

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CH. 59]

#### Milk Sanitation

The Department of Agriculture (Department) amends §§ 59.1 and 59.22 (relating to definitions; milk dating).

The statutory authority for these amendments is the act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—660f) (act), which authorizes the Department to regulate production, processing, storage and packaging of milk to safeguard human health.

This rulemaking amends prior regulatory authority by extending the sell by date which must appear on containers of pasteurized milk by 2 days. Previously, the containers were required to bear a sell by date that did not exceed 12 days from midnight of the date upon which the milk was pasteurized. This order changes that 12-day limit to 14 days.

The amendments also clarify that the sell by date requirement is applicable to containers of pasteurized milk at food establishments. The terms "food establishment" and "retail food store" (a subset of food establishments) are defined as they are defined in the Food Act (31 P. S. §§ 20.1—20.18). The incorporation of these statutorily-defined terms will eliminate confusion over whether there is some intended distinction between establishments and food establishments. There is not.

#### *Regulatory Review*

The amendments meet the general requirements of Executive Order 1996-1, "Regulatory Review and Promulgation."

The amendments are a reasonable, cost-effective approach to preserving the competitiveness of this Commonwealth's dairy industry in interstate commerce. The changes accomplished by these amendments may be implemented at the option of individual milk processors. If a milk processor prefers to use a sell by date of less than 14 days, it is free to do so.

These amendments do not put public health or safety at risk. Neighboring states that have established milk sell by periods of 14 days or longer have not experienced adverse public health, milk quality or milk demand consequences. In fact, a significant number of states have declined to impose any milk sell by date requirements on their milk processors.

#### *Comments*

Notice of proposed rulemaking was published at 25 Pa.B. 5510 (December 2, 1995), and provided for a 30-day public comment period.

The Independent Regulatory Review Commission (IRRC) offered no objections, comments or suggestions.

Comments were received from a major food service company from New York, a dairy, a supermarket assistant manager and Representative William R. Lloyd, Jr. These comments, and the Department's responses, follow.

A New York-based food service company that regularly purchases milk from a Pennsylvania dairy complained that most of its current customer base has, at one time or another, asked why the milk obtained and distributed by

the food service company has a sell by date of 12 days or less, while most other available milk has a sell by date of 14 days or less. The commentator added:

It is our belief that our sales are limited by this 12-day limit, and we can grow our business at a faster rate if the sell by date is allowed to go to 14 days. In addition, due to the guarantee that we give our customers of at least 6 code days on delivery, we will cut our throw outs by 75% with the additional 2 days.

The Erie-based dairy with which the food service company does business also added its support for the amendments, noting that it had an ongoing problem keeping two separate inventories—one for New York and one for Pennsylvania. The dairy stated that this situation puts its milk at a competitive disadvantage with milk processed in New York.

A supermarket assistant manager objected to these amendments on several grounds. He believed the amendments would increase the amount of sour milk returned to his store by dissatisfied customers, and questioned whether smaller stores (convenience stores) would refrigerate their milk well enough and turn over their milk inventories often enough to prevent the degrading of milk quality Statewide.

Along similar lines, Representative Lloyd inquired as to whether other states with milk sell by periods of 14 days or more experienced any measurable increase in consumer complaints regarding milk quality and any measurable decrease in the demand for pasteurized milk as a result.

The Department reviewed the impact of various states' sell by periods on the demand for pasteurized milk, and cannot correlate any inverse relationship between demand for pasteurized milk and the sell by date for pasteurized milk in a given state. Demand for pasteurized milk does not decrease as the maximum sell by date increases.

Ohio requires a milk processor to establish its own quality assurance date—based upon the quality of the pasteurized milk it produces. Ohio may require a milk processor to adopt a particular sell by date if frequent consumer complaints occur.

With the exception of New York City (which has its own 9-day sell by date), New York State does not impose any sell by date on its milk processors. The majority of these milk processors voluntarily affix sell by dates of between 10 and 14 days on their containers of pasteurized milk. New York State does not enforce any sell by date, and views the sell by date as a tool by which processors and retailers can efficiently rotate their inventories.

New Jersey allows a milk processor to conduct bacteriologic and organoleptic analysis of its pasteurized milk and submit its proposed sell by date for approval by its Department. That Department must approve a sell by date for each milk processor, and may reduce a milk processor's sell by date, if necessary.

