner in which the milk is transported from the farm to the dairy plant, the handling of the milk within the plant, and the distribution from the dairy plant to the consumer. There are other requirements which apply to the milk products which are produced by a milk plant. These requirements cover a whole gamut of commodities ranging from beverage milk intended for human consumption to cream, ice cream, butter, buttermilk, cheese and many other milk products. The great majority of these

regulations are intended to insure that the consumer get a sanitary and wholesome product and one which is made in accordance with accepted standards of nutrition.

Obviously, the State Department of Agriculture is well suited to inspecting the production of milk where it is handled by the dairy farmer, on the farm and all the way to the milk plant. Its inspectors have in the past done an excellent job in the inspection of the handling and distribution of milk from the plant to the consumer also. However, as more and more municipalities adopted ordinances governing the production and distribution of milk, local health departments, in addition to inspecting dairy plants located within or near the municipalities, began the inspection of the farms on which the milk was produced. This led to duplicate inspection on the farm, as well as in the milk plants. It was but natural that those who were subject to duplicate inspections became subject to differing requirements as to sanitary conditions. Eventually, this led to the legislation introduced at the 1960 session of the General Assembly and the present study of milk inspection by the Council.

Virginia has been fortunate in the development of its dairy industry. The depressed state of agriculture in these days has been offset to some extent by the record of the dairy farmers who have stayed in business despite higher costs and lower profit margins. The operators of these dairy farms have large investments and they have supplied the people of Virginia with a sanitary and wholesome product. The milk plants located in Virginia also represent large investments. They have to meet stringent requirements concerning sanitary conditions in their plants, and they must be able to compete effectively throughout the State in these days of intensive competition for the consumer's dollar. The State and local health departments are greatly concerned, as is the State Department of Agriculture, in insuring that the consumer obtain a sanitary and high quality milk for his family and domestic uses. In this endeavor they have succeeded remarkably well, and the people of Virginia have been supplied with milk of high quality — and no instances were cited to us of any disease outbreak caused by milk produced or distributed under unsanitary conditions.

The dairy plant must, in most cases, produce a product, whether fluid milk or some milk product, which can be sold over a wide area. It operates on a narrow margin of profit and, as noted above, under the most intensive competition. It is of economic importance to the dairy plant operators that they have a single set of rules to follow governing the requirements for milk products which they offer for sale anywhere in the State.

If a milk product complies with the requirements of the law which we propose, the public health will be protected, and the consumer will be given a wholesome and nutritious product. A locality should not be allowed to erect barriers prohibiting the distribution of a milk product in its area which complies with the bill we recommend.

Instances were cited to us in which local health departments exclusively inspected the production of milk and the distribution thereof from the dairy farm to the consumer. Other cases were cited in which the State Department of Agriculture had done the same job and just as effectively. But there were also cases in which duplication of inspection had taken place; under such circumstances, either producers or the operators of milk plants or both had been subject to differing requirements concerning the product which they were producing or distributing. Dupli-

cation of inspection helps no one; it is harmful. We believe that the public health would be adequately protected with either the Department of Agriculture or the State and local health departments having exclusive responsibility for inspecting the production and distribution of milk. Yet, we do not believe that this would be the most effective, economical or satisfactory method to provide for inspecting the production and distribution of milk. We do believe that there should be a clear cut division of authority between the Department of Agriculture and the State and local health departments together with an allocation of responsibility to each in their separate fields.

We have therefore prepared our bill to provide that the Department of Agriculture shall have the exclusive responsibility for inspecting the production and distribution of milk from the farm to the point of delivery at the milk plant. The State and local health departments will have exclusive responsibility for inspecting the milk from the point of delivery at the milk plant to the consumer. In this way the tasks which each agency is best suited to perform can be done effectively and efficiently. There should be no occasion for a duplication of inspection. If one develops the heads of the two State agencies concerned and the Attorney General are constituted a committee of three to make a final decision upon the area of responsibility of the agencies involved in the controversy. This should minimize the chance of uncertainty over who has the responsibility for a particular function.

The regulation of milk and milk products under the recommended bill is exclusive. If a particular milk product is produced and inspected in accordance with the bill it can be sold anywhere in the State. This should tend to reduce the cost of milk products to consumers.

Local health departments are given important responsibilities under this bill: they are allowed to continue enforcement of existing ordinances and rules and regulations insofar as they conform to the bill recommended and the regulations adopted thereunder. They may adopt local ordinances paralleling the bill recommended and may adopt rules and regulations paralleling those adopted jointly by the State Boards of Agriculture and Health. In no case may they impose a higher requirement than that set by this bill. The provision for inspection from the milk plant to the consumer effectively utilizes the local health departments and places a great responsibility upon them. In order to insure that the public health is adequately protected under local inspection, the State Health Commissioner is given the power to take over milk inspection from a local health department if he believes the public health to be endangered. Under appropriate conditions, he may return the responsibility to the local health department. It is not in our contemplation that any additional expense will be involved. We believe that local health departments are capable of, and will be happy to, carry out the functions which they may exercise under the legislation proposed.

Legislation of the type which we have recommended necessarily presupposes that rules and regulations must be adopted to implement and effectuate its provisions. A variety of proposals were considered concerning the agency or agencies which might adopt such rules and regulations. We have recommended that rules and regulations be adopted by the State Boards of Agriculture and Immigration and Health acting jointly; the approval of a majority of each of the Boards would be required, and the Boards would have to meet jointly in the consideration of rules and regulations. The two Boards are composed of men of good will and sound judgment and their concern will be to insure the protection of the public

health and the prosperity of the dairy industry through the production and distribution of sound and wholesome milk and milk products. Each Board should be able to contribute to the deliberations of the other and, in our opinion, they will be able to operate effectively under our proposal.

It is provided under the bill that milk rating surveys will not be affected by its provision. These are surveys which are required in order for a milk producer to ship to a dairy plant located in another State. These can only be made by an agency which is accredited by the U. S. Public Health Service. Historically, the State Department of Health has made such surveys. They do not concern the production and distribution of milk for consumption in this State. Hence, we can see no duplication or overlap in this area. Even if there were, we could do nothing about it since the requirements are imposed by a federal agency.

The bill further provides that a milk plant shall not receive milk from a farm that has not been inspected by the Department of Agriculture in accordance with the bill recommended. This is necessary in order to insure that a milk plant will receive its milk from a source which is operating in accordance with the requirements of the bill and which has been inspected by an agency of the State which is skilled in making on-the-farm inspection. To do otherwise, would allow milk to be brought to a milk plant which had been produced in violation of accepted standards of sanitation, with possible danger to the public health.

We wish to express our appreciation to the members of the Committee for the time and effort given by them to consideration of the problems presented by this study. We also wish to thank those who assisted the Committee in the conduct of the study and gave the Committee the benefit of their views and recommendations.

