



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
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COMMISSIONER

May 7, 2010

Scott J. Soares, Commissioner
Department of Agricultural Resources
251 Causeway St.
Boston, MA 02114

RE: Comments on Proposed Regulations 330 CMR 27.00

Dear Commissioner Soares:

The Department of Public Health (DPH) applauds the Department of Agricultural Resources (DAR) for your support of safe and sanitary farming in the Commonwealth. We are pleased that your proposal to amend 330 CMR 27.00 will provide the Commonwealth with an opportunity to increase protection of consumers who choose to drink raw milk.

As you know, DPH continues to have very serious concerns about the public health risks of raw milk. According to the U.S. Centers for Disease Control, between 1998 and 2008, there were 85 outbreaks of human infections identified that resulted from consumption of raw milk, including a total of 1,614 reported illnesses, 187 hospitalizations, and two deaths. These are likely to represent only a small proportion of the total number of outbreaks due to raw milk or raw milk products that occurred during this time period. Although only 1-3% of the US population consumes raw milk or raw milk products, 68% of all outbreaks related to any dairy product are related to raw milk or raw milk products.

While in an ideal world we would prefer that all milk sold in Massachusetts be pasteurized, we recognize that some local farms are realizing an economic benefit from the sale of raw milk. If raw milk is to be sold, procedures must be in place to ensure the greatest possible protection to consumers. While raw milk cannot be regulated into safety without being cost prohibitive to farmers, government, industry, the buying public and taxpayers, we have provided measures in the attached highlighted draft of the regulations that aim to reduce the risk of serious illness. As you are probably aware, many of these changes were originally proposed by a M.S./M.P.H. candidate at Tufts University, Christine Lee, who served as an intern at DAR in the summer of 2006 and worked with our respective staffs to better enhance food safety related to raw milk/raw milk products.

We support your proposed amendment of the definition of "dairy farm" in the regulations, to clarify that it applies to a farm where one or more lactating animals are kept. This recognizes that farms producing milk other than cows' milk (for example, goat milk) will be subject to the regulations.

We also strongly support the proposed provision in 330 CMR 27.08(A), prohibiting the sale of raw milk anywhere except on the farm where the milk was produced, and requiring that such farm possess a Certificate from DAR allowing for such sales. We also request that the certificate itself be called "Certificate of Raw Milk for *Direct Sale*" rather than "Retail Sale," to avoid any confusion regarding the sale of such products in retail stores that are regulated by local boards of health and MDPH.

We urge that the regulations add language making clear that so-called "cow-share," "goat-share," etc. arrangements, which attempt to evade the requirement of a Certificate for sales of raw milk, are prohibited. The regulations should also make clear that "buying clubs" are prohibited, as they attempt to evade the requirement of on-farm sales. Limiting sales to the premises of the farm helps to ensure that the milk is held at the proper temperature before being sold and reduces public health concerns. Raw milk by its nature contains a great deal of bacteria, which quickly multiply if the milk is held or transported at an improper temperature. Once the milk leaves the farm, there is no way to control the temperature. The final consumer of the milk is the person who should make the decision to buy it at the farm, as the farm is the entity that is required to conform to DAR's sanitation and other requirements up to the point of purchase. For these reasons, we would suggest adding the following language to section 27.08(A); see last 2 sentences below:

"No person shall sell, distribute, provide or offer for consumption to the public any raw milk elsewhere than on a dairy farm where that raw milk was produced provided that to such farm a Certificate of Raw Milk for Direct Sale has been issued by the Commissioner. The term "offer for consumption" shall include any sampling of milk by the public or offering of samples to the public. The terms "distribute" and "provide" shall be interpreted to prohibit any animal sharing arrangement, so-called, whereby members of the public "own" shares of a milk-producing animal. These terms shall also be interpreted as prohibiting delivery services or "buying clubs," whereby a party other than the final consumer moves the product from the farm to the final consumer or consumers."

We request that the Consumer Warning Statement be strengthened as indicated in the attached highlighted version of the regulations. This language is based on warnings that are currently required in the states of California and Vermont.


We also urge that the allowable limit for somatic cells in individual producer milk not exceed 500,000, rather than 750,000 as proposed. The reason for this is that an elevated somatic cell count is indicative of an infection in the animal, and as raw milk is not processed, the threat to the consumer is elevated in accordance with the level of the somatic cell count.

In conclusion, it is unfortunate that some raw milk advocates have chosen to portray their choice to buy raw milk as a "right." With respect to food that is *sold to the public*, it has long been established that states have the authority to enact laws and regulations to protect the health and

safety of their citizens. See the early case of Sligh v. Kirkwood, 237 U.S. 52, 58-59, 35 S. Ct. 501 (1915) in which the U.S. Supreme Court reiterated the longstanding principle that “the competency of the state to provide local measures in the interest of the safety and welfare of the people is not doubted The power of the State to . . . prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well established.”

It is our sincere hope that the health of the residents of the Commonwealth who choose to drink raw milk will be better protected, once these regulations are strengthened.

Sincerely,

A handwritten signature in black ink, appearing to read "John Auerbach". The signature is written in a cursive style with a prominent initial "J".

John Auerbach, Commissioner
Massachusetts Department of Public Health

cc: Suzanne K. Condon, Associate Commissioner/Director, MDPH/BEH