In summary, most states defer, to some extent, to their milk processors to establish reasonable sell by dates for containers of pasteurized milk, but reserve authority to establish a uniform maximum sell by period or particular sell by periods for milk processors whose pasteurized milk is the subject of complaints. In these respects, the

amendments established by this order are consistent with other states. They impose a maximum sell by date, leaving individual milk processors free to adopt shorter sell by periods as they deem appropriate.

The milk processor has a strong business interest in ensuring the sell by date affixed to its containers of pasteurized milk will result in the consumer receiving milk of acceptable quality.

The Department is satisfied the changes accomplished by this order will not jeopardize the overall quality of the pasteurized milk reaching consumers and will not work to decrease demand for pasteurized milk. The regulatory changes resulting from this order will make this Commonwealth's dairy industry more competitive in interstate commerce.

#### *Fiscal Impact*

##### *Commonwealth*

These amendments will impose no costs and have no fiscal impact upon the Commonwealth.

##### *Political Subdivisions*

These amendments will impose no costs and have no fiscal impact upon political subdivisions.

##### *Private Sector*

These amendments will impose no costs on the private sector. Milk processors need only adjust the sell by date stamping apparatus on their packaging machinery in order to take advantage of the extension of the pasteurized milk sell by date established by these amendments. The amendments will have a favorable fiscal impact on this Commonwealth's dairy industry by making its product more competitive in interstate commerce.

##### *General Public*

The amendments will impose no costs and have no fiscal impact upon the general public.

#### *Paperwork Requirements*

The amendments are not expected to result in an appreciable increase in paperwork.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Attention: James C. Dell, Chief, Division of Milk Sanitation, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 20, 1995, the Department submitted a copy of the notice of proposed rulemaking published at 25 Pa.B. 5510 to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee and the Senate Committee on June 11, 1996, and were deemed approved by IRRC on June 11, 1996, in accordance with section 5(b.3) of the Regulatory Review Act.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the amendments encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and that the comments received were considered.

(3) The amendments meet the requirements of Executive Order 1996-1, "Regulation Review and Promulgation."

(4) The adoption of the amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 59, are amended by amending §§ 59.1 and 59.22 to read as set forth at 25 Pa.B. 5510.

(b) The Secretary of Agriculture shall submit this order and 25 Pa.B. 5510 to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Agriculture shall certify this order and 25 Pa.B. 5510 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

CHARLES C. BROSIUS,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 3237 (July 6, 1996).)*

**Fiscal Note:** Fiscal Note 2-101 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 96-1089. Filed for public inspection July 5, 1996, 9:00 a.m.]

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [67 PA. CODE CH. 203]

#### Work Zone Traffic Control

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering, by this order adopts an amendment to § 203.83 (relating to arrow panels).

The Department plans to make this amendment effective upon publication without notice of proposed rulemaking. Notice of proposed rulemaking has been omitted under the authority contained in section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL). The Department, for good cause, finds that the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), are, in the circumstances, impracticable, unnecessary and contrary to the public interest for the following reasons:

1. The *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, as approved by the Federal Highway Administration (FHWA), is the National standard for traffic control devices on all highways open to public travel. Under 75 Pa.C.S. § 6121 (relating to uniform system of traffic-control devices), the Department is required to devise a uniform system of traffic control devices which conforms, as nearly as possible, to this standard. The FHWA, at 60 FR 18520, on April 11, 1995, amended the *MUTCD*. This amendment affects the caution mode display on arrow panels used in construction and maintenance operations. The Department must revise its regulation to conform to this new provision.

2. This change must be in place prior to the beginning of the 1996 highway construction and maintenance season or as soon as possible thereafter since it allows the use of a horizontal pattern of a straight line or bar when an arrow panel is placed in the caution mode. Currently, the regulation requires the caution mode to consist of four lamps arranged in a rectangle commonly known as four-corners. The Department owns approximately 500 arrow panels, of these, only 15 are capable of displaying the four-corners pattern. Further, it is estimated that there are several hundred arrow panels owned by municipalities, utilities and private contractors which are not capable of displaying the four-corners pattern. In conformance with the regulation, arrow panels which cannot display the four-corners pattern must be banned from use in applications where the caution mode is required. Other devices can be substituted for arrow panels, however, the Department believes that in many situations, when performing work on the shoulder or during moving operations, arrow panels are the most effective means of alerting drivers. Prohibiting the use of arrow panels in applications where a caution mode is required would be detrimental to the safety of motorists and highway workers.