Respectfully submitted,

ROBERT Y. BUTTON, Chairman
CHARLES K. HUTCHENS, Vice-Chairman
C. W. CLEATON
JOHN WARREN COOKE
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A BILL to amend the Code of Virginia by adding in Chapter 17 of Title 3 an Article numbered 3.1 containing §§ 3-400.40 through 3-400.107, so as to establish State-wide uniform standards for the production, processing and distribution of milk and milk products, to fix the respective responsibilities of the State Departments of Health, and Agriculture and Immigration for inspection and enforcement, and to provide for the joint adoption of rules and regulations by the State Boards of Health, and Agriculture and Immigration, and the effect thereof; and to repeal §§ 3-384 through 3-400.39, 3-416 through 3-424, and 3-424.1 through 3-424.8 which were enacted as §§ 3-476.1 through 3-476.8, of the Code of Virginia, relating to standards for production, processing and distribution of milk and milk products, and responsibility for inspection and enforcement.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 17 of Title 3 an Article numbered 3.1 containing §§ 3-400.40 through 3-400.107, as follows:

Article 3.1

§ 3-400.40. Definitions.—The following definitions shall apply in the interpretation and the enforcement of this Article:

(1) “Milk” is the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained before and after calving, for such a period as may be necessary to render the milk practically colostrum free.

(2) “Goat Milk” is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. The word “milk” shall be interpreted to include Goat Milk.

(3) “Market Milk” is milk which contains not less than three and twenty-five one-hundredths per cent milk fat and not less than eight and twenty-five one-hundredths per cent solids-not-fat when sold, offered for sale, distributed or dispensed to the consumer for human consumption. Market milk may be standardized as provided for in § 3-400.98 of this Article.

(4) “Milk Fat or Butterfat” is the fat of milk.

(5) “Cream” is a portion of milk which contains not less than eighteen per cent milk fat.

(6) “Sour Cream” is cream the acidity of which is more than twenty one-hundredths per cent, expressed as lactic acid.

(7) “Light Cream”, “Coffee Cream”, or “Table Cream” is a cream which contains less than thirty per cent milk fat.

(8) “Whipping Cream” is cream which contains not less than thirty per cent milk fat.

(9) “Light Whipping Cream” is whipping cream which contains less than thirty-six per cent milk fat.

(10) “Heavy Cream” or “Heavy Whipping Cream” is whipping cream which contains not less than thirty-six per cent milk fat.

(11) “Homogenized Cream” is cream which has been subjected to a process or treatment in such a manner as to insure breakup of the fat

globules to such an extent that no visible cream separation occurs after forty-eight hours of quiescent storage and which otherwise conforms with all other requirements for cream.

(12) "Half and Half" is a product consisting of a mixture of milk and cream which contains not less than eleven per cent milk fat.

(13) "Reconstituted, or Recombined, Half and Half" is a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream, which contains not less than eleven per cent milk fat.

(14) "Whipped Cream" is cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, other harmless flavoring and a harmless stabilizer.

(15) "Concentrated Milk" is a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from the milk. When recombined with water, in accordance with the instructions printed on the container, the resulting product conforms with the standards for milk fat and solids-not-fat of market milk as defined herein.

(16) "Concentrated Milk Products" includes homogenized concentrated milk, Vitamin D concentrated milk, concentrated skim milk, concentrated chocolate milk, concentrated chocolate drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be; and which, when recombined with water in accordance with instructions printed on the container, conforms with the definitions of the corresponding milk products in this section.

(17) "Dry Milk" is milk which contains not more than five per cent moisture and not less than twenty-six per cent fat.

(18) "Skim Milk" is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to not more than fifty one-hundredths per cent and contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat. "Non-fat", or "Fat-free" is skim milk which contains not more than ten one-hundredths per cent milk fat, and not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(19) "Skim Milk Solids" includes concentrated skim milk and nonfat dry milk solids.

(20) "Nonfat Dry Milk" means nonfat milk which contains not more than five per cent moisture and not more than one and fifty one-hundredths per cent fat.

(21) "Vitamin A & D Skim Milk" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, the Vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method, the Vitamin A content of which has been increased by the addition of at least two thousand U. S. P. units per quart by an approved method.

(22) "Vitamin A & D Skim Milk with Added Solids" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, and has a solid-not-fat content of not less than ten per cent and not more than eleven per cent, the Vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method, the Vitamin A content of which has been increased by the addition of at least two thousand U. S. P. units per

quart by an approved method. Not more than two per cent milk solids-not-fat may be added provided the fact is declared on the label of the container.

(23) "Vitamin D Skim Milk" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, the Vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method.

(24) "Reconstituted or Recombined Milk" is a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids-not-fat of market milk as defined herein.

(25) "Reconstituted or Recombined Cream" is a product which results from the combination of dry cream, butter or milk-fat with cream, milk, skim milk, or water, and which complies with the milk-fat standards of cream as defined herein.

(26) "Reconstituted or Recombined Skim Milk" is a product which results from the recombining of skim-milk constituents with water, and which contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(27) "Chocolate Milk" is milk to which has been added a chocolate syrup or flavoring consisting of wholesome ingredients. Chocolate milk shall contain not less than three and twenty-five one-hundredths per cent milk fat and eight and twenty-five one-hundredths per cent milk solids-not-fat.

(28) "Chocolate Drink" is a product consisting of skim milk to which has been added chocolate syrup or flavoring consisting of wholesome ingredients. The finished product may contain not more than fifty one-hundredths per cent milk fat and shall contain not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(29) "Chocolate Reconstituted Drink" is a chocolate flavored drink made from reconstituted skim milk.

(30) "Churned Buttermilk" is a fluid product resulting from the churning of pasteurized milk or cream. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(31) "Buttermilk" is a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted non-fat-milk. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(32) "Cultured Milk" is a fluid or semifluid product resulting from the souring or treatment, by lactic acid or other culture, of pasteurized milk. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat and not less than three and twenty-five one-hundredths per cent milk fat.

(33) "Cottage Cheese" is the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria with or without enzymatic action to pasteurized skim milk or pasteurized reconstituted non-fat milk. It contains not more than eighty per cent moisture.

(34) "Creamed Cottage Cheese" is the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk, and which contains

not less than four per cent milk fat by weight and not more than eighty per cent moisture.

(35) "Homogenized Milk" is milk which has been treated in such a manner as to insure breakup of the fat globules to such an extent that after forty-eight hours of quiescent storage no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart container or of proportionate volumes in containers of other sizes, does not differ by more than ten per cent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The term "market milk" shall be interpreted to include homogenized milk.

(36) "Vitamin D Milk" is a grade A pasteurized milk, the Vitamin D content of which has been increased by at least four hundred U. S. P. units per quart by an approved method.

