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Hoge, Paul

From: Smith, Catherine [SMITHCATH@ecu.edu]
Sent: Monday, September 28, 2009 10:36 PM
To: Hoge, Paul; irrc@irrc.state.pa.us
Cc: irrc@irrc.state.pa.us
Subject: comment--proposed new milk sanitation regulation

RECEIVED
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DEPARTMENT OF AGRICULTURE
REGULATORY
INVESTIGATION

To: Pennsylvania Department of Agriculture (PDA)
Bureau of Food Safety
Division of Milk Sanitation
2301 North Cameron Street
Harrisburg, PA 17110-9408

Attention: Paul Hoge

From: Catherine F. Smith
246 Brush Mountain Road P. O. #132
Spring Mills, PA 16875

Date: September 28, 2009

Re: Comments and Questions relative to proposed new milk sanitation regulations published in the Pennsylvania Bulletin, Doc. No. 09-1402, August 1, 2009.

Dear Mr. Hoge:

I support all comments made by Brian Snyder, Executive Director, Pennsylvania Association for Sustainable Agriculture (PASA). Especially, I support sections #1, 2, 5, and 9 of his comments (copied below), for three reasons.

First, I know directly the economic importance and cultural significance of small dairy farms including raw milk producers in central Pennsylvania, where I reside and vote. Especially Amish farming families help keep agriculture alive in central Pennsylvania by their growing numbers engaged in raw milk dairying. Second, I know indirectly about the potential market for raw milk in other states. In North Carolina where I work temporarily for periods of each year, healthy-food advocates prize raw milk products, which are not available locally. Newspapers there report that consumer cooperatives travel to other states to purchase raw milk products for families in North Carolina. Pennsylvania could supply them. Third, Pennsylvania should set the national standard for public policy on this matter. Here, the international organic gardening and farming movement took root in the US with Walnut Acres and Rodale Farms in the 1940s. Here the 'pure food' movement originating at The Pennsylvania State University led to governmental food safety regulation in the 1930s. Pennsylvania should lead again now with well-considered standards and regulations for raw milk production.

I strongly agree with PASA director Snyder, who says "Some of our most innovative dairy farmers need the support of a government that wishes to see them succeed, not only by increasing sales but also by assuring the public of the safest, most wholesome food products possible. Pennsylvania as a whole is benefiting tremendously from the influx of interest in raw dairy products, both from among our own population, and also from consumers in neighboring states who come here to buy the products they seek and for which they are willing to pay very good money. It is time for PDA and the Pennsylvania state legislature to stand with our smaller dairy farmers in particular in acknowledging one of the most promising trends to come along in many years."

Sincerely,
Catherine F. Smith

1. Further Extension of Public Comment Period and Additional Hearings

It was refreshing to read in the stated Purpose of the new regulations, as published in the Pennsylvania Bulletin, PDA's impression that "The regulated community is quite diverse, with the size and sophistication of dairy production and processing operations

varying dramatically." But this introduction seems to be where such awareness - or at least any accommodation to it - stopped rather abruptly.

Pennsylvania certainly is home to one of the most diverse agricultural communities in our nation - if we are not, in fact, the top of the list in that regard. In our survey of member dairy farmers who would be impacted by the proposed regulations, we have found profound confusion about what is happening and how folks should proceed to have their voices heard in the process. We find it unacceptable that information has been made available only via the Internet, particularly when a not-insignificant portion of the Commonwealth's dairy farmers have poor access to such information, and indeed, very many live with cultural inhibitions or restrictions in this regard.

We also note that, while one hearing on these new regulations has been held, the notice period was very short, the hearing was held in a month when most farmers are extremely busy, and the topics covered at that hearing were, by clear public notice, to be very restrictive. As your notice of the hearing stated, "This hearing will be focused only on the proposed changes to bacterial standards - and not on the entire proposed new regulation." The distance involved for many farmers to attend that hearing, along with the relentless schedule of most dairy farmers, were also limiting factors for those wishing to know more about the intended regulatory changes.

We propose that a) the public comment period on this proposed rulemaking be extended an additional 30 - 60 days, to as late as the end of November, b) that open, free-ranging public hearings be scheduled in three locations across the Commonwealth, in the eastern, central and western regions specifically, and c) that "redline" versions of the new regulations, highlighting all significant changes being proposed, be made available, both online and in hardcopy, to whomever should request them in advance of those hearings. PASA does hereby offer to help publicize, and even to co-host such regional information sessions, should they occur. We also welcome the participation and assistance of other agricultural organizations that may have a stake in the outcome of such hearings.

2. Prohibition of "False or Misleading Material" from Product Labels.

With respect to §59a.14(f), PASA supports the idea that blatantly incorrect information should neither be represented on product labels of any kind, nor used in the marketing of food products whatsoever. However, we heavily doubt the ability of PDA to be a fair arbiter in every possible question of what might constitute information that is indeed "false" or "misleading." This is particularly the case since disputed scientific opinion or even spiritual considerations may be the basis for such determinations - or those to the contrary. The mere mention of "false or misleading material" sounds like tabloid-speak and, depending on how this language is applied by future PDA administrations, could easily reopen the wounds from recent years within the farming community and dairy industry that have not entirely healed. We believe that the burden of PDA to make such determinations, now and in the future, should be a bit steeper than the proposed language would seem to demand.

