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## **New York State 2011 Legislative Priorities and Recommendations**

### **Issues Requiring Legislative Action:**

#### **MILK DEALER LICENSING – ILLEGAL RETAILER TRANSPORTATION OF MILK**

New York State requires persons whose intent it is to distribute and transport milk for resale at retail level to obtain a milk dealer license. There are exemptions in this law for retail locations/businesses who are located far from population centers and cannot have milk delivered. The exemption allows retailers who do transport milk for resale with out having to obtain a milk dealer license so long as the milk's temperature does not exceed 45 deg. F. and do not sell more than 3,000 lbs. of milk per month, (equal to 347 gallons).

In the past decade, discount wholesale food clubs have started to include milk for sale. This has enticed small and mid size food retailers to purchase milk at these locations when they purchase other food and non-food items. When purchases are made at the food clubs, in most situations, the retailer uses a personal vehicle or non-refrigerated van to transport the products back to their stores. These retailers in most cases are purchasing more milk than the allowable maximum per month, (3,000 lbs.).

Article 21, Section 257-b of the Agriculture and markets Law Relating to MILK CONTROL, which expresses the exemption in pounds is arbitrary and not easy to identify when inspection takes place for proper enforcement of milk dealer licensing.

The definition of a licensed milk dealer should be more specific and based on a recognizable quantity other than pounds. Instead of recognizing the need for the issuance of a milk dealer license at 3,000 lbs. per month, the quantifiable limit should be set in gallons per transaction. This would allow for easier inspections to identify those who should qualify and those who should be exempt including most non-commercial and household purchases.

Twenty-eight gallons would represent a reasonable quantity per purchase based on other existing Agricultural laws. It also represents a small retail location's approximate average sales per day of milk. Less sales should not qualify for automatic mandatory licensing, more sales certainly should require milk dealer licensing.

#### **THEREFORE WE RESPECTFULLY RECOMMEND:**

Law be introduced and passed amending Agriculture and Markets law Article 21 Section 257-b to reflect a more reasonable solution to this situation by changing the 3,000 lbs. per month to 28 gallons per purchase. This would mandate any reasonable retailer or person whose intent is to transport and distribute milk for retail sale be properly licensed and subject to inspection and reporting of sales. It would also allow for better tracking and immediate notification by the Agriculture Department in the event of a terrorist attack of tampering with the raw milk supply. Finally it would discourage transportation in private vehicles not

properly suited for commercial delivery and would help keep the quality of milk at the proper temperature of 45 degrees or less.

A change in this law would not affect purchases of food service locations, schools, hospitals, nursing homes or day care centers, only retailers whose intent is to bypass normal legitimate milk distribution systems.

A change in law that would mandate all food that is perishable to be transported in commercial vehicles with mechanical refrigeration equipment that would keep all products at 45 deg. F. or less at all times.

## **RAW MILK SALES**

New York State currently allows the sale of raw milk by dairy farmers on farms only. Dairy farmers have to comply by applying for a permit at no cost and have to notify the public through proper signage notification. Raw milk is not pasteurized.

Cornell University Department of Food Science Milk Quality Improvement Program reports that decades ago, before pasteurization of milk was mandated by government agencies, milk contaminated with harmful bacteria was linked to several serious diseases including typhoid fever, diphtheria, septic sore throat, scarlet fever, dysentery, Q-fever, and other kinds of food borne illness. Other diseases, including tuberculosis and undulant fever (brucellosis), can be transmitted to people in raw milk from diseased animals. Milk pasteurization was initially designed to kill the bacterium that caused tuberculosis, considered to be the most heat resistant pathogen found in raw milk. As recently as the 1960's the temperatures at which milk is pasteurized was increased slightly to insure destruction of the bacteria, *Coxiella burnetii*, which causes Q-fever.