(37) "Market Milk Products" means and includes cream, sour cream, half and half, light cream, whipping cream, light whipping cream, heavy cream, whipped cream, homogenized cream, concentrated milk, concentrated milk products, skim milk, Vitamin A & D skim milk, Vitamin A & D skim milk with added solids, Vitamin D Skim milk, chocolate milk, chocolate drink, buttermilk, churned buttermilk, cultured milk, Vitamin D milk, non-fat dry milk, or any other product made from or by the addition of any substance to milk, or to any of these milk products and used for similar purposes and defined and designated as a market milk product by the Board of Agriculture and Immigration.

(38) "Pasteurization, Pasteurized" and similar terms refers to the process of heating every particle of milk or milk product to at least one hundred forty-five degrees Fahrenheit and holding it at such temperature continuously for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment; provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and which is approved by the Commissioner.

(39) "Adulterated and Misbranded Milk, Market Milk and Market Milk Products" means any milk, market milk or market milk products to which water, preservative, coloring matter or other foreign substance has been added, or any milk, market milk or market milk product which contains any unwholesome substance, or which if defined in this Article, does not conform with its definition, shall be deemed to be adulterated. Any milk, market milk or market milk product which carries a grade label, unless such grade label has been awarded by the Commissioner and not revoked, or which fails to conform in any other respect with the statements on the label and does conform to all the requirements of § 3-400.45 of this Article shall be deemed to be misbranded.

(40) "Producer" includes any person who owns or controls one or more cows, a part or all of the milk, market milk or market milk products from which is sold or offered for sale.

(41) "Distributor" includes any person who offers for sale or sells to another any milk, market milk or market milk products for human consumption as such, provided that groceries, restaurants, soda fountains and similar establishments that sell market milk products at retail but do no processing are exempt from the permit requirements of this Article.

(42) "Producer-Distributor" means a milk producer who is also a distributor.

(43) "Sub-distributor" means any person who buys market milk or market milk products from a milk plant or a milk distributor and offers for sale or sells any market milk or market milk product for human consumption as such.

(44) "Dairy or Dairy Farm" means any place or premises where one or more cows are kept, from which a part or all of the milk is sold or offered for sale.

(45) "Producer Dairy" means a dairy farm which sends milk or cream to a milk plant for processing.

(46) "Milk Hauler" means any person, who transports milk, cream or skim milk products to or from a milk plant or a collecting point.

(47) "Milking Barn" means a barn equipped with stanchions where milk cows are milked and can be housed permanently or overnight.

(48) "Milking Parlor" means a parlor equipped with parlor stalls, where milk cows are milked, and in which they remain only during the time they are cleaned, fed, and milked.

(49) "Milk Plant" means any place, premises or establishment where milk, market milk or market milk products are collected, handled, processed, stored, pasteurized, packaged or prepared for distribution, or consumption, except an establishment where market milk or market milk products are sold at retail only.

(50) "Commissioner" means the Commissioner of Agriculture and Immigration or the State Health Commissioner, as the case may be, or as required hereinafter by § 3-400.103.

(51) "Board" means the Board of Agriculture and Immigration and the State Board of Health acting jointly under § 3-400.106 in the adoption of rules and regulations.

(52) "Average Bacterial Plate Count and Average Direct Microscopic Count" means the logarithmic average of the respective test results of the last four consecutive samples, taken upon separate days, irrespective of the six-month period referred to in § 3-400.47.

(53) "Person" means any individual, partnership, corporation, company, firm, trustee and/or association. A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

(54) "Sell", "Sale" or "Sold" means and includes sell, deliver or receive for sale or distribution, offer or expose for sale or distribution, or to have in possession with intent to sell, deliver for sale or distribution, or offer or expose for sale or distribution or transport for sale or distribution in the State of Virginia.

(55) of Making Sanitation Ratings of Milk Sheds", 1958 edition, by rating officials who have been certified as competent by the U. S. Public Health Service.

(56) "Point of delivery" means the receipt by a milk plant of milk delivered by or on behalf of a producer into the holding tank of the milk plant.

(57) "And/or"—When this term is used, "and" shall apply where possible, otherwise "or" shall apply.

§ 3-400.41. No person shall sell, or offer for sale, or have in possession with intent to sell or deliver, any milk, market milk or market milk products which are adulterated, misbranded or ungraded, provided, however, that in an emergency, the sale of ungraded pasteurized market milk or pasteurized market milk products may be authorized by the Commissioner, in which case, they shall be labeled "ungraded". It shall be unlawful for any person elsewhere than in a private home to have in his possession any adulterated, misbranded or ungraded milk and milk products. Any adulterated, misbranded and/or improperly labeled milk, market milk or market milk products may be impounded by the Commissioner and disposed of as provided by law.

§ 3-400.42. It shall be unlawful for any person to bring into or receive in this State for sale, or to sell or offer for sale, or distribute therein, or to have in his possession with intent to sell, any milk, market milk or market milk products defined in this Article, who does not possess an unrevoked permit from the Commissioner. Every milk producer, milk hauler, milk distributor, and operator of a milk plant shall secure a permit. In no case shall the State Health Commissioner issue a permit to any person, firm or corporation to distribute grade A pasteurized market milk or grade A market milk products until the Commissioner of Agriculture and Immigration has certified to the State Health Commissioner that the raw milk used by the processor is acceptable under the terms of this Article. This applies to all milk plants regardless of location.

Only a person who complies with the requirements of this Article shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Permits shall be posted in a conspicuous place upon an inside wall of one of the dairy or milk plant buildings, and such permits shall not be removed by any person except those authorized by the Commissioner.

Such a permit may be temporarily suspended, or, may be revoked by the Commissioner upon violation by the holder of any of the terms of this Article. Provided, however, that no permit shall be revoked until an opportunity for a hearing by the Commissioner has been provided.

§ 3-400.43. No milk, market milk or market milk product shall be imported into this State by any person who does not possess an unrevoked permit from the Commissioner. The permit shall be issued for such period of time as the Commissioner approves, but not for a period in excess of one year. The permit shall be renewed on the first day of January of each year. Permits for bulk raw milk for pasteurization shall be issued on an individual shipment basis only.

The issuance of a permit by the Commissioner shall be conditioned upon assurance that such milk, market milk, or market milk products have been produced and/or processed under provisions which are substantially equivalent to the requirements of this Article and which are enforced with equal effectiveness. No milk, market milk, or market milk product shall be imported into Virginia unless from a source with an official rating of ninety per cent or better including the enforcement rating.

Such a permit may be temporarily suspended or revoked by the Commissioner upon violation of the holder of any of the terms of this

Article. Provided, however, that no permit shall be revoked until after an opportunity for a hearing by the Commissioner, and provided further, that during an emergency the Commissioner may permit the importation of milk into the State on a temporary basis without a permit upon such conditions as he may establish.