3. The time and expense of converting arrow panels to display the four-corners pattern, or purchasing new panels with this capability cannot be justified since the FHWA is now allowing the use of the bar pattern.

4. Accordingly, since this amendment is extremely high priority to the Department in meeting Federal standards and in promoting roadway safety in construction areas, it is appropriate for the Department to proceed in the manner described in this Preamble.

#### *Purpose of this Chapter*

The purpose of this chapter is to provide the required basic principles and guidelines for the control of traffic approaching and within construction, maintenance and permit/utility work zones on highways within this Commonwealth. These guidelines satisfy the requirements of 75 Pa.C.S. § 6123 (relating to erection of traffic-control devices while working), and are intended to provide the means by which traffic movement through work zones is made safer and more efficient and to improve workers' safety.

#### *Purpose of this Amendment*

The purpose of this amendment is to bring the Department's rules on work zone traffic control into compliance with the latest amendment to the *MUTCD*, as approved by the FHWA as the National standard for traffic control devices on all highways open to public travel. Under 75 Pa.C.S. § 6121, the Department will establish a uniform system of traffic control devices consistent with 75 Pa.C.S. (relating to the Vehicle Code) and shall conform and correlate its system, so far as possible, with the

system set forth in the most recent edition of the *MUTCD*. Adherence to the Federal standards also helps assure the continuation of funding for Federally-aided highway construction projects.

At 24 Pa.B. 1363 (March 12, 1994), the Department amended Chapter 203 (relating to work zone traffic control). Many of the amendments adopted in this final rulemaking were occasioned by changes in the *MUTCD*, 1988 Edition, Revision 3, as approved by the FHWA.

The FHWA, at 58 FR 65084, on December 10, 1993, amended the *MUTCD* by adopting a total revision of Part VI, "Traffic Controls for Streets and Highway Construction, Maintenance, Utility, and Emergency Operations." Part VI sets forth basic principles and prescribes standards for temporary traffic control zone operations on streets and highways in the United States.

One of the amendments in the FHWA's final adoption of December 10, 1993, involved changes to the arrow panel display. Arrow panels are electrically operated signs containing a matrix of lamps which are used in highway construction and maintenance activities to display a pulsating arrow or sequential chevron to alert drivers at long distance that a travel lane is closed and to instruct them to merge into the open lane.

The Department's Arrow Panel Specifications permit the use of arrow panels which contain either 15 or 20 lamps, and when operations are performed on the shoulder of a highway or during moving operations on a two-lane, two-way highway where a lane change is not required, the panel is placed in a caution mode. Previously, for 15 lamp arrow panels, this was stipulated as four or more pulsating lamps arranged in a horizontal pattern of a straight line or bar that did not indicate a direction.

The FHWA amendments at 58 FR 65084 amended arrow panels to indicate that the caution mode consist of four lamps arranged in a rectangular pattern, commonly known as four-corners. This amendment, as well as the other FHWA amendments of December 10, 1993, to the *MUTCD*, had an effective date of January 10, 1994.

The Department, in anticipation of the previously stated *MUTCD* change to arrow panels, commenced a rulemaking culminating in the final adoption of amendment to § 203.83, at 24 Pa.B. 1363. The amendments to § 203.83, as well as the other changes made to Chapter 203, had an effective date of April 1, 1994. The Department also modified its specifications to reflect these changes.

On April 6, 1994, subsequent to the amendment of § 203.83, the Department was informed by the FHWA regional administrator that the FHWA would not insist that the states comply with its January 10, 1994, effective date for arrow panel amendments to the *MUTCD*, but would permit the states to have 2 years from the date of adoption of its amendments to comply with the same. Thus, the new compliance or effective date was December 10, 1995.

To allow the Department, municipalities, utilities and private contractors time to convert their arrow panels to the new four-corners caution display, the Department by publication of a notice at 25 Pa.B. 1287 (April 8, 1995), amended the effective date of § 203.83 from April 1, 1994, to December 10, 1995, thus permitting the display of the bar caution mode until December 10, 1995. After that date, all arrow panels were mandated to display the four-corners pattern when used in the caution mode.