We propose that the language of this section, and other sections where the "false and misleading" designation occurs (e.g. in Subchapter F), be changed to read "Material, marks, words or endorsements that are blatantly false according to prevailing scientific opinion and common public understanding, or that intend to mislead the consuming public in a grossly negligent manner, are prohibited." Language included as such will restore a proper perspective to the role of PDA in determining what is true or false in our society, especially with regard to the food we eat, while not at all diminishing the department's ability to maintain the safety and security of the food supply as defined elsewhere by the statutes of this nation and commonwealth.

5. Location of Packaging-Related Facilities and Equipment for Raw Milk Bottling

The proposed regulations governing packaging-related facilities and equipment, which occur identically in §59a.404(f)(1-2) and §59a.410(a-b), are insufficient in addressing current realities on farms with raw milk permits. First, however, we'd like to ask, is it really necessary to repeat this language, and in reverse order? We think it more suitable to address these issues under one section only, probably the latter. Other issues here are much more complex, as indicated in the following discussion.

Anyone trying to evaluate these sections needs to understand that when regulations for raw milk sales were first implemented, and for most of the time since then, there were two

general kinds of containers used for such sales - those that were owned, returned to, washed and re-used by the farmer (i.e. the "permit holder"), and those brought in by the "customer" for use and reuse by themselves as they saw fit. These categories still apply, but a third category of containers has gained favor among many, if not most, raw milk permit holders in recent years, i.e. the pre-sanitized, one-time-use plastic jug that is sold by the farmer to the consumer along with the milk. This third category of container is not explicitly addressed by the proposed rulemaking at all.

For the sake of simplicity - not requiring much additional regulatory language - we feel that pre-sanitized, one-time-use plastic jugs should be explicitly designated as "containers owned by the customer," since they are in fact intended for ownership by the customer once the milk has been sold. Most significantly, this would mean that farmers using this method of packaging and selling raw milk would not be subject to the extra requirements as specified under the "containers owned by the raw milk permit holder" section. This single item alone would likely have a greater positive impact on public safety than any of the other proposed changes to the regulations because it would discourage direct, public access to the milk rooms and bulk storage tanks on the farms of permit holders. Fortunately, it would also avoid requiring such farmers to have costly, separate bottling facilities and equipment in order to fill these one-time-use, customer-owned jugs themselves.

9. "Illegally Produced" Raw Milk Products

§59a.416 is without much doubt the most controversial section of the proposed rulemaking, signaled both by its strong language and ominous appearance right at the end of this very long document. It would be hard to get more negatively-charged words in a single heading than "Enforcement: Seizure, condemnation, denaturing or destruction of raw milk; exclusion from sale." Also, while the phrase "illegally-produced raw milk products" appears in this section three times, with various consequences noted, we find no specific definition of that term here or elsewhere. Yet, our reading of this section as a whole is that milk products may be seized, condemned, denatured, destroyed or excluded from sale if, and only if, the farmer is not following the provisions of these proposed regulations and/or the Secretary has reason to believe they are unsafe.

By itself, this section might have enough wiggle room for Pennsylvania farmers, who are already working hard to meet the growing demand for raw, value-added dairy products other than fluid milk and aged cheese, to continue their rapid growth in this regard. We therefore hesitate to draw attention to and challenge what seems to be a carefully worded statement. Perhaps this was intended to walk a fine line between complying with federal expectations and supporting dairy farmers who, despite widespread economic hardship, are often benefiting from this positive trend in the marketplace. But in our daily interactions with such farmers, we hear again and again about the desire they have to operate more in the open, without needing to hide or mischaracterize their sales activities.

Some of our most innovative dairy farmers need the support of a government that wishes to see them succeed, not only by increasing sales but also by assuring the public of the safest, most wholesome food products possible. Pennsylvania as a whole is benefiting tremendously from the influx of interest in raw dairy products, both from among our own population, and also from consumers in neighboring states who come here to buy the products they seek and for which they are willing to pay very good money. It is time for PDA and the Pennsylvania state legislature to stand with our smaller dairy farmers in particular in acknowledging one of the most promising trends to come along in many years.

It is our understanding that Pennsylvania statutes do not prohibit any individual from purchasing milk, or using milk from a cow he/she owns, and making with it the desired products. It is also true that other persons can be hired without limitation to make such products on behalf of an owner of milk or cow for his/her own use. We therefore now have a tremendous opportunity to clearly state in these regulations what is technically true, that permit holders who enter into and hold private contracts on behalf of individual consumers, where said contracts clearly establish the prior ownership of the cow and/or milk involved, and the intentions with regard to the products desired for manufacture, may provide such products to these individuals on the basis of their private agreement.

Appropriate statements can be added, as advisable, to specify the conditions under which contract files are to be confidentially maintained, and/or to hold the Commonwealth of Pennsylvania harmless in the event of unanticipated illness or other problems traced to

such products.

We would not expect such clear statements in regulation to satisfy everyone, nor to eliminate the belief held by some that such private contracts are not within the purview of the Commonwealth to regulate - this opinion deserves more scrutiny and a fair hearing in the legislature or appropriate court of law someday in the future. However, we do believe that PDA, along with Pennsylvania consumers and raw milk permit holders, would substantially benefit from a clear declaration of how value-added, raw dairy products can be "legally produced," as opposed to providing unclear, unconstructive instructions that will be almost impossible to enforce regarding "illegally-produced" raw milk products. We also believe that such an effort would be more in keeping with the dual purpose as stated in this proposed rulemaking: i.e. to protect the public and to facilitate the production and sale of wholesome dairy products in the Commonwealth of Pennsylvania.