In addition to the hazards historically associated with raw milk, scientists and some unfortunate consumers have recently become painfully aware of some new strains of harmful bacteria, called "emerging pathogens," which also can get into milk and make people sick -- or even die. Some of these names may sound familiar because the same harmful bacteria can be associated with several different kinds of food; they include *E. coli* 0157:H7, *Listeria monocytogenes*, *Salmonella typhimurium* DT-104, *Campylobacter jejuni*, and *Yersinia enterocolitica*. Some of these bacteria, such as *E. coli* 0157:H7, are particularly dangerous to young children, the elderly, and people with compromised immune systems, and can cause death or serious, life-long adverse health conditions. Others, including *Salmonella typhimurium* DT-104, have shown alarming resistance to many commonly used antibiotics, so infections caused by these bacteria are very difficult to treat.

## **THEREFORE WE RESPECTFULLY RECOMMEND:**

Given the dangers inherent in raw milk consumption, it is our association's position that the sale of raw milk should not be expanded or allowed to be sold off dairy farm property for the safety of consumers.

## **RETAIL FLUID MILK PRICE CONTROL**

In 1991, New York State passed emergency legislation allowed by NYS Department of Agriculture and Markets law, (known as Rogers-Allen Provision) (see appendix for copy of law) to give a temporary price increase for New York State dairy farmers. However, at the same time the legislature agreed to a completely new law, (not part of Rogers-Allen) to counter at retail the extra money given to dairy farmers, which in effect, established a retail price maximum for fluid milk products. The law sets the retail fluid milk price from exceeding 200% of the cost only of raw milk prices paid to farmers without justification. The basis at which the 200% threshold is set at is arbitrary, with no relationship to the actual increasing non-milk costs of energy, processing, distribution and retail merchandising. In September of 1991, dairy farmers voted to discontinue their emergency price relief, which should have removed the need for the retail milk price threshold. The retail milk price threshold law was written outside of Ag. and Markets law, (in NY State General Business law), to

continue without the emergency dairy farmer price law in effect, a major oversight of the law by the authors and industry.

Price controls have been harmful in the past, and the effects of this are damaging to the entire dairy industry from the farmer to consumer. The ability to price a product depending on supply and demand is necessary for product category growth and survival in a free trade economy.

In 1990 the New York State Department of Agriculture and Markets reports there were 47 milk pasteurizing plants located in the State, in 2007 there were 28. Within New York City, only one significant milk plant (serving the school system) exists. The difference represents a decrease of over 35% in the number of milk companies and reduced competition in the marketplace.

## EFFECTS OF THE LAW

With the State establishing a maximum retail price for milk, retailers are less inclined to put milk on sale and not use milk as a lost leader item, (lost leader item being one that is sold close to cost to entice consumers into the store where profit can be made up from purchases of other items). The reason retailers might not put milk on sale as often is because the law forces retailers to change their milk prices to follow the farm prices each month. The uncertainty of raw milk pricing does not allow retailers to average retail milk profits out over the course of a year to allow sales as often.

The State Agriculture Department announces to retailers each month the mandated retail price threshold. This is done as a service to help with compliance of the law. It also provides incentive to retailers to raise prices to the highest limit set by law instead of allowing competition to keep the price lower for consumers. In fact, the retail prices charged to consumers for milk in New York State could be actually higher than what they would have been in a free competition marketplace without this law. The law's goals are not doing what it was originally intended to do. Higher retail prices of milk reduce sales. Milk sales in the Northeastern United States have dropped dramatically from 218.6 in 1993 pounds per capita to 192.1 in 2006 as reported by the State Agriculture Department.

Federal law sets the price paid for milk to farmers by milk companies. Traditionally milk companies have in the past paid dairy farmers extra dollars (called a premium) over and above the Class I price established each month by the USDA. Premiums are paid for various reasons such as quality and geographic proximity to the milk plant.

Because milk processors are mandated to pay a minimum price to dairy farmers for milk combined with the cap on retail prices, profit margins are squeezed by inflation every year. With decreasing profit margins, lower voluntary premiums are paid to dairy farmers thus reducing their potential income. Milk companies cannot afford to pay the dairy farmer premiums because the announced threshold milk price does not take into account extra costs of doing business other than the raw cost of the milk. In 2005 the increase in energy costs alone makes the threshold price intolerable.

