STATE OF NEW YORK

6714

2021-2022 Regular Sessions

IN SENATE

May 12, 2021

Introduced by Sen. HINCHEY -- (at request of the Department of Agriculture and Markets) -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to import of dairy products and payment from the milk producers security fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 71-n of the agriculture and markets law, as amended by chapter 389 of the laws of 1994, is amended to read as follows:

1. (a) No person, firm, association, partnership or corporation shall engage in or carry on the business of shipping, transporting or importing into this state from any other state, territory or foreign country any milk or milk products, as defined in subdivision two of section seventy-one-l of this article, for sale, resale or distribution to consumers [~~without first having obtained from the commissioner a permit authorizing all such shipments, transportations or importations~~] **unless the milk and milk products to be shipped, transported, or imported into this state meet all of the sanitary requirements and standards for such milk and milk products produced or manufactured within this state**.

(b) [~~All such permits shall expire on June thirtieth following; provided, however, that before the commissioner shall issue such permit he or she shall (i) cause an inspection by a New York state inspector of the out-of-state producers' cows, barns, stables, milk houses, water supply, milk equipment, utensils and milk; (ii) require a veterinarian's certificate showing the cows to be in a healthy condition; and (iii) require the applicant or applicants for the permit to satisfy him or her that the milk or milk products to be shipped, transported or imported into the state meet all of the sanitary requirements and standards for such milk and milk products produced within the state of New York.~~]

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~(c)~~] Nothing in this section shall be held or construed to apply to evaporated or condensed milk manufactured, sold or exposed for sale or exchange in hermetically sealed cans.

[~~(d) The commissioner shall not issue a permit for the shipment, transportation or importation into this state of any milk or milk products, as defined in subdivision two of section seventy-one-l of this article, for sale, resale or distribution to consumers which fail to meet in detail in accordance with the actual inspection hereinabove described, all sanitary requirements, regulations and product standards now in force or hereafter promulgated by the department for the production of milk or milk products within the state.~~]

(c) When the commissioner inspects a plant beyond the boundary of the state, the commissioner may require such plant to reimburse the department for all necessary and reasonable expenses incurred in making such inspections. [~~In lieu of the inspection requirements set forth in paragraph (b) of this subdivision, the~~] **The** commissioner is authorized to effectuate and enter into such reciprocal agreements with governmental units of other states, commonwealths or jurisdictions as will insure the inhabitants of this state milk and milk products complying with all the sanitary requirements and product standards and regulations now in force or hereafter promulgated by the department for the production and handling of milk or milk products within the state, through reciprocal inspection agreements, and in aid of such agreements, may approve or accept inspections conducted by other commonwealths, states and jurisdictions with respect to milk and milk products.

§ 2. Paragraph (a) of subdivision 5, paragraph (a) of subdivision 6, subdivision 7 and subdivision 9 of section 258-b of the agriculture and markets law, paragraph (a) of subdivision 5 as amended by chapter 326 of the laws of 1988, paragraph (a) of subdivision 6 as amended by chapter 506 of the laws of 2003, subdivision 7 as amended by chapter 167 of the laws of 1995, and subdivision 9 as amended by chapter 540 of the laws of 1987, are amended to read as follows:

(a) If the commissioner has reason to believe that a licensed milk dealer who is participating in the milk producers security fund has defaulted in making payments for milk to producers, the commissioner shall give reasonable notice to the producers believed to be affected to file verified claims and may fix a reasonable time within which such claims must be filed. Upon learning of such default, the commissioner shall immediately examine the records of the defaulting dealer and shall identify the amounts which are reasonably estimated to be owed to producers. Within [~~thirty~~] **sixty** days of the receipt of a claim by a producer and on the basis of such estimates, the commissioner may authorize the comptroller to pay any such producer up to seventy-five percent of such estimate. In connection with such payment, the commissioner may make provisions for the recovery for the benefit of the fund of any payments made pursuant to this paragraph.

(a) Each milk dealer who buys, receives or otherwise handles milk received from producers may execute and file with the commissioner a surety bond in lieu of participation in the milk producers security fund and the filing of a surety bond or bonds pursuant to subdivision three of this section. The bond shall be executed by a surety company authorized to do business in this state and shall be approved by the commissioner. The bond shall be conditioned for the prompt payment of all amounts due to producers for milk sold or consigned by them to such milk dealer during the license year and all amounts due to the equalization or producer settlement fund of any order promulgated by the commissioner

pursuant to section two hundred fifty-eight-m or two hundred fifty-eight-n of this article or to the equalization or producer settlement fund of a federal milk marketing order. **Additionally, the bond shall make provisions for an advance payment pursuant to subdivision nine of this section.**

7. Alternative security. Each milk dealer buying milk from producers may in lieu of filing a surety bond pursuant to subdivision three or six of this section provide an equal amount of protection for the producers from whom he or she purchases or receives milk by filing an irrevocable letter or letters of credit for the account of the milk dealer authorizing the commissioner to draw on a bank or trust company or banks or trust companies authorized to do business in the state of New York. Such letter or letters shall contain such terms and conditions as the commissioner may require. **Additionally, the irrevocable letter of credit shall make provisions for an advance payment pursuant to subdivision nine of this section.**

9. Claims against bond or alternative security. Claims by producers against a dealer who had filed a bond or alternative security shall be processed by the commissioner in the same manner as is provided in subdivision five hereof with respect to claims against the producers security fund and such claims shall be subject to the same limitations. **Upon receiving a claim against a dealer who had filed a bond or alternative security, the commissioner shall immediately examine the records of the defaulting dealer and shall identify the amounts which are reasonably estimated to be owed to producers. Within sixty days of the receipt of a claim, and on the basis of such estimates, the commissioner is authorized to pay any such producer up to fifty percent of such estimate and proceed to obtain from such security the funds with which to pay any advances on the claims. In connection with such payment, the commissioner shall make provisions for the recovery of any payments made pursuant to this subdivision.** The commissioner's determination certifying the amounts due claimants shall be subject to judicial review in the same manner and subject to the same limitations. In the case of a dealer who has filed alternative security, the commissioner shall proceed to obtain from such security the funds with which to pay the claims. If recovery upon the alternative security is not sufficient to pay all claims, the amount recovered shall be divided pro rata among claimants. In the case of a dealer who has filed a surety bond, the commissioner may bring an action on the bond, and for the purposes of such action his determination certifying the amounts due shall be presumptive evidence of the facts therein stated. In the event that recovery on such bond has not been made within sixty days of the commissioner's certification of the amounts due producers covered by the bond, the commissioner shall direct the comptroller to pay such amounts to claimants from whatever monies are available in the milk producers security fund. In the event that recovery against the bond has not been made within one hundred eighty days of certification of the amounts due claimants, each and every dealer having filed a bond pursuant to subdivision six of this section shall pay monthly to the commissioner an amount not to exceed one-half of one-tenth of one percent of the average uniform price per hundredweight of milk for the previous calendar year, as determined by the commissioner on or before the thirty-first day of March of each year, on each hundredweight of such milk purchased, received or handled. Such payments shall continue for such period of time as the commissioner deems necessary in order to return to the fund, no later than three years from the date of such payment therefrom, the total amount paid as

a result of the default of such dealer plus interest, at the rate provided for in section 5-501 of the general obligations law on the amount of such payment from the date of such payment. In the event of a recovery on the bond after the commencement of such payments, the commissioners shall authorize the comptroller to pay to each dealer making such payments its pro rata share of the amount by which the total of such payments exceeds the difference between the amount received and the total amount paid to claimants.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law.