

March 2, 2009

Gene Wright, Manager
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MC 1987
Austin, Texas 78714-9347

Dear Mr. Wright:

Thank you for the opportunity to comment on the agency's draft rules for milk and dairy. The undersigned organizations represent both farmers and consumers. More specifically, our members are farmers and consumers who seek to promote local food options, providing alternatives to the mass-produced food supply that currently dominates.

We respect the difficult task the agency faces in regulating the large, industrial food suppliers who are selling into an anonymous food chain. We urge you, however, to recognize the fundamental differences between that system and small farmers selling directly to consumers who have taken significant time and effort to seek out these food sources.

We therefore request that the agency make the following changes to its draft rules regarding Grade A for Retail and Manufactured Milk Products.

I. Requested Change to Section 217.22 in Subchapter B: Grade A Raw for Retail Milk and Milk Products

The most important change that we request is to Section 217.22. The current regulations allow licensed farms to sell raw milk directly at the "point of production." This existing regulation has already proven to be a problem for consumers who wish to purchase raw milk, because dairy farms are typically located several hours drive from major population centers. The draft rules would make it even more difficult, by limiting both the sale and distribution to the final consumer to the point of production. This would arguably prevent people from choosing to carpool or setting up other pick-up options.

It is safer to allow licensed farmers to deliver raw milk to their consumers. Consumers who drive to a distant farm to pick up milk may or may not bring a cooler, ice, or other means for keeping the milk at a safe temperature on their return trip. In contrast, a farmer who delivers milk to his or her customers can ensure that the milk is kept at a safe temperature during the transportation

It is also more energy efficient to allow delivery. Obviously, it makes little sense from a fuel efficiency perspective to have hundreds of people driving to a farm that may be 50-150 miles away, as opposed to having the farmer make a single trip with the product.

The restriction in the existing regulation, and the even more burdensome draft rule, are not protective of human health and safety. Rather, they create a marketing barrier for raw milk farmers and consumers. The existing and proposed restrictions limit farmers' ability to provide a product that is in great demand, and cause consumers to expend unnecessary money and time to obtain food that they desire.

We urge the department to change Section 217.22 to read:

Raw milk may be sold by the milk producer directly to the consumer, provided that such producer has been issued a Grade A Raw for Retail Milk Permit in accordance with Section 217.81 of this title (relating to Permits, Fees and Enforcement), and complies with all the sections in this chapter relating to Grade A Raw for Retail Milk. For purposes of this provision, sales made "directly to the consumer" includes sales at the farm, farmer's markets, farm stands, fairs, trade days and flea markets, consumer's residences or designated delivery locations for multiple consumers, and any other location acceptable to the department.

The language proposed above continues to limit sales of raw milk to direct farm-to-consumer transactions, without placing unnecessary burdens on the farmer or the consumer.

II. Requested Change to Section 217.17 in Subchapter B: Grade A Raw for Retail Milk and Milk Products

The draft Section 217.17(g) requires a producer to provide a list of his or her customers to the government if a milk sample tests positive for antibiotics or pathogenic bacteria. While we understand the need for the producer's permit to be suspended and a possible recall of the products, requiring a list of customers to be given to the government goes too far and is unnecessary. If the milk is contaminated, then the department can issue a public notice to that effect, just as it does with any contaminated food product. There is no reason to single out raw milk consumers.

We urge the department to delete the sentence in Section 217.17(g), "The producer shall furnish a list of customers to the department."

III. Requested Change to Section 217.13 in Subchapter B: Grade A Raw for Retail Milk and Milk Products

The last sentence in Section 217.13 states that "It shall be unlawful for any person, elsewhere than in a private home, to have in their possession any adulterated, misbranded, or ungraded milk." This sentence is also in the existing regulations and has not caused problems to date, but has potentially troubling implications. Take, for example, the following scenario: An individual buys properly labeled Grade A milk from a farmer. The consumer takes the container home and

pours the milk into jars to make yogurt, which he or she then takes to work for breakfast. That individual now possesses a raw dairy product outside of his or her home which is not labeled or graded.

There is no health or safety reason to make it illegal to possess raw dairy products outside of people's homes. We urge the department to delete the final sentence.

IV. Requested Changes to Subchapter E: Dairy Products and Milk for Manufacturing Purposes

Although revisions to the dairy manufacturing regulations may be needed to increase the safety of the process, the draft regulations add unnecessary expense and burdens to small-scale cheesemakers. Section 217.67(a) should be amended to clarify that a small-scale cheese-maker does not need a separate room for each stage of cheesemaking, as long as there are clean and sanitary areas for each stage. Section 217.67(b) should be amended to explicitly allow for the use of any method of pasteurization that has been proven effective, since the federal PMO appears to require equipment that costs several thousands of dollars. So long as the cheese is made in a sanitary, safe fashion, the agency should not require expensive equipment and infrastructure.

The draft regulations also appear to change the permits fees in an inequitable manner. Under the existing regulations, someone who sells less than \$10,000 in product pays a \$104 annual fee for the food manufacturers permit. Under the draft regulations, that same person will now have to pay \$400 in annual permit fees for two separate permits: the raw dairy permit and dairy manufacturing permit. In contrast, under the existing regulations, a large company selling \$10 million of product pays a \$1,731 annual fee, but the draft regulations appear to allow such a company to pay the same \$400 fee as the small cheesemaker. We ask that the agency reduce the fees for small producers to prevent financial hardship and avoid discouraging small, local food providers.

We urge you to make the changes listed above before publishing the proposed rules. We would welcome the opportunity to have a meeting with you to discuss these issues in more detail.

Respectfully,

Farm and Ranch Freedom Alliance
Farm-to-Consumer Legal Defense Fund
Sustainable Food Center
Texas Organic Farmers and Gardeners Association
Weston A. Price Foundation

For more information, please contact Judith McGeary at 512-243-9404 or Judith@FarmAndRanchFreedom.org