§ 3-400.44. The shipper shall plainly mark upon each container of bulk milk or cream entering this State the following information: (a) the name and address of the consignor and the consignee, (b) the description of the contents, (c) the date of shipment and, if pasteurized, the date of pasteurization.

In case of a tank truck entering the State, in addition to the above information, it shall be accompanied by an invoice that will identify the load of milk or cream and show the name and address of the consignor and the consignee. The shipper shall notify the Commissioner of every shipment of milk or cream entering Virginia. Such notice shall include the date, amount, consignor and consignee. This section does not apply to dairy farms holding individual permits.

§ 3-400.45. All bottles, cans, packages, and other containers enclosing milk, market milk or any market milk product, defined in this Article, shall be plainly labeled or marked with (1) the name of the contents as defined in this Article, except the word "market" need not appear, (2) the word "reconstituted" or "recombined" if included in the name of the product as given in the definition, (3) the grade of the contents, (4) the word "pasteurized" if the contents have been pasteurized, (5) the word "raw" if the contents are raw, (6) the phrase "for pasteurization" if the contents are to be pasteurized, (7) the name of the producer if the contents are raw, (8) the identity of the plant at which the contents were pasteurized, if pasteurized, (9) in case of Vitamin D milk or market milk products the designation "Vitamin D", and the minimum number of U. S. P. units of Vitamin D per quart; and in the case of Vitamin A and D skim milk with added solids, the designation "Vitamin A and D", the minimum number of U. S. P. units of Vitamin A and D per quart, and the per cent of the milk solids added, (10) in the case of concentrated milk or milk products, the volume or proportion of water to be added for recombining, provided, however, that only the identity of the producer dairy shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which dumps, washes and returns the cans to the producer dairy.

The label or mark shall be in letters of an approved size, kind and color and shall contain no marks or words which are misleading.

Homogenized milk or homogenized cream shall not be mixed with milk, skim milk, or cream which has not been homogenized unless the product is labeled "homogenized milk" and conforms with the standards for homogenized milk or homogenized cream.

§ 3-400.46. Prior to the issuance of a permit, the Commissioners shall inspect all dairy farms and all milk plants under their respective jurisdictions. Thereafter they shall inspect all dairy farms at least once every three months and all milk plants monthly coming under their respective jurisdictions. If a violation of any of the requirements of this Article is discovered, a second inspection shall be made after a lapse of time deemed necessary for the defect to be remedied. Any violation of the same requirements of the law on such reinspection shall be justification for immediate suspension of a permit and/or such other action as the respective Commissioner deems proper.

One copy of the inspection report shall be posted in a conspicuous

place upon the inside wall of the milk house of milk plant, and said inspection report shall not be defaced or removed by any person except the Commissioner. Another copy of the inspection report shall be filed with the records of the Commissioner. Every milk distributor shall make available to the Commissioner upon his request, for official use only, a true statement of the actual quantities of milk, market milk, and market milk products of each grade purchased and sold, together with a list of all sources of such milk, market milk and market milk products, records of inspections and tests, and pasteurization time and temperature records.

§ 3-400.47. During each six-month period at least four samples of milk from each dairy farm, and at least four samples of market milk and market milk products from each milk plant, shall be taken on separate days and examined by the Commissioner. Samples may be taken at any time prior to the final delivery of milk, market milk or market milk products. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and/or such other tests as the Commissioner may require and approve, shall conform to the procedures in the latest edition of "Standard Methods for the Examination of Dairy Products" recommended by the American Public Health Association, or such other national standard or standards as the Commissioner may approve. Examinations may include such other chemical and physical determinations as the Commissioner may deem necessary for the detection of adulteration. Whenever the average bacterial count of the last four consecutive samples, taken on separate days, is beyond the limit for the grade then held, the Commissioner shall send written notice thereof to the person concerned and shall take an additional sample, but not before the lapse of three days, for determining a new average in accordance with paragraph (52) of § 3-400.40. Violation of the grade requirements by the new average shall be a basis for immediate suspension of the permit, or such action as the Commissioner deems advisable, unless the last individual result is within the grade limit. Whenever more than one of the last four consecutive coliform counts on samples, taken on separate days, are beyond the limit for the grade then held, the Commissioner shall send written notice thereof to the persons concerned. He shall then take an additional sample, but not before the lapse of three days. Immediate suspension of the permit or other action may be taken when the grade limit is violated by such additional sample, or by more than one of the last four consecutive samples, unless the last individual result is within the grade limit. In case of violation of the phosphatase test requirements, the probable cause shall be determined and corrected before market milk or market milk products from the plant concerned again can be sold as pasteurized market milk or market milk products.

§ 3-400.48. Whenever market milk and market milk products are offered for sale as vitamin market milk and market milk products representative samples of such market milk and market milk products shall be assayed periodically as approved by the State Health Commissioner. The cost of such assays shall be paid by the seller or distributor of such market milk or market milk products. When unsatisfactory results are found, additional samples shall be assayed, the seller or distributor paying the cost of such additional assays as, in the opinion of the Commissioner, may be necessary to insure the Vitamin potency of such market milk and market milk products.

For evaporated or condensed milk sold in hermetically sealed containers, the assay report of any assaying institution approved by the federal

authorities for interstate shipment shall be recognized by the Commissioner.

All moneys collected under provisions of this section shall be paid into the State treasury in a special fund to be known as the "Vitamin Assay Account" and such amount as may be necessary hereby is appropriated out of such Vitamin Assay Account for the payment of the cost of assays as provided in this Article.

§ 3-400.49. Grades shall be based on the standards set forth in the next four sections and § 3-400.72. The grading of market milk products shall be identical with the grading of market milk, except that the bacterial plate count standards shall be doubled in the case of cream and half and half, and shall be omitted in the case of sour cream, buttermilk, churned buttermilk, cultured milk, cottage cheese and cream cottage cheese. The grade of market milk and market milk products shall be that of the lowest grade of milk, market milk or market milk products used in its preparation.

§ 3-400.50. Grade A raw milk for pasteurization is raw milk from producer dairies conforming with the requirements of this Article. The bacterial plate count or the direct microscopic clump count of the milk, as received from the farm, shall not exceed one hundred thousand, per milliliter, as determined in accordance with § 3-400.47.

§ 3-400.51. Grade A raw market milk is raw milk produced on dairy farms conforming with the requirements of this Article. The bacterial plate count or the direct microscopic clump count of the milk shall not exceed fifty thousand per milliliter, as determined in accordance with § 3-400.47.

§ 3-400.52. Grade C raw market milk is milk that fails to meet the requirements for Grade A raw market milk. The bacterial plate count or the direct microscopic clump count of this milk shall not exceed two hundred thousand per milliliter, as determined in accordance with § 3-400.47.

