

Amanda Rose

June 9, 2008

Senator Dean Florez
1800 30th Street, Suite 350
Bakersfield, CA 93301

Dear Senator Florez,

I appreciate your work on the new raw milk legislation. I am a raw milk drinker in your district, I have been a supporter of yours since your first Assembly run, and I have followed the raw milk legislation closely. In particular, I appreciate the explicit mention of outsourcing in the proposed SB 201. Outsourcing from non-raw dairies should be illegal in California but, unfortunately, SB 201 is not yet airtight on this issue.

Loopholes

Several areas of the Food and Ag Code still allow a raw milk processor to purchase product from dairies producing milk intended for pasteurization and yet produce a raw product:

- **Butter and cheese.** The Food and Ag Code for both butter and cheese make no mention of creating the products with “certified raw milk” or even “market milk.” It would be possible for a certified raw dairy to purchase milk intended for pasteurization and use it to make a raw butter or cheese and not be in technical violation of California statutes.
- **Pet Food.** Implied in the dairy section of the Food and Ag Code is that the dairy products are for human consumption. California has separate laws regulating pet food production. Since it is possible for a dairy to produce dairy products as pet food, it is also possible for them to use a non-raw dairy for this purpose. There is the potential for bottling equipment at the certified raw dairy to become contaminated with “pet food” dairy products from a non-raw dairy.
- **Colostrum.** Colostrum is not regulated as a dairy product, so it would be possible to purchase the product from dairies producing milk intended for pasteurization. When that outsourced colostrum is brought to the raw dairy, it could cause contamination of the certified raw milk products. (Colostrum was part of the product mix in the 2006 raw milk recall for E. coli 0157:H7.)

Solution

A simple approach to closing these loopholes is to require raw dairy processors to process only certified raw milk or products made from certified raw milk.

The Food and Ag Code has a provision written in a similar spirit (Part II Section 35834): Raw market milk and pasteurized market milk cannot be bottled in the same processing facility (with some exceptions, see full text below). The intent is to limit contamination of the pasteurized milk. By the same token, language should be added to Part 2 Chapter 2 of the Food and Ag Code that does not allow a facility to process both certified raw milk and products made from something other than certified raw milk.

Here is possible language:

Certified raw milk shall not be processed in a facility that processes any product that is not derived from certified raw milk.

Impact: Colostrum

Since Organic Pastures has stated that it will no longer be purchasing product from off-site, the legislation should have little impact on the two raw dairies in California. The exception is the the colostrum and colostrum-containing products that Organic Pastures produces. Neither of these products are made with certified raw milk. Colostrum is not regulated as a dairy product.

Because colostrum *does* come out of a cow, perhaps the legislation could allow colostrum to be bottled by the certified raw milk processor if it meets the standards of certified raw milk.

The language could read something along the lines of this:

Certified raw milk shall not be processed in a facility that processes any product that is not derived from certified raw milk. An exception is that the facility may also process colostrum if the colostrum is produced by cows at a certified raw dairy and the colostrum meets standards required of certified raw milk.

With little impact on the dairies (except for increased testing of colostrum products), this language is a “win” for consumers. Upstart raw dairies could not use the legal loopholes to purchase milk from off-site.

Penalty

SB 201 makes any violation of its regulations a misdemeanor. Putting the public at risk of tuberculosis by purchasing product from a herd that does not test regularly for TB surely demands more than a misdemeanor penalty. If my child were sickened with tuberculosis because of illegal outsourcing, I would want the penalty to be greater than the penalty for tagging a schoolhouse. My suggestion for the language, then, is the following:

Certified raw milk shall not be processed in a facility that processes any product that is not derived from certified raw milk. An exception is that the facility may also process colostrum if the colostrum is produced by cows at a certified raw dairy and the colostrum meets standards required of certified raw milk. Violation of this provision is a felony.

Thank you for your consideration of this change to SB 201. This amendment would further protect my own raw milk-drinking family and have little impact on producers' ability to supply Californians with certified raw milk. Please feel free to contact me if you have any questions.

Sincerely,

Amanda Rose, Ph.D.

cc: Mark McAfee, Organic Pastures Dairy Company
Ron Garthwaite, Claravale Farm
Michael Payne, Ph.D., Western Institute for Food Safety and Security
Stephen Beam, Ph.D., California Department of Food and Agriculture

REFERENCES FROM THE FOOD AND AGRICULTURE CODE

(1) Raw and pasteurized milk co-mingling

FOOD AND AGRICULTURAL CODE SECTION 35834

35834. Raw market milk and pasteurized market milk shall not be bottled in the same milk products plant for sale and distribution within a city or county which maintains an approved milk inspection service, except where an official representative of such approved milk inspection service is present during the period of handling, processing, or bottling such market milk, or except in those milk products plants where all market milk which is received meets the requirements for grade A raw milk.

(2) Butter

Note that in the butter portion of the Food and Ag Code, that there is no reference to raw butter made from certified raw milk. There is no reference to “market milk.”

FOOD AND AGRICULTURAL CODE SECTION 37131-37164

Butter grades; Butter standards

37131. All butter which is sold or distributed in package form, including such butter which is received from out-of-state points, shall be classified into grades which indicate its quality and shall be labeled and advertised by the use of one of the following designations:

- (a) First quality.
- (b) Second quality.

