

**ON-FARM AND OFF-FARM SALES
OF FOOD PRODUCTS GROWN AND
PROCESSED ON INDIVIDUAL FARMS**

Submitted by:

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November 1, 2005

EXECUTIVE SUMMARY

At the request of the Chairman of the Senate Agriculture, Conservation and Natural Resources Committee, the Secretary of Agriculture and Forestry and the Secretary of Health and Human Resources conducted a review of the issues related to HB 2903, which was introduced in the 2005 General Assembly by Delegate Pollard. HB 2903, which failed to report from the Senate Agriculture, Conservation and Natural Resources Committee, would have allowed farmers to sell unregulated and un-inspected products or commodities grown or processed on their farms if they met certain conditions.

The Workgroup, consisting of the two secretaries and their deputies, was staffed by the Virginia Department of Agriculture and Consumer Services (VDACS) and the Virginia Department of Health (VDH). Issues relating to on-farm and off-farm sales were researched by staff and the findings compiled in a briefing book for the Workgroup. The Workgroup conducted two listening sessions that allowed both supporters and opponents of HB 2903 to explain their positions concerning on-farm and off-farm sales issues. In addition, written comments were accepted from the public.

KEY FINDINGS

1. Virginia Food Laws are already more lenient than those of most states. Virginia is one of only two states that allow the processing/preparation and sale of both potentially hazardous and other high-risk foods from a home kitchen.
2. Fresh fruits and vegetables and fresh eggs (requiring no inspection) and other low-risk foods (requiring inspection) such as baked goods, jams and jellies represent the least risk when sold directly to consumers. It is important to note that “low risk” does not equal “no risk”. For instance, eggs should be refrigerated at 45° F to control the growth of *Salmonella enteritidis*, a microorganism that is responsible for foodborne illness outbreaks associated with consuming undercooked eggs.
3. Allowing the sale of raw meat and poultry from the farm is not an option because it would jeopardize the state’s “equal to” status. Virginia’s Meat and Poultry Inspection Program operates under a cooperative agreement with USDA, whereby 50% of the cost of the inspection program is provided by the federal government. To maintain this agreement, all laws, regulations and operations must be at least equal to the federal program. If un-inspected meat sales were allowed, Virginia would lose its “equal to” status and \$1.5 million in matching federal funds for the Meat and Poultry Inspection Program, as well as 40 inspector positions for which VDACS would be required to pay termination costs. The total cost to the state for losing the state program would be approximately \$2 million.
4. The predominant issue addressed by small producers who spoke at the August 2005 listening sessions was the sale of unpasteurized milk. These small producers expressed the desire to sell unpasteurized milk and to accept minimal regulation of their operation.

5. The sale of unpasteurized milk directly to consumers represents a substantial risk to human health. If the General Assembly were to allow the sale of unpasteurized milk Virginia, such sales should be allowed only under the strictest inspection regime. It is critical to understand that inspection can only verify that minimal sanitation standards are being met and will not guarantee the product is safe for human consumption.
6. Most states that allow sales of unpasteurized milk regulate the sales. Those states typically require adherence to the same sanitary standards that are required for Grade “A” raw milk for pasteurization. These standards, which are identified in 2 VAC 5-490, Regulations Governing Grade “A” Milk, identify the minimum sanitation requirements for dairy farms, the maximum levels of total bacteria, Coliform bacteria and somatic cells permitted in the raw product, the minimum numbers of inspections and samples necessary for each grade “A” farm, and other issues related to public health, sanitation, adulteration and quality. Once again, it must be understood that these standards were developed for raw products that are intended to be pasteurized. Although adherence to these standards will ensure a product that is safe for consumption once it has been pasteurized, there is absolutely no assurance that the raw product will be free of pathogenic microorganisms and safe to consume without pasteurization. Consequently, it is reasonable to expect that if the sale of raw milk directly to consumers is allowed, there will be an increase in the number of foodborne illnesses associated with the consumption of raw milk and raw milk products.
7. No standards exist in Virginia law or regulations for animal share operations. Animal share operations are often used as a means of obtaining raw milk. To determine the legitimacy of animal share operations, Virginia currently relies on a Virginia Supreme Court decision addressing the sale of raw milk, and each operation must be evaluated on a case-by-case basis utilizing advice provided by the Office of the Attorney General.
8. If the state were to allow regulated on-farm sales of raw milk, the state would incur significant additional costs in public health and inspections. VDACS estimated that a program including inspection, permitting and sampling of raw milk would cost more than \$144,000 each year. VDH indicated that their cost would depend on the number of persons who became ill from consuming raw milk. VDH estimated \$160 per half day to interview and follow up with a single case. Division of Consolidated Laboratory Services estimated \$180-\$340 to test a single stool specimen for an unknown bacterial agent and \$60 to \$100 to fingerprint a sample. This does not include the cost of health care incurred by individuals. (A more detailed cost analysis is available under Tab N of the briefing book accompanying this report.)
9. The health implications are basically the same for products/commodities that are given away as they are for products/commodities sold from the farm. A significant difference is that the Virginia Food Laws do not authorize the regulation of gifts, but they do authorize the regulation of food products that are involved in commerce. In this respect, Virginia’s law is no different than the laws enforced by other states or the federal government.
10. The sales of farm products both on the farm and at off-farm locations create liability issues for the producer. The liability may include defective or contaminated products, negligence