§ 3-400.53. All milk and cream not defined in this Article, or which does not meet the requirements of grades established in this Article, shall be known as "ungraded milk" and "ungraded cream" and may be sold in Virginia only for manufacturing purposes, or as authorized under § 3-400.41. When used in manufactured products for human food, such milk and cream shall be pasteurized.

§ 3-400.54. Before any dairy farm is issued a permit as provided in this Article, all cattle on such farm shall pass a test for Tuberculosis and Brucellosis satisfactory to the Commissioner. Thereafter an annual test must be made, and the results thereof must be satisfactory to the agency concerned therewith.

Dairy herds in which reactors are found shall be handled and reactors promptly removed and retests of the herd made in a manner satisfactory to the agency concerned therewith.

No additions to dairy herds shall be made from outside the herd during the valid period of any permit until and unless such additions have passed a satisfactory test for Tuberculosis and Brucellosis. Cows giving abnormal milk shall be excluded from the herd until re-examination shows that the milk has become normal.

For other diseases such tests and examinations as the Commissioner

may require shall be made. Any diseased animals or reactors shall be disposed of as the Commissioner may require.

§ 3-400.55. A milking barn or milking parlor separate and apart from buildings used for other livestock shall be provided. There shall be at least four square feet of glass per stall. There shall also be provided adequate artificial light, properly distributed.

§ 3-400.56. The milking barn shall be well ventilated and shall contain at least five hundred cubic feet of air space per stall. Milking parlors shall be well ventilated.

§ 3-400.57. The floors and gutters of the barn or parlor, in which cows are milked, shall be constructed of concrete or other approved impervious and easily cleaned material. Floors and gutters shall be graded so as to drain properly and shall be kept clean and in good repair. No swine, calves, bulls or fowl shall be permitted in the milking barn or parlor.

§ 3-400.58. The interior walls and ceilings of the milking parlor or barn shall be ceiled and shall be painted as often as necessary or finished in an approved manner and shall be kept clean and in good repair. If feed should be ground, mixed or stored in a feed room or feed storage space which adjoins the milking space, it shall be separated therefrom by a dust-tight partition and door. No loafing barn or tramp shed, where livestock other than the milking herd are housed and fed, shall be located less than fifty feet from the milking parlor or milk house. Where a loafing barn or tramp shed is used for housing the milking herd, a minimum of sixty square feet of bedded area shall be provided per cow. Cows shall not run loose within a thirty foot area of the milking barn or parlor and the milk house except on entrance and exit lanes.

§ 3-400.59. All barns or parlors in which cows are milked, or milked and housed permanently, shall be equipped with stanchions or other stall arrangements approved by the Commissioner. A concrete walkway extending at least thirty feet from the milking barn or parlor, or the entire distance to the tramp shed or loafing barn, shall be provided for the entrance and exit of the milking herd.

§ 3-400.60. The cow yard shall be graded and drained as well as is practicable and shall be so kept that there are no standing pools of water nor accumulations of organic waste. In loafing and/or cattle housing areas, manure droppings shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the accumulation of manure on cows' udders and flanks. All swine shall be kept out, and hog pens and hog lots shall not be maintained within one hundred feet of the milking barn, milking parlor or milk house. Other livestock and poultry houses, lots and runs shall not be maintained within fifty feet of the milking barn or milking parlor or milk house.

§ 3-400.61. All manure shall be removed and stored or disposed of in such a manner as best to prevent the breeding of flies therein or the access of cows to piles thereof. No manure shall be stored within fifty feet of the milking barn or milking parlor or milk house.

§ 3-400.62. There shall be provided a milk house or milk room of sufficient size which shall be used for the cooling, handling and storing of milk, market milk and market milk products and the washing and bactericidal treatment of milk utensils. It shall be separated from the milking barn or parlor by a solid wall. The entrance into the milk house

shall not be less than ten feet to the nearest entrance into the milking barn or parlor. It may be connected to the barn by a covered passageway, one side of which shall be open. The milk house or room shall be provided with a smooth floor, constructed of concrete or other impervious material, maintained in good repair, and have a slope of not less than one fourth inch per foot to a trapped drain. An adequate drain shall be provided from the milk house and installed in such a manner as to prevent surface pooling. Masonry walls shall be reasonably smooth and painted with a white cement or other approved paint. If the milk house is to have frame walls, the foundation wall shall be of masonry and shall extend at least three feet above the floor. The studding in the walls and the joists or rafters that form the ceiling shall be covered with a smooth surface material that can be easily washed or painted whenever deemed necessary by the Commissioner. The milk house shall have all openings effectively screened, including outward opening self-closing screened doors, unless other effective means are provided to prevent the entrance of flies. It shall be used for no purpose other than those specified above, except as may be approved by the Commissioner; it shall not open directly into a milking barn or milking parlor, nor into any room used for domestic purposes; it shall be provided with adequate facilities for heating water to clean utensils; and it shall be equipped with a two-compartment, stationary, wash and rinse vat which is open and available at all times. A third vat may be required when a single vat is used for automatic washing of pipelines. The cleaning and other operations shall be located and conducted so as to prevent any contamination of the milk or the cleaned equipment. If coal or wood is used as fuel, the water heating unit shall be in a separate room from the milk house, and there shall not be a direct opening between the two. The heating unit for the water, if located in the one room milk house, shall be electric, gas or oil. (Oil unit must have the oil pumped from an outside supply tank and must be vented to the outside air.) If a toilet, shower or dressing room is to be included in the milk house, an outside door shall be provided. A door opening directly from the milk house, wash room, milking barn, or parlor into the toilet is prohibited. An approved auxiliary heating unit will be permitted in the milk house during cold weather.

The minimum size of the milk room for a dairy selling milk for pasteurization shall be: (1) less than one hundred gallon capacity per day—one hundred eighty-eight square feet floor space; (2) over one hundred gallon capacity per day—two hundred fifty square feet of floor space, provided, however, that where bulk holding and cooling tanks are used exclusively, the size of the milk room and the location and installation of the tank shall be as the Board may require; (3) ceiling height—not less than eight feet; (4) window area—not less than ten percent of the floor area, proportionately distributed.

Adequate artificial light shall be provided in the milk room and such room shall be well ventilated.

The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All necessary means for the elimination of flies shall be used.

§ 3-400.63. The immediate surroundings of the milking barn, parlor, or milk house shall be kept neat and clean, and free of rodent harborages and insect breeding places.

§ 3-400.64. Every dairy farm shall be provided with one or more sanitary toilets, conveniently located, and properly constructed, operated

and maintained so that the waste is inaccessible to flies and rodents and does not pollute the surface soil nor contaminate any water supply.

§ 3-400.65. Water for all dairy purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate and of a safe, sanitary quality, and shall be piped into the milk house under sufficient pressure to permit the outlets to be located in such a manner that the water may be drawn directly into the wash vats.