Subsequent to the amendment of § 203.83, the FHWA, at 60 FR 18520, on April 11, 1995, amended the *MUTCD*. One of the amendments involved changes to the arrow panel display. The FHWA learned that making the electrical modifications needed to alter arrow displays which currently use the horizontal pattern of a straight line or bar would cause an undue financial burden on many public agencies, therefore, the FHWA rescinded its ban and will allow the use of the horizontal pattern of a straight line or bar caution display as an option to the four-corners display. The Department, at that time, did not immediately propose amending § 203.83 to permit the use of the bar caution display since the Department, as part of its process to consolidate and simplify its regulations, intended to adopt by reference the entire *MUTCD* and use it as the standard for the control traffic within this Commonwealth. This effort has been delayed, and it is apparent that it will not be accomplished until 1997; therefore § 203.8 must now be amended to allow the use of the bar caution display during the upcoming construction season.

Consequently, in compliance with the changes to the *MUTCD*, the Department is amending § 203.83(a)(2)(iv) to permit the use of the horizontal pattern of a straight line or bar caution display as an option to the four-corners caution display.

#### *Persons and Entities Affected*

This amendment will affect the Department, its officials and employes, other Commonwealth agencies which hire or cause to hire private contractors to perform work on public highways, local governments, utility companies and private contractors that perform construction on public highways.

#### *Fiscal Impact*

The Department anticipates that the Commonwealth will save \$415,000, which is the estimated cost of converting the Department's arrow panels to the four-corners display.

It is not possible to determine the cost savings to local governments, utilities or private contractors since the Department does not keep a record of arrow panel ownership; however, the cost of converting one arrow panel is approximately \$850.

#### *Regulatory Review*

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Department submitted a copy of this amendment with proposed rulemaking omitted on May 7, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. On the same date, this amendment was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, this amendment was deemed approved by the Committees on May 28, 1996, and was approved by IRRC on June 6, 1996.

In addition to the final amendment, the Committees were provided with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

In preparing this final-form amendment, the Department has considered the comments received from IRRC, the Committees and the public.

#### *Sunset Provisions*

The Department is not establishing a sunset date for this regulation since this regulation is needed to administer provisions required under the Vehicle Code.

#### *Contact Person*

The contact person is Richard J. Sesny, P.E., Manager, Regulations and Traffic Control Section, Traffic Engineering and Operations Division, Bureau of Highway Safety and Traffic Engineering, Post Office Box 2047, Room 215 Transportation and Safety Building, Harrisburg, PA 17105-2047, (717) 783-6080.

#### *Authority*

The amendment is adopted under the authority contained in sections 6103, 6109(a)(15), 6121 and 6123 of the Vehicle Code. These provisions, respectively, authorize the Department to promulgate regulations to implement the Vehicle Code; regulate and temporally prohibit traffic on streets closed or restricted for construction, maintenance or special events; require the Department to publish a manual for a uniform system of traffic control devices which is consistent with the Vehicle Code and which conforms, as nearly as possible, to the most recent addition of the *MUTCD* as approved by the FHWA; and authorize any person working on or near the roadway to erect traffic control devices for the maintenance and protection of traffic.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the amendment has been omitted under section 204(3) of the CDL and the regulation promulgated thereunder at 1 Pa. Code § 7.4.

(2) The procedures specified in sections 201 and 202 of the CDL are, in the circumstances, impracticable, unnecessary and contrary to the public interest. The procedures specified are impracticable since this amendment permitting the use of the straight line or bar arrow panel caution mode is needed before the commencement of the 1996 highway construction season to facilitate roadway safety in work zones and cannot be accomplished before the start of the season if rulemaking with comments is attempted. The Department regulation in § 203.83(a)(2)(iv), requires the caution mode to consist of four lamps arranged in a rectangle commonly known as four-corners. The four-corners mode was adopted by the Department to comply with the FHWA and the standard delineated in the *MUTCD*. The FHWA, however, in April of 1995, amended the *MUTCD* to permit the bar arrow panel in the caution mode, as well as the four-corners, because of the undue financial burden that would be imposed on State and local governments by strict insistence upon the use only of the four-corners. Accordingly, it is unnecessary for the Department to maintain through its regulations that only the four-corners can be employed in work zones since the motivation for the initial amendment to four-corners, the *MUTCD*, has been amended to permit the bar arrow panel. Further, it is unnecessary to submit this amendment to rulemaking at this time because of the costs which State and local governments must absorb for implementation of the four-corners, and because there is no increase in risk to traffic in construction zones by using the bar caution display. Failure to immediately adopt this amendment would also be contrary to the public interest because the Department estimates that it will have to expend \$415,000 to convert the Department's arrow panels to the four-corners display and that local municipalities, utilities and private con-

