

State, dairies clash in court on raw milk regulations

Specialized dairies say new rules will destroy a beneficial market.

E.J. Schultz Bee Capitol Bureau

Originally published 2008-04-25

To its fervent supporters, raw milk is almost magical. It keeps colds and diarrhea away and can even cure asthma, they say.

But to state regulators, raw milk has a different sort of power: It can cause serious, even deadly, illnesses.

The debate moves to a San Benito County courtroom today, where a judge could decide whether the state can enforce new regulations that raw milk enthusiasts -- including a producer in Kerman -- say are unwarranted.

The outcome could have nationwide implications. The sale of raw milk is legal in 28 states. But supporters fear new limits -- like those proposed in California -- will reduce its availability.

"The regulators are watching it very closely to see how much they can get away with in California and then they're going to try to apply that all over the place," said Liz Reitzeg, a Maryland-based raw milk advocate.

Raw milk drinkers started watching California last year after Gov. Schwarzenegger signed legislation putting a limit on the amount of bacteria allowed in raw milk.

Organic Pastures Dairy Co. in Kerman and Claravale Farms Inc. in San Benito County sued the state, claiming the regulations would hurt business. The **dairies** -- the only raw milk producers in the state -- won an initial victory in March when Superior Court Judge Harry Tobias temporarily halted the new law.

Today, a judge will hear testimony and could issue a ruling either extending that freeze or letting the law go into effect.

The debate is mostly over science.

Some nutritionists believe that pasteurizing milk, or heating it, kills helpful bacteria that make milk easier to digest. In raw milk, these friendly

bacteria, known as probiotics, are kept alive. Once inside the human digestive tract, they can boost immunity, helping to combat colds, allergies and even asthma, enthusiasts say.

"If you kill the bacteria, you're taking away a lot of the benefits [of milk]," said Robert Irons, a nutritional immunologist and vice president of VE Irons Inc., a Kansas City-based dietary supplement company.

The trend is so hot that major food companies such as Kraft and Dannon are marketing probiotic products such as yogurts and cheeses that "promote a healthy digestive system."

But the research on probiotics is still relatively new, especially in the case of raw milk.

Michael Payne, an outreach coordinator with the Western Institute for Food Safety at the University of California at Davis, said most bacteria in raw milk comes from dirty udders or contaminated milking equipment. When milk is not pasteurized, harmful pathogens can slip into the final product, said Payne, who might be called to testify today.

Raw milk or cheese made with unpasteurized milk was associated with 87 cases of foodborne illness outbreaks from 1973 to 2005, according to federal government data presented by Payne at a legislative hearing on raw milk last week. By comparison, pasteurized products -- which dominate the market -- were tied to 47 cases.

Raw milk from Kerman's **Organic Pastures Dairy** was the subject of a state recall in 2006 after regulators alleged that several children were sickened by E. coli. Testing at the **dairy** did not detect the strain of E. coli that sickened some of the children. **Organic Pastures** still faces a civil lawsuit over the matter filed by the children's families.

The **dairy** also is being investigated by the U.S. Food and Drug Administration. Mark McAfee, the dairy's founder and co-owner, has said the probe concerns the possible sale of raw milk to consumers in other states, which is illegal. He denies the charges, saying the company only sells the milk for pet consumption outside of California. Mark Cullers, an assistant U.S. attorney in Fresno, declined to comment Thursday afternoon.

The new regulations set a limit of 10 coliform bacteria per milliliter of raw milk. High coliform counts do not indicate that the milk is tainted with

harmful pathogens. But regulators say coliform testing measures cleanliness -- and dirty **dairies** are more likely to harbor harmful bacteria.

"If you've got a sanitation problem, you've got a risk of pathogen," said Steve Lyle, an agriculture department spokesman.

Raw milk supporters counter that the milk has a built-in safety mechanism: good bacteria that "compete with and overgrow pathogenic bacteria," according to written testimony given last week by Irons to state lawmakers.

Organic Pastures says its milk would not always meet the 10-coliform limit -- and that would cause supply disruptions. The milk is sold at 310 stores in California, including Whole Foods.

"It would probably put us out of business over time," McAfee said.

That would disappoint the 40,000 or so regular raw milk drinkers in California. Christine Chessen of San Francisco said she used to think raw milk drinkers were part of a "weird, fringe cult." But after taking nutrition classes, she began feeding it to her three young children and husband.

"For the first time ever, all five of us made it through the entire cold and flu season without so much as a sniffle," she told lawmakers at last week's hearing.

Legislation introduced earlier this year by Assembly Member Nicole Parra, D-Hanford, would have raised the limit to 50 coliform. It drew support from producers. But Parra backed off and the bill died. She said it did not have the votes to pass.

Sen. Dean Florez, D-Shafter, who led the raw milk hearing, plans to introduce a bill to eliminate the coliform test and replace it with mandatory safety guidelines covering everything from milking to grazing.

"The goal of it is to try to have a much safer product and yet not have a test that eliminates the raw milk industry altogether," he said.

The legislation sets up a showdown with agriculture department officials, who are committed to the coliform test.

"We continue to feel that standard was the right standard," said Secretary of Agriculture A.G. Kawamura.

The reporter can be reached at eschultz@fresnobee.com or (916) 326-5541.