Because of the lock step relationship of the price threshold for milk and the monthly change in dairy farmer prices set by the federal government, milk processors and distributors are caught in the middle of the price squeeze. They have to pay a guaranteed minimum price for milk to farmers at one end. At the other end, retailers force margins out of processors when farm prices are lower. This is especially harmful when milk processors need to pass along increased costs of doing business such as research and development, promotion and marketing, labor, insurances, energy, plant and equipment upgrades. Retailers will insure their profit margins are kept in tact forcing their milk supplier to continually reduce their profit margins when extra costs are attempted to be passed along or when the federal milk price decreases dramatically.

Retailers allocate shelf space based on consumer demand and profitability. Demand for milk has decreased consistently over the past few decades. Profitability has been reduced for milk in NY State because of the threshold

law. Shelf space is reduced and allocated to other higher profit refrigerated beverage items. Less shelf space for milk means lower sales. Lower sales for milk hurt dairy farmer income, milk processor income and the well being of our society when inferior nutritional beverages are substituted.

Allowing free competition among retailers to set the price of milk and not by the State of New York will guarantee consumers with the lowest price at the best possible quality.

**THEREFORE WE RESPECTFULLY RECOMMEND:**

1. The complete repeal of those sections of the General Business Law that regulate the retail price of fluid milk products. The New York State Department of Agriculture and Markets adopt regulations to promulgate the law.

### **WHOLESALE MILK CUSTOMER PAYMENTS**

Licensed NY State milk processors and distributors continue to be confronted with wholesale customers who decide to switch suppliers and not pay their outstanding wholesale delivery invoices. In many situations the wholesale customer has been extended long term credit and has accrued substantial dollars owed to their milk supplier.

In 2004 a New York State law was passed that was designed to help alleviate the problem. The bill contained language that made it mandatory for wholesale accounts who decide to switch to a new milk distributor supplier to provide 7 days notice and make payment in full to their current company for outstanding debt before actually switching to a new supplier.

The law has helped some licensed milk distributors collect outstanding debt on invoices, although for the most part because of weak penalties the problem continues and is growing. Efforts have been made by the NYS Department of Agriculture and Markets to review apparent violations brought before them and enforce the law with some success as well.

Unfortunately due to the weak penalties for not complying with the law wholesale accounts have less to lose by being fined than paying their final invoices. In situations where credit is used as a competitive tool, licensed milk distributors are not utilizing the law effectively by reporting wholesale accounts who have not complied with the law.

To be more effective and successful an effort should be made to amend the law to be more self policing and or more strict penalties applied to the wholesale account to resolve and work out the balance owed with their milk supplier.

There are many amendment options that could be considered. The strongest amendment supported by our association's legislative committee is to amend the law to not allow delivery to a new wholesale customer who hasn't resolved their outstanding debt with their old milk supplier. This can be accomplished by forcing penalties on the new supplier should they take new account who hasn't settled their past account to satisfaction. Penalties could include stiff fines and ultimately revocation of their milk dealer license. The law would become self policing and more effective for fear of penalties etc.

**THEREFORE WE RESPECTFULLY RECOMMEND,** The NY State Legislature consider amending the law with these options:

- a. Mandate the retailer pay C.O.D. to the new supplier until the issue/outstanding invoices are resolved.
- b. License all wholesale purchases of milk. Or, tie in amendments to include retail food permits already issued by the Ag. Dept. with final payments.
- c. Mandate only 15 days of credit is allowed for all wholesale milk customers.
- d. Impose higher fines than the current \$300.00 fine for violation of the law.