tractors would have to spend approximately \$850 to convert each individual panel. The time and expense of converting arrow panels to the four-corners pattern, or purchasing new panels with this capability cannot be justified since the FHWA is now allowing the use of the bar pattern.

(3) The adoption of the amendment, in the manner provided in this order, is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 203, are amended by amending § 203.83 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality, as required by law.

(c) The Secretary of the Department shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

BRADLEY L. MALLORY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 2958 (June 22, 1996).)*

**Fiscal Note:** 18-339. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**Subpart A. VEHICLE CODE PROVISIONS**

**ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT**

**CHAPTER 203. WORK ZONE TRAFFIC CONTROL**

**Subchapter F. LIGHTING DEVICES**

**§ 203.83. Arrow panels.**

(a) *Design of arrow panels.*

(1) Arrow panels shall be approved by the Department and listed in Publication 35 which is incorporated by reference—see § 203.6 (relating to availability of Department publications).

(2) At a minimum, each arrow shall be capable of displaying the following message modes:

- (i) Left flashing arrow or left sequential chevron.
- (ii) Right flashing arrow or right sequential chevron.
- (iii) Simultaneous left and right flashing arrows.

(iv) A caution mode, consisting of four lamps arranged in a rectangular pattern, or horizontal pattern of four or more lamps arranged in a straight line or "bar," that will not indicate a direction.

(3) Arrow panels shall have an automatic dimming circuit that is actuated by a photocell at a light level of approximately 5 footcandles to provide a minimum of 50% dimming from the rated lamp voltage.

(b) *Application of arrow panels.*

(1) The application of arrow panels shall comply with the typical figures of this chapter. Normally, arrow panels may be used for lane closures on multilane roadways, at median crossovers, at locations where traffic must make an abrupt change in direction, and at other locations where traffic is required to divert from its normal travel path. Where more than one lane is closed, each lane to be closed should generally have its own device.

(2) When an arrow panel is used but drivers are not required to change lanes, shift laterally, change direction or turn, the caution mode of the arrow panel shall be displayed.

(3) Arrow panels should generally be located as shown on the typical figures of this chapter. The location of arrow panels should be field-adjusted to optimize visibility. The geometrics and conditions at each site where an arrow panel is to be used should be studied to determine the best point to begin the transition or taper and the proper orientation of the panel. For stationary lane closures, the arrow panel should usually be placed on the shoulder at the start of the taper or upstream of the start of the taper. The arrow panel may be placed in the closed lane behind the taper, especially where the shoulder is not of sufficient width to accommodate the arrow panel.

(4) When an arrow panel is required for a long-term operation, it shall be a minimum size of 8 feet wide by 4 feet high. When an arrow panel is required for a short-term operation, it shall be a minimum size of 6 feet wide by 3 feet high when used on a highway with a normal speed limit of 40 mph or more, and 4 feet wide by 2 feet high when used on a highway with a normal speed limit less than 40 mph. On some moving operations with a caravan of work vehicles, more than one arrow panel is often used successively within the same closed lane. The minimum sizes in this paragraph only apply for the first arrow panel that a driver would encounter when approaching the operation from the rear. Other successive panels within the same closed lane may be of a smaller size.

(5) As noted on some of the typical figures of this chapter, a Temporary Arrow Sign (G40-1) may sometimes be used in lieu of an arrow panel for short-term operations. The standard size G40-1 Sign shall be 8 feet wide by 4 feet high, except that a 6-foot wide by 3-foot high size may be used when the sign is mounted on a pickup truck or similar size vehicle, or on a Type III barricade. A Striped Panel Sign (G40-2) shall be placed beneath Temporary Arrow Signs that are mounted on a vehicle. The G40-2 Sign shall be the same size as the G40-1 Sign with which it is being used.

[Pa.B. Doc. No. 96-1090. Filed for public inspection July 5, 1996, 9:00 a.m.]