and the condition of the on-farm premises. Any person engaging in on-farm sales, inviting the business customer onto their property and selling the product either on farm or off farm, should consult with insurance agents and companies regarding insurance coverages and costs. These will vary according to the type of activity and other specifics.

11. The current regulatory scheme for in-home food processing and on-farm manufacturing of cheese does not represent a disproportionate cost burden for small farmers. There are currently approximately 434 in-home or on-farm food manufacturing operations that are successfully operating in Virginia. There are currently 17 farmstead cheese manufacturers in Virginia who are operating successfully under existing regulation.
12. On-farm sales and other types of direct marketing provide farmers more control over the prices they receive, potentially higher profits by cutting or eliminating costs for packaging, handling, transportation and doing business through a middleman. These sales put more money into the local economy, help farmers diversify production, and provide consumers locally grown produce and other farm products.
13. Consumer demand for “natural” or “organic foods” is a growing national trend. Many consumers are concerned about such things as antibiotics, additives, genetic modification and pesticides in their food and believe that natural or organic foods represent a safer, healthier choice. A growing number of consumers believe it is their right to choose where and from whom they purchase their food.

CONCLUSION

Virginia food laws are more lenient than those of its surrounding states for fresh fruits and vegetables and other low risk foods sold on and off the farm. Allowing more lenient regulatory requirements in Virginia for low risk and high risk foods does not appear to be in the best interest of public health and food safety. No information was presented during the study to show that the economic benefits derived by farmers from direct-to-consumer sales of raw milk and other high risk food products would outweigh the potential harm to public health and the agriculture industry overall in the event of a foodborne illness outbreak. While it is understandable that many consumers would like the freedom to choose to purchase their food directly from the farm, the freedom to choose should not outweigh the concern for food safety.

RECOMMENDATIONS

The Workgroup recommends that:

1. No changes be made to the current regulatory requirements for low-risk and high-risk food products no matter where processed and sold; and
2. If the process of selling animal shares in Virginia persists as a means for obtaining unpasteurized milk, then animal sharing needs to be defined and addressed in the Code of Virginia.

STUDY METHODOLOGY

In order to conduct a review of the issues related to House Bill 2903 as requested by the Chairman of the Senate Agriculture, Conservation and Natural Resources Committee, a workgroup was formed by the Secretary of Agriculture and Forestry and the Secretary of Health and Human Resources consisting of the secretaries and deputy secretaries of the respective secretariats. The Workgroup was staffed by personnel from the Virginia Department of Health and the Virginia Department of Agriculture and Consumer Services and was charged with researching issues pertinent to on-farm and off-farm sales and preparing briefing materials for the Workgroup. The briefing materials covered the following topics:

Existing State and Federal Regulation of Off-Farm and On-Farm Sales

- Food Laws and Regulations

- Dairy Laws and Regulations

- Meat and Poultry Laws and Regulations

Other States' Regulation of Off-Farm and On-Farm Sales

- Raw Milk and Cheese Survey

- Food Survey

- Kentucky Food Law

- Maryland Food Law

- Meat and Poultry Regulation

- Animal-Shares (including cows and goats)

Public Health Issues and Risks

- Consumer Preference for Natural Foods

- Economic Benefits and Risks of Direct Marketing

- Legal Liability Issues of Off-Farm and On-Farm Sales

- Cost and Resource Requirements to Regulate Off-Farm and On-Farm Sales

The Workgroup invited representatives from the agriculture and public health communities and supporters of HB 2903 to present comments at one of two public listening sessions held on August 24, 2005 and August 31, 2005. A public comment period was scheduled at the end of each listening session, and the public was provided an opportunity to submit written comments by August 31, 2005. Twenty-two persons presented oral comments at the listening sessions, and approximately 100 persons submitted written comments.

The following organizations and individuals were represented at the listening sessions: Virginia Farm Bureau Federation, Virginia State Dairymen's Association, Virginia State Food and Beverage Association, Virginia Agribusiness Council, MarvaMaid/Carolina-Virginia Dairy Products Association, American Academy of Pediatrics (VA Chapter), Virginia State Dairy Goat Association, Polyface, Inc., Virginia Independent Consumers and Farmers Association, Libertarians (Lynchburg area), the Weston A. Price Foundation, Christine Solem, Gary Via, Carols Arostegui, and Rebekah Hoskins.