§ 3-400.66. All multi-use containers, equipment and other utensils used in handling, storage and/or transportation of milk, market milk and market milk products shall be made of smooth, non-absorbent, non-corrodible, non-toxic material, and shall be so constructed as to be easily cleaned and shall be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for straining milk. When milk is strained, strainer pads shall be used and shall not be re-used. All milk pails shall be of a seamless, hooded type. All single-service articles used shall have been manufactured, packaged, transported, stored and handled in a sanitary manner.

All multi-use containers, equipment and other utensils used in the handling, storage or transportation of milk, market milk and market milk products shall be thoroughly cleaned after each useage.

All multi-use containers, equipment and other utensils used in the handling, storage and/or transportation of milk, market milk and market milk products shall, immediately before each usage, be subjected effectively to an approved bactericidal process, utilizing steam, hot water, approved chemicals or hot air.

All containers and other utensils used in the handling, storage, or transportation of milk, market milk and market milk products, unless stored in bactericidal solutions, shall be stored so as to drain dry and so as not to become contaminated before being used.

After bactericidal treatment, containers and other milk, market milk and market milk products utensils shall be handled in such a manner as to prevent contamination of any surface with which milk, market milk and market milk products come into contact.

§ 3-400.67. Milking shall be done in the milking barn or parlor. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution immediately before each milking. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils.

The hind legs, flanks and udders of cows shall be clipped so that hair is kept short on these parts at all times. The flanks, bellies and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences.

A milker's hands shall be washed clean, rinsed with an effective bactericidal solution, and dried with a single service towel immediately before milking and immediately after any interruption in the milking operation. Wet hand milking is prohibited. Convenient hand washing facilities including hot and cold running water, soap and approved single service towels shall be provided in the milk house. Hand washing facilities shall be kept clean. The use of a common towel is prohibited. No person with an infected cut or lesion on hands or arms shall milk cows or

handle milk or milk utensils.

Milkers and milk handlers shall wear clean outer garments while milking or handling milk, market milk, market milk products, containers, utensils or equipment.

Milk stools shall be constructed of approved material and all milk stools and surcingles shall be kept clean.

§ 3-400.68. Each pail or can of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the barn unless it is protected from flies and other contamination.

§ 3-400.69. Milk shall be cooled immediately after completion of milking to fifty degrees Fahrenheit, or less, and maintained at that temperature until delivery. After milk is cooled, no milk producer or distributor shall transfer milk, market milk or market milk products from one container to another in any place except a bottling or milk room especially used for that purpose.

§ 3-400.70. Market milk and market milk products not for pasteurization shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and shall be integral in one machine. Caps and cap stock shall be purchased in sanitary containers and stored therein in a clean, dry space until used.

§ 3-400.71. All vehicles used for the transportation of milk, market milk or market milk products shall be so constructed and operated as to protect their contents from the sun, from freezing and from contamination. All vehicles shall be kept clean, and no substance capable of contaminating milk, market milk or market milk products shall be transported with milk, market milk or market milk products in such a manner as to permit contamination. Each bulk milk tank used in the transportation of milk, market milk or market milk products shall be identified, which shall be conditioned on the requirements for such tanks as prescribed by the Board.

§ 3-400.72. Grade A pasteurized market milk is grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in a milk plant which conforms to the sanitation requirements prescribed in this Article. In all cases, the market milk shall show efficient pasteurization as evidenced by satisfactory phosphatase test, or other approved tests, and at no time after pasteurization and before delivery shall the market milk have a bacterial plate count exceeding thirty thousand per milliliter, or a coliform count exceeding ten per milliliter, as determined in accordance with § 3-400.47. Provided, however, that the raw milk at no time between the point of receipt from the producers and pasteurization shall have an average bacterial plate count or direct microscopic clump count exceeding two hundred thousand per milliliter.

§ 3-400.73. The floors of all rooms in which milk, market milk or market milk products are handled or stored, or in which milk utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, kept clean and in good repair.

§ 3-400.74. Walls and ceilings of rooms in which milk, market milk or market milk products are handled or stored or in which such milk utensils are washed, shall have a smooth, washable, light-colored surface and shall be kept clean and in good repair.

§ 3-400.75. Unless other effective means are provided to prevent the access of flies, all outer openings shall be effectively screened and all outer doors shall be self-closing and open outward.

§ 3-400.76. All rooms shall be well lighted and well ventilated.

§ 3-400.77. The various milk plant operations shall be located and conducted so as to prevent any contamination of the milk, market milk, or market milk products, or, of the cleaned equipment. All necessary means shall be used for the elimination of flies, other insects and rodents. There shall be separate rooms for: (a) the pasteurization, processing, cooling and packaging operations; (b) the washing and bactericidal treatment of containers. Approved facilities shall be provided for the loading, unloading, cleaning and sanitizing of bulk tank trucks. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Rooms in which milk, market milk and market milk products, cleaned utensils or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurizing plant, milk containers, utensils and equipment shall be used for no purpose other than the processing of graded milk, market milk and market milk products and the operations incident thereto, except as may be approved by the Commissioner.

§ 3-400.78. Every milk plant shall be provided with a sanitary toilet and such toilet shall be conveniently located. Toilet rooms shall not open directly into any room in which milk, market milk or market milk products, equipment or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair and well ventilated. A sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees. Where privies or earth closets are permitted and used, they shall be separated from the buildings and shall be of a sanitary type and shall be located, constructed, and operated in conformity with § 3-400.64.

§ 3-400.79. The water supply shall be easily accessible, adequate and of a safe, sanitary quality.

§ 3-400.80. Convenient hand-washing facilities, including hot and cold running water, soap and approved single service towels, shall be provided in all toilet rooms, washing and bactericidal treatment rooms, and milk processing rooms. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No employee shall resume work after having used the toilet room without having washed his hands.

§ 3-400.81. All piping used to conduct milk, market milk or market milk products shall be sanitary milk piping of a type which can be easily cleaned. Pasteurized market milk and market milk products shall be conducted from one piece of equipment to another only through sanitary milk piping.

§ 3-400.82. All multi-use containers and equipment with which milk, market milk, and market milk products come into contact shall be of a smooth, impervious, non-corrodible, non-toxic material; shall be so constructed and so located as to be easily cleaned; and shall be kept in good repair. All single service containers, closures, gaskets, and other articles used shall have been manufactured, packaged, transported, stored and handled in a sanitary manner.

§ 3-400.83. All wastes shall be properly disposed of. All plumbing

and equipment shall be so designed and so installed as to prevent contamination of milk, market milk, and market milk product equipment by backflow.