37132. First quality butter is butter which scores not less than 92. The minimum requirements for first quality butter are as follows:

- (a) It shall be fresh, sweet and clean in flavor if of fresh make, or sweet and clean if storage.
- (b) The body shall be firm.
- (c) The color shall be either light or medium and shall be uniform, except that it may show small curd specks or slight waviness.
- (d) The salt shall be either light or medium, and free from grittiness.
- (e) The package shall be clean, uniform, and sound.

(f) The defects in body, color, salt, and package shall not total over one point.

37133. Second quality butter is butter which scores below 92, but not less than 90. The minimum requirements for second quality butter are as follows:

(a) It shall be fresh and fairly sweet and fairly clean in flavor if of fresh make or fairly sweet and fairly clean if storage.

(b) It may also be flat or lacking in flavor.

(c) The body shall be fairly firm, but may show slight defects in grain and texture.

(d) The color may be either light or medium and shall be fairly uniform, but may be wavy.

(e) The salt may be either light, medium or high, and shall be fairly uniform, but may be slightly gritty.

(f) The package shall be clean, uniform, and sound.

37134. Butter which scores less than 90 shall not be sold or served to consumers. Such butter when sold shall be in bulk packages which contain not less than 30 pounds, and are labeled "for cooking and baking purposes only."

37161. Butter is the product made by gathering the fat or fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents.

37162. Butter shall be clean and nonrancid and shall contain not less than 80 percent of milk fat.

37163. Butter may contain salt or a harmless coloring matter.

37164. Butter flavored with spices, condiments, garlic, chives, herbs, or other flavoring may be sold in whipped or solid form, provided the product meets the following requirements:

(a) The butter, before flavoring, meets all of the requirements for USDA 93 score (AA Grade) butter.

(b) The principal flavor is identified on the container with equal prominence with the word "butter."

(c) The principal display panel has a list of all ingredients in the descending order of predominance, and identifies the name and address of the manufacturer.

(d) The product is processed in a licensed milk products plant.

(e) The product contains no preservative.

(3) Cheese

Note that in the butter portion of the Food and Ag Code, that there is no reference to the milk from which the cheese is made.

FOOD AND AGRICULTURAL CODE SECTION 37401-37601

37401. Varieties of cheese are foods that conform to the applicable standards of identity provided for in Part 133 of Title 21 of the Code of Federal Regulations. Varieties of cheese that do not conform to these standards are special varieties and shall conform to the standards of composition adopted by the secretary by regulation and that are not inconsistent with the standards of identity in Part 133 of Title 21 of the Code of Federal Regulations.

37402. Cheddar cheese is a food that complies with Section 133.113 of Title 21 of the Code of Federal Regulations.

37403. Washed-curd cheese is a food that complies with Section 133.136 of Title 21 of the Code of Federal Regulations.

37404. Colby cheese is a food that complies with Section 133.118 of Title 21 of the Code of Federal Regulations.

37405. Monterey cheese or monterey jack cheese is a food that complies with Section 133.153 of Title 21 of the Code of Federal Regulations.

37406. High-moisture jack cheese is a food that complies with Section 133.154 of Title 21 of the Code of Federal Regulations.

37407. Cream cheese is a food that complies with Section 133.133 of Title 21 of the Code of Federal Regulations.

37408. Cream cheese with other foods is a food that complies with Section 133.134 of Title 21 of the Code of Federal Regulations.

37409. Pasteurized neufchatel cheese spread with other foods is a food that complies with Section 133.178 of Title 21 of the Code of Federal Regulations.

37410. Pasteurized process cheese is a food that complies with Section 133.169 of Title 21 of the Code of Federal Regulations.

37411. Pasteurized process cheese food is a food that complies with

Section 133.173 of Title 21 of the Code of Federal Regulations.

37412. Pasteurized cheese spread is a food that complies with Section 133.175 of Title 21 of the Code of Federal Regulations.

37413. Cold-pack cheese is a food that complies with Section 133.123 of Title 21 of the Code of Federal Regulations.

37414. Cold-pack cheese food is a food that complies with Section 133.124 of Title 21 of the Code of Federal Regulations.

37501. Dry curd cottage cheese is a food that complies with Section 133.129 of Title 21 of the Code of Federal Regulations.

37502. Cottage cheese is a food that complies with Section 133.128 of Title 21 of the Code of Federal Regulations. Lowfat cottage cheese is a food that complies with Section 133.131 of Title 21 of the Code of Federal Regulations.

37503. For the purposes of this article, dry curd cottage cheese or cottage cheese made from goat's milk are special varieties of cheese.

37504. If dry curd cottage cheese or cottage cheese is made from certified raw milk, it shall be labeled as being made from certified raw milk.

37505. The packaging of dry curd cottage cheese or cottage cheese, and the addition of milk products to dry curd cottage cheese to make cottage cheese shall take place only in a licensed milk products plant.

37601. Any cheese sold in this state shall be labeled in compliance with Title 21 of the Code of Federal Regulations.