## **MILK DEALER LICENSING – VENDING MACHINE OPERATORS EXCLUSION**

New York State requires any company or person transporting milk for resale, (excluding those that do not purchase more than 3,000 lbs. for said purpose in one months time) to obtain a milk dealer license. In 2003 New York State passed law that excluded vending machine companies from having to obtain a milk dealer's license to transport and sell milk as contained in:

Agriculture Law, Article 21, Section 257,

Par. 5. Any person who sells food and beverages through vending machines shall be exempt from the licensing requirements provided that such person (a) sells no milk in bulk or in containers that are greater than one pint in size; (b) sells no milk other than that purchased or received from a duly licensed milk dealer, or a milk dealer exempted by official order of the commissioner from the license requirements of this article; (c) does not operate a milk pasteurizing plant; and (d) is subject to those provisions of the state sanitary code that regulate the sale of food and beverages through vending machines.

New York State Dairy Foods, Inc. and other organizations opposed passage of this law. The intent of milk dealer licensing is to allow the State to track milk sales for statistical purposes, allow for organized recall if milk products are tampered with or because of a food-born illness disease causing sickness, orderly distribution of milk products and prevent defaults to dairy farmer for payment of raw milk production.

Milk dealer licensing should be enforced on any person or company engaged in the transportation of milk for resale. Since the inception of the change in the exemption of milk dealer licensing of vending machine operators, important statistical information has not been retrieved by the Agriculture Department leaving a void in collecting information necessary for marketing of milk. Proper inspection of vending companies transporting milk has not been conducted by the Agriculture Department due to the lack of licensing. Milk is a perishable food product susceptible to high temperature damage resulting in less code shelf life for the product. Vending machine operators do not have the necessary refrigerated transportation vehicles to keep milk at the proper minimum serving and storage temperature set by the State, (45 deg. F.)

County health departments are responsible for inspection of vending machine company's food preparation and transportation vehicles. Some counties in NY State do not have a Health Department and rely on the State to conduct the necessary inspections. Additionally, many counties do not inspect trucks or have the necessary training or information to properly oversee the distribution and sales of milk products.

**THEREFORE WE RESPECTFULLY RECOMMEND:**

Repeal of those sections of Agriculture and Markets law that exempts vending machine companies from milk dealer licensing.

## **RECOMBINANT BOVINE SOMATOTROPIN rBST**

Biotechnology is a large and growing industry in the United States. Agriculture biotechnology is an even faster growing segment with a 10% increase in U.S. based companies in 1993, accounting for 10% of the total biotechnology industry. New York State is a leader in the research, development and use of food-related biotechnology products and can benefit economically from maintaining its leadership.

The FDA has approved rBST (recombinant bovine somatotropin) that was designed to help increase milk production in dairy cows. Increasing efficiency with new tools such as rBST on farms is important for farmers and is advantageous for consumers. The FDA has found milk from supplemented cows to have the same nutritional

value and composition as milk from unsupplemented cows. Every credible scientific and health organization along with many very reputable individuals in these fields of work in the U.S. has concurred with the FDA.

The FDA further concluded that under the Federal Food, Drug and Cosmetic Act the agency did not have the authority in this situation to require special labeling for milk from rBST treated cows. To label such products unnecessarily alarms consumers and suggests there is difference when, in fact, none exists.

Opponents of Agriculture biotechnology have launched a campaign of misinformation to turn consumer opinion against such worthwhile products. As a manifestation of their broad agenda to restrict food biotechnology products, opponents have targeted rBST for mandatory labeling legislation in the New York State Legislature.

**THEREFORE WE RESPECTFULLY RECOMMEND:**

1. The New York State Legislature supports the agricultural biotechnology industry by taking a leadership role in the continued research and development of beneficial products and processes.
2. The New York State Legislature oppose mandatory labeling of all consumer products produced with technologies such as rBST that have been approved by FDA or other federal regulatory agencies.
3. The New York State Department of Agriculture and Markets and state legislators support the voluntary labeling at retail of milk produced on farms from cows not treated with supplemental rBST as provided for in guidelines by the FDA.

### **BOTTLE BILL REQUIREMENT EXEMPTION FOR MILK PACKAGING**

We oppose any changes in the current requirements for beverage container deposits or new bottle bill expansion or amendments. We also oppose the inclusion of milk packaging to any bottle bill proposals.