§ 3-400.84. All milk, market milk and market milk product containers and equipment except single-service containers shall be thoroughly cleaned after each usage. All such containers shall be subjected effectively to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty, and before being returned to a producer by a milk plant, each container, including bulk tanks, shall be thoroughly cleaned and subjected to an approved bactericidal treatment.

§ 3-400.85. After bactericidal treatment, all bottles, cans and other multi-use milk, market milk or market milk product containers and equipment shall be transported and stored in such a manner as to be protected from contamination.

§ 3-400.86. Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such a manner as to permit contamination of the milk. Pasteurized market milk or market milk products shall not be permitted to come into contact with equipment with which unpasteurized market milk or market milk products have been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process.

§ 3-400.87. Market milk bottle caps or cap stock, parchment paper for milk cans, single-service containers and gaskets shall be purchased and stored only in sanitary tubes, wrappings or cartons, and shall be handled in a sanitary manner. They shall be kept therein in a clean dry place until used.

§ 3-400.88. Pasteurization shall be performed as described in paragraph (38) of § 3-400.40 of this Article. No fluid market milk as herein defined shall be pasteurized more than once unless specifically permitted by the Commissioner.

§ 3-400.89. All milk received for pasteurization shall be cooled immediately in approved equipment to fifty degrees Fahrenheit or less and maintained thereat until pasteurized. All pasteurized market milk and market milk products except those to be cultured, shall be cooled immediately in approved equipment to a temperature of fifty degrees Fahrenheit, or less, and shall be maintained at that temperature until delivered.

§ 3-400.90. Bottling and packaging of market milk and market milk products shall be done at the place of pasteurization with approved mechanical equipment.

§ 3-400.91. Overflow milk or milk products shall not be sold for human consumption.

§ 3-400.92. Capping of market milk and market milk products shall be done in a sanitary manner by approved mechanical equipment. Hand-capping is prohibited except in the case of bulk dispenser cans and similar approved containers. The cap, or cover, shall protect the pouring lip to at least its largest diameter.

§ 3-400.93. A licensed physician shall examine and take a careful morbidity history of each person connected with a pasteurization plant, or about to be employed by one, whose work will bring him into contact with the processing, handling, storage or transportation of milk, market milk, market milk products, containers or equipment. If such examination

or history should suggest that such person may be a carrier of, or be infected with, the organism of typhoid or paratyphoid fever or any other communicable disease likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the State health authorities for such examinations; and, if the results justify, such person shall be barred from such employment. Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the physician may require for the purpose of determining freedom from infection. No person with an infected cut or lesion on his hands or arms shall handle milk, market milk, market milk products, containers or equipment.

All persons who come into contact with milk, market milk, or market milk products containers or equipment shall wear clean outer garments and shall keep their hands clean at all times while engaged in such work. No person shall smoke or spit in any room where products or containers are handled.

§ 3-400.94. All vehicles used for the transportation of milk, market milk and market milk products shall be constructed and operated so as to protect their contents from the sun, from freezing and from contamination. All vehicles used for the distribution of milk, market milk or market milk products shall have the name of the distributor prominently displayed thereon. Tank-cars and tank-trucks shall comply with the construction, cleaning, bactericidal treatment, storage and handling requirements of this Article. While containing milk, market milk or market milk products, they shall be sealed and labeled in an approved manner. For each tank shipment a bill of lading containing all necessary information shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the Commissioner.

§ 3-400.95. No person with any disease in a communicable form, or who is a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transportation of milk, market milk or market milk product containers or equipment, and no dairy farm or milk plant shall employ in 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 producer or distributor of milk, market milk or market milk products upon whose dairy farm or in whose milk plant, any communicable disease occurs, or 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. A placard containing these requirements shall be posted at dairy farms and milk plants.

§ 3-400.96. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk, market milk or market milk products, the Commissioner is authorized to require any or all of the following measures: (1) the immediate exclusion of that person from milk handling; (2) the immediate exclusion of the milk supply concerned from distribution and use; and (3) adequate medical and bacteriological examination of the person, of his associates and of his and their body discharges.

§3-400.97. No market milk or market milk products shall be sold or served for human consumption except grade A pasteurized. After the

effective date of this act no additional permits, as required by this Article, for the sale of milk, market milk or market milk products for consumption in the raw state shall be issued, and within one year from the effective date of this act no milk, market milk or market milk products shall be sold to the final consumers except grade A pasteurized. No grade A plant holding a permit as required by this Article shall receive fluid milk other than grade A after the effective date of this act. Provided, however, that this shall not apply to plants that were routinely and regularly receiving such non-grade-A milk on or before August one, nineteen hundred sixty-one.

No new plants receiving a grade A permit as required by this Article shall receive fluid milk other than grade A after the effective date of this Article, nor shall any plant extensively altered or remodeled or which changes ownership or location. When any milk distributor fails to maintain the standards established for market milk and market milk products, the Commissioner may suspend his permit and/or institute such other action as he deems proper, or, in lieu thereof, at his discretion, permit the sale of such products for a temporary period not to exceed twenty days, or if during an emergency for such longer periods as he may deem necessary. The Commissioner may revoke such permit after an opportunity for a hearing has been provided.

§ 3-400.98. It shall not be deemed a violation of law to standardize the milk fat and solids-not-fat content of market milk or market milk products by the addition or removal of whole milk, skimmed milk or cream of the same quality, grade and freshness; provided, however, that the resulting standardized market milk or market milk products shall comply with the standards for market milk or market milk products fixed by law.

§ 3-400.99. Any producer or distributor of milk, market milk or market milk products, whose permit has been suspended, at any time may make application for the reinstatement of such permit. Upon receipt of a satisfactory application for reinstatement of such permit, based on correction of a violation of any bacteriological or cooling temperature standard, the Commissioner shall take further samples at the rate of not more than two per week and shall approve the application upon compliance. Provided, that if samples are not available, because of suspension of permit to operate, or for other reasons, the Commissioner may issue a temporary permit upon satisfying himself, by inspection of the facilities and the operating methods, that the conditions responsible for the violation have been corrected, with final reinstatement of permit conditional upon subsequent compliance. In case the permit suspension had been due to a violation of an item other than bacteriological standards or cooling temperature, the said application must be accompanied by a statement, signed by the applicant to the effect that the violated items of the specifications have been corrected. Within one week of the receipt of such application and statement, the Commissioner shall make a reinspection of the applicant's establishment, and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the requirements and, in case the findings justify, shall reinstate the permit.

