

# 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:

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

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

14 (b) [~~All such permits shall expire on June thirtieth following,~~  
15 ~~provided, however, that before the commissioner shall issue such permit~~  
16 ~~he or she shall (i) cause an inspection by a New York state inspector of~~  
17 ~~the out of state producers' cows, barns, stables, milk houses, water~~  
18 ~~supply, milk equipment, utensils and milk; (ii) require a veterinarian's~~  
19 ~~certificate showing the cows to be in a healthy condition; and (iii)~~  
20 ~~require the applicant or applicants for the permit to satisfy him or her~~  
21 ~~that the milk or milk products to be shipped, transported or imported~~  
22 ~~into the state meet all of the sanitary requirements and standards for~~  
23 ~~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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1 ~~(e)~~ Nothing in this section shall be held or construed to apply to  
2 evaporated or condensed milk manufactured, sold or exposed for sale or  
3 exchange in hermetically sealed cans.

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

12 (c) When the commissioner inspects a plant beyond the boundary of the  
13 state, the commissioner may require such plant to reimburse the depart-  
14 ment for all necessary and reasonable expenses incurred in making such  
15 inspections. ~~[In lieu of the inspection requirements set forth in para-  
16 graph (b) of this subdivision, the]~~ The commissioner is authorized to  
17 effectuate and enter into such reciprocal agreements with governmental  
18 units of other states, commonwealths or jurisdictions as will insure the  
19 inhabitants of this state milk and milk products complying with all the  
20 sanitary requirements and product standards and regulations now in force  
21 or hereafter promulgated by the department for the production and handl-  
22 ing of milk or milk products within the state, through reciprocal  
23 inspection agreements, and in aid of such agreements, may approve or  
24 accept inspections conducted by other commonwealths, states and juris-  
25 dictions with respect to milk and milk products.

26 § 2. Paragraph (a) of subdivision 5, paragraph (a) of subdivision 6,  
27 subdivision 7 and subdivision 9 of section 258-b of the agriculture and  
28 markets law, paragraph (a) of subdivision 5 as amended by chapter 326 of  
29 the laws of 1988, paragraph (a) of subdivision 6 as amended by chapter  
30 506 of the laws of 2003, subdivision 7 as amended by chapter 167 of the  
31 laws of 1995, and subdivision 9 as amended by chapter 540 of the laws of  
32 1987, are amended to read as follows:

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

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

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

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

17 9. Claims against bond or alternative security. Claims by producers  
18 against a dealer who had filed a bond or alternative security shall be  
19 processed by the commissioner in the same manner as is provided in  
20 subdivision five hereof with respect to claims against the producers  
21 security fund and such claims shall be subject to the same limitations.  
22 Upon receiving a claim against a dealer who had filed a bond or alterna-  
23 tive security, the commissioner shall immediately examine the records of  
24 the defaulting dealer and shall identify the amounts which are reason-  
25 ably estimated to be owed to producers. Within sixty days of the  
26 receipt of a claim, and on the basis of such estimates, the commissioner  
27 is authorized to pay any such producer up to fifty percent of such esti-  
28 mate and proceed to obtain from such security the funds with which to  
29 pay any advances on the claims. In connection with such payment, the  
30 commissioner shall make provisions for the recovery of any payments made  
31 pursuant to this subdivision. The commissioner's determination certify-  
32 ing the amounts due claimants shall be subject to judicial review in the  
33 same manner and subject to the same limitations. In the case of a dealer  
34 who has filed alternative security, the commissioner shall proceed to  
35 obtain from such security the funds with which to pay the claims. If  
36 recovery upon the alternative security is not sufficient to pay all  
37 claims, the amount recovered shall be divided pro rata among claimants.  
38 In the case of a dealer who has filed a surety bond, the commissioner  
39 may bring an action on the bond, and for the purposes of such action his  
40 determination certifying the amounts due shall be presumptive evidence  
41 of the facts therein stated. In the event that recovery on such bond  
42 has not been made within sixty days of the commissioner's certification  
43 of the amounts due producers covered by the bond, the commissioner shall  
44 direct the comptroller to pay such amounts to claimants from whatever  
45 monies are available in the milk producers security fund. In the event  
46 that recovery against the bond has not been made within one hundred  
47 eighty days of certification of the amounts due claimants, each and  
48 every dealer having filed a bond pursuant to subdivision six of this  
49 section shall pay monthly to the commissioner an amount not to exceed  
50 one-half of one-tenth of one percent of the average uniform price per  
51 hundredweight of milk for the previous calendar year, as determined by  
52 the commissioner on or before the thirty-first day of March of each  
53 year, on each hundredweight of such milk purchased, received or handled.  
54 Such payments shall continue for such period of time as the commissioner  
55 deems necessary in order to return to the fund, no later than three  
56 years from the date of such payment therefrom, the total amount paid as

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

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