The transportation of trash should be a one way street originating from the manufacturer, to distributor, retailer, consumer, curbside recycling bin and eventually to the recycling company. Trash should not be allowed to re-enter retail locations where fresh food is sold. The potential for cross contamination of harmful contamination between fresh food sold and garbage is high.

Milk and dairy products are perishable food products highly regulated by both federal and state agencies. There are specific regulations and laws that do not allow delivery vehicles (milk delivery trucks) to come into contact with garbage, poisonous non-food products or food products that could contaminate fresh milk and dairy products. Empty, dirty, smelly, bacteria laden, used milk packaging could easily contaminate the inside of a delivery vehicle used for new, fresh and clean dairy product packaging should they be required and be responsible for the collection of returnable packaging. Including milk packaging in any bottle bill would pose a health risk for our state's citizens that drink milk, including the most susceptible, children!

Milk distributors sell other beverages other than fluid milk. Included in this list of beverages are fruit drinks, bottled water, juices and iced teas. This portion of distribution can represent between 5 and 10 percent of distribution revenue. These products return higher profit margins per unit than milk products and contribute significantly to the bottom line company profit structure. Any legislation passed to include additional glass or plastic beverages for returnable deposits would create huge increased costs of doing business for milk distributors. These costs include packaging label changes, accounting system overhauls, paper invoice changes, costs for transporting used containers, increased labor separation costs and reduced profit per unit.

It would be economically impossible for milk and dairy distributors to be responsible for the collection and return of milk packaging. Any new fees imposed on milk companies for collection and distribution of used packaging would severely put our state's milk processors and distributors at an economic disadvantage and drive the few remaining

milk plants in our state to go out of business. This disadvantage would ripple down to dairy farmers who rely on local milk processors and distributors to purchase raw milk from them.

All milk packaging including glass, plastic and plastic coated cardboard is 100% recyclable. There is no need to require a deposit on milk packaging. Milk packaging is not a significant contributor to curbside litter as other beverage packaging and therefore should not be included in any bottle bill.

The majority of milk packaging sold today is in either plastic or plastic coated cardboard. Neither of these packages would allow for them to be returned, properly cleaned and reused. It would be impossible for these containers to be cleaned to the point where there would be no contamination from harmful bacteria.

Furthermore, any new bottle bill that would require all milk packaging to be refillable would be impossible for **all** milk companies in our state to comply with. There are only two milk companies in our state that sell returnable/reusable milk bottles. This accounts for a small percentage of their total milk sales and a fraction of total milk sales in our state. All other milk companies could not machine fit their plants to accommodate changes to comply with any law that would require returnable/reusable packaging.

We encourage state legislators to enact mandatory recycling laws in each county that would not require deposits placed on containers; move recyclables from residences to reclamation centers; allow counties to reap economic benefits from used containers to cover handling costs.

## **REGULATION CHANGE RECOMMENDATIONS:**

### **LARGE TRUCK ROADWAY RESTRICTIONS**

In 2008 the NY State Department of Transportation issued proposed changes that would limit local roadway access on central New York secondary highways for large trucks. These restrictions are illegal due to funding requirements by the federal government. In addition restricting large truck deliveries and usage of secondary highways is another example of government intervention that increases costs of doing business. Businesses of all sizes, regardless of type need complete access to all roadways in the state. Restricting usage is unnecessary unless there are safety concerns such as bridge weights and road conditions.

The New York State Department of Transportation should immediately rescind any proposed regulations that will limit usage of state highways by large commercial vehicles.