§ 3-400.100. Except as permitted in this section, no milk or market milk producer or distributor shall transfer milk, market milk or market milk products from one container to another except in a bottling or milk room especially used for that purpose. The sale of dip milk is hereby prohibited. Milk, market milk and market milk products sold in the

distributor's containers shall be delivered in standard milk containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries and similar establishments to sell or serve any milk or fluid milk products except in the individual original container in which it was received from the distributor, or from a bulk container equipped with an approved dispensing device. Provided, that these requirements shall not apply to cream, whipped cream, or half and half, which is consumed on the premises, and which may be served from the original container or from a dispenser approved for such service; nor to market milk served at hospitals and institutions, which may be served from containers packaged at a milk plant; nor to mixed milk drinks requiring less than one-half pint of market milk, which may be poured from containers packaged at a milk plant. It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital or similar establishment to sell or serve any market milk or market milk product which has not been maintained, while in its possession, at a temperature of fifty degrees Fahrenheit, or less. If containers of market milk or market milk products are stored in water for cooling, the pouring lips of the containers shall not be submerged. It shall be the duty of all persons to whom market milk or market milk products are delivered to clean thoroughly the containers in which such market milk or market milk products are delivered before returning such containers. The delivery of market milk or market milk products to, and the collection of market milk or market milk product containers from, residences in which a case of communicable disease transmissible through milk supplies exists, shall be subject to the special requirements of the Commissioner.

§ 3-400.101. All dairies and milk plants from which graded milk, market milk or market milk products are supplied in the Commonwealth of Virginia shall conform in their construction to the grade A requirements of this Article. Properly prepared plans for milk plants, which are thereafter constructed, reconstructed or extensively altered, shall be submitted to the Commissioner for approval before work is begun. Signed approval shall be obtained from the Commissioner.

§ 3-400.102. The Commissioner may approve the installation or use of facilities, fixtures, appurtenances, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the standards of this Article after he has determined that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended. Any person desiring to install or use a facility, fixture, appurtenance, material, or method of a type not conforming with the requirements of, nor expressly prohibited by, these standards shall, prior to such installation or use, submit to the said Commissioner such proof by recognized authority as the Commissioner may require to permit him to determine whether such facility, fixture, appurtenance, material, or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended. In the event the Commissioner determines that it does appear to be suitable, safe and sanitary for the use for which it is intended, he may then permit such installation or use; provided, that the manner of installation or use is otherwise in accordance with applicable standards. In view of the special nature of these cases, such installation or use shall be subject to periodic inspection by the Commissioner, and such facility, fixture, appurtenance, material, or method shall, upon order, be discontinued or removed if such inspection indicates it is unsuitable, unsafe, insanitary, or contrary to the provisions of these or other standards.

§ 3-400.103. The Commissioner of Agriculture and Immigration and his agents shall enforce this Article, and rules and regulations adopted hereunder by the Board, pertaining to production and distribution of milk to the point of delivery. They are empowered, in the performance of their duties, to enter upon and to have free access to any establishment or area subject to the provisions of this Article, or rules and regulations, adopted hereunder, pertaining to the production and transportation of milk to the point of delivery. It shall be unlawful for any person to hinder, obstruct, or interfere with the Commissioner of Agriculture and Immigration or his agents in the performance of their duties under this Article or such rules and regulations.

The State Health Commissioner and his agents shall enforce this Article, and rules and regulations adopted hereunder by the Board, pertaining to the processing and distribution of grade A market milk and grade A market milk products from the point of delivery on to the consumer. They are empowered, in the performance of their duties, to enter upon and to have free access to any establishment or area subject to the provisions of this Article, or rules and regulations adopted hereunder, pertaining to the processing and distribution of grade A market milk and grade A market milk products from the point of delivery on to the consumer. It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner or his agents in the performance of their duties under this Article or such rules and regulations.

Provided, however, that any county, city or town, which has a local health department is hereby authorized to enforce existing ordinances insofar as, but no further than, they comply with this Article and to adopt and enforce ordinances and rules and regulations governing the handling of milk within such political subdivision, from the point of delivery, until sold and delivered to the public. Every such ordinance shall conform to the provisions of this Article, and rules and regulations adopted thereunder shall conform to rules and regulations adopted under this Article by the Board.

The State Health Commissioner shall periodically determine whether or not political subdivisions enforcing local ordinances and rules and regulations adopted thereunder are properly enforcing such ordinances, and the rules and regulations adopted thereunder. If the Commissioner has reason to believe that such ordinances and rules and regulations are not being properly enforced or that public health is endangered, he shall so certify to the governing body of the political subdivision concerned; thereupon from the date of such certification the State Health Commissioner shall have sole responsibility for enforcing this Article, and rules and regulations adopted thereunder, in any such political subdivision until such time as the State Health Commissioner determines that danger to the public health is terminated; then at such date as may be set at the discretion of the State Health Commissioner, the political subdivision shall again be vested with the power to enforce the local ordinance as provided by this Article.

In no event shall employees of the State Health Department, or of any county, city or town, or the employees of any local health department in any county, city or town have any power to inspect, regulate or control the production and distribution of grade A milk prior to the point of delivery of any such milk; and in no event shall employees of the State Department of Agriculture and Immigration have any power to inspect, regulate or control the processing and distribution of grade A market milk and market milk products, subsequent to the point of delivery

of any such grade A raw milk. Provided, however, that this provision shall not be construed as prohibiting official rating surveys, when requested by proper authority.

It is the intent of this Article that duplicate inspections of the same establishment by more than one agency for the purpose of enforcing the requirements of this Article shall be avoided. If a question arises regarding the applicability of any requirement of a local ordinance or regarding the jurisdictional responsibility between agencies, State or local, over milk inspection, such question shall be referred to the Commissioner of Agriculture and Immigration, the State Health Commissioner and the Attorney General, whose ruling shall be binding on and accepted by the agencies concerned.

§ 3-400.104. All authority vested in the Commissioner by virtue of the provisions of this Article may, with like force and effect, be executed by such persons as the Commissioner may from time to time designate for such purpose.

§ 3-400.105. In the event of violation of any provision of this Article, in addition to any other remedy, the Commissioner may apply to any court of record in the State of Virginia for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist.

§ 3-400.106. Rules and regulations for the interpretation, application and enforcement of the provisions of this Article may be adopted, and shall be effective when approved, by a majority of the membership of the Board of Agriculture and Immigration and the State Board of Health voting separately, the approval of each Board being required. In the consideration of, and action on, rules and regulations the two Boards shall meet jointly.

§ 3-400.107. Any violation of the provisions of this Article, or rules and regulations adopted thereunder, or failure to comply with such provisions or rules and regulations shall be a misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense and punished as such.

2. If any part, section, portion or provision of this Article or the application thereof to any person or circumstance is held invalid by a court of final resort, such holding shall not affect any part, section, portion, provision or application of this Article which can be given effect without the part, section, portion, provision or application so held invalid; and to this end, the parts, sections, portions, provisions and applications thereof are declared severable.

3. §§ 3-384 through 3-400.39, 3-416 through 3-424, and 3-424.1 through 3-424.8 which were enacted as §§ 3-476.1 through 3-476.8, of the Code of Virginia, are repealed.