## **Issues Requiring Regulation Changes:**

### **BOTTLED WATER**

Current NY State Dept. of Health codes do not allow the processing of bottled water in processing lines unless they are dedicated only for that purpose. On a national level, the FDA does allow the use of non-dedicated lines for processing of bottled water. Many states currently allow companies that bottle milk to also bottle water. Other reasons and facts milk plants should be allowed to process water include:

a. NY State dairy plants regularly process many different types of beverages. Cleaning and sanitation guidelines are always in effect. They are inspected and checked regularly by the NY State Department of Agriculture and the NY State Department of Health. NY State milk plants have above average technology that can easily handle all sanitation requirements for bottled water.

b. In an emergency situation or crisis such as ice storms, floods, tsunamis, or other catastrophes, local milk plants spread throughout the State if allowed to bottle water could supply the public needs with clean bottled water quickly.

c. The Federal Drug Administration recently approved a new set of standards of identity that became effective on May 13, 1996. These standards provided companies with more specific processing technology guidelines for proper packaging and processing.

d. At the same time the new standards were adopted, the FDA ruled against a proposal to limit bottled water to dedicated lines. The FDA allows dairy companies the opportunity to bottle water in non-dedicated lines, New York State should allow it as well.

e. Dairy companies should have the same opportunity in NY State that neighboring competing states allow their businesses to bottle water in non-dedicated lines.

f. By allowing companies such as milk processors in NY State to bottle water in non-dedicated lines, we will be able to be a viable source of business and jobs for New Yorkers and supply bottled water to consumers at a competitive price.

**THEREFORE WE RESPECTFULLY RECOMMEND:**

The NY State Department of Health amend regulations currently prohibiting milk processing plants from processing bottled water in non-dedicated lines to allow these type of facilities to use non-dedicated lines and or fillers to process bottled water.

## **OTHER ISSUES OF IMPORTANCE**

### **UNIFORM REGULATION**

We support the USDA Federal Milk Market Order System as the recognized authority for the marketing of milk and payment system for dairy producers. We oppose any individual state that usurps the FMMO system by creating differences including hauling charges or the creating of Compacts to enhance producer revenue.

Milk processing plants distribute milk products throughout the State as well as in other states and are dependent upon uniform standards in order to be competitive in all areas.

It is imperative that regulations affecting the inspection, distribution and packaging of all dairy products be uniform at the broadest possible level.

**THEREFORE WE RESPECTFULLY RECOMMEND:**

1. That the uniformity of regulation provided by adherence to the Pasteurized Milk Ordinance (PMO) be mandated in New York state.
2. That this action specifically prohibits laws and regulation by other jurisdictions within the state that are not in conformance with the requirements of the PMO.
3. That there is total reciprocity among the states in the testing of milk and inspection of farms as specified in the PMO.
4. The New York State Attorney General take aggressive action to allow New York State processors and distributors the right to compete in neighboring states, whenever such states impede such competition.

## **THE EMPIRE STATE COUNCIL OF AGRICULTURAL ORGANIZATIONS**

Northeast Dairy Foods Association, Inc. is a member of the Empire State Council of Agricultural Organizations, Inc., (CAO). The CAO's membership is made up of all major Agriculture concerns and groups in New York State. Each year these individual organizations come to agreement on numerous agricultural issues important to our State's agriculture businesses and industries. These issues are outlined in a booklet of Legislative Recommendations and Policy Statements, available in early Spring each year.

With agriculture being New York State's number one industry, the well being of our state's economy rests greatly on the well being of the agriculture industry.

THEREFORE WE RESPECTFULLY RECOMMEND:

1. All New York State elected officials and legislators become aware of and support the 2011 Legislative Recommendations and Policy Statements as supported by the Empire State Council of Agricultural Organizations, Inc.

### **ANNUAL STATE & AGRICULTURE BUDGET**

Agriculture is New York State's number one industry. Within agriculture, dairy is the largest segment. It is important for our State to recognize and fund at adequate levels agriculture related projects that foster growth and economic development. In addition, passage of a well-balanced state budget on time is essential for our State's financial future.

THEREFORE WE RESPECTFULLY RECOMMEND:

1. New York State adopt a balanced state budget and one on time as prescribed by law.
2. Continued funding of dairy and related science/research programs that increase agri-business economic development of new dairy products, technology, productivity and business in New York State.
3. Support with adequate funding, the New York State Farm Viability Institute.
4. Support funding for renovation of Stocking Hall at Cornell University.

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