CURRENT REGULATORY STRUCTURE

Virginia's current regulatory structure allows for certain foods produced on the farm to be sold directly to consumers from the farm with no required inspection by Department of Agriculture and Consumer Services food inspectors. These foods include fresh eggs and all fresh fruits and vegetables as long as the fresh fruits and vegetables are sold in their whole, uncut form.

With the exception of bottled drinking water, the Virginia Food Laws and related regulations allow individuals to manufacture and process certain food products within a home or farm kitchen. Currently, approximately 434 home-based or farm-based kitchen food processors are manufacturing or processing food products under state oversight. The food products allowed and constraints that apply are as follows:

Low-Risk Food Products

Establishments producing and selling low-risk food products are subject to inspection by VDACS. Inspections focus predominantly on proper sanitation and food handling practices.

Low risk foods include the following:

- Cakes
- Fruit Pies
- Doughnuts
- Cookies
- Yeast Breads
- Nut and Fruit Breads
- Muffins
- Jams and Jellies (except banana jam)
- Fruit Butters (except pumpkin butter)
- Canned Fruits (except figs)
- Candy
- Vinegars
- Honey and Syrups
- Dehydrated Fruits and Vegetables (as long as they are not packaged under vacuum)

High-Risk Food Products

Establishments producing and selling high-risk products are also subject to inspection. Inspections of high-risk food products also focus on proper sanitation and food handling practices, but these products are also subject to other specific requirements or regulations. High-risk foods include the following:

- Cream or custard type pies, cream-filled pastries, and other potentially hazardous foods. Special handling and refrigeration requirements must be met.
- Canned, acidified foods (pickles, relishes, sauces, dressings). Must comply with 21CFR Part 114.

Food Products Not Processed In A Home Or Farm Kitchen And Why:

- Bottled Drinking Water - 21CFR Part 129.20 (adopted by the Board of Agriculture under 2 VAC 5-600-5, Regulations Pertaining to Food for Human Consumption) states, in part, “Rooms in which product water is handled, processed, or held or in which containers, utensils, or equipment are washed or held shall not open directly into any room used for domestic household purposes.”
- Low-Acid Canned Foods – The equipment and processing controls required by 21CFR Part 113 cannot be met within a home kitchen environment. Low-acid foods means any foods, other than alcoholic beverages with a finished equilibrium pH greater than 4.6 and a water activity (a_w) greater than 0.85. Examples of low-acid canned foods include canned vegetables such as string beans, corn, and tomatoes.

High-Risk Foods Not Allowed

Sales of the following high-risk food products are prohibited in Virginia:

- Un-inspected Raw Meat and Poultry – The slaughter and processing of commercial meat and poultry food products require inspection. Species of meat animals requiring inspection (known as amenable species) include cattle, sheep, swine, goats, horses, mules and other equines, chickens, turkeys, ducks, geese guineas, ratites, and squab. Under the meat and poultry laws, inspection of non-amenable species, such as deer, elk, bison, and rabbits, is voluntary; however, if processors of such species do not choose to be voluntarily inspected under the meat and poultry laws, such establishments are subject to inspection under the Virginia Food Laws.
- Raw Milk – Individuals may raise their own dairy animals, collect the milk and process it into milk and dairy products for their own consumption, for use in their home, and to give away. They may not sell unpasteurized milk (except to those permitted to accept unpasteurized milk such as Grade “A” processors, dairy product manufacturing plants, etc.) or unpasteurized dairy products (except properly aged cheeses). Individuals may obtain unpasteurized milk through a cow-share or animal-share program as long as they truly own the animal and receive milk from the animal they own.

Note: More detailed information concerning the current regulatory structure is available under Tabs A, B and C of the briefing book accompanying this report.

COMPARISON OF VIRGINIA FOOD LAWS TO THOSE OF OTHER STATES

Foods Processed In A Home or Farm Kitchen

Virginia laws governing on-farm and off-farm sales of food products grown and processed on individual farms are more lenient than the laws of other states. Of the 49 states responding to a recent VDACS survey, 27 prohibit the sale of foods prepared/processed in a home kitchen.

Several of the 27 states indicated that they allow the sale of home processed/prepared foods for charitable/non-profit events on a temporary basis. Non-potentially hazardous foods are allowed to be processed/prepared in a home kitchen in 22 states. Virginia and Oregon are the only states surveyed that currently allow the processing/preparation of both potentially hazardous and other high-risk foods from a home kitchen.

Delaware will allow home processed/prepared non-potentially hazardous foods in January 2006. Indiana and Tennessee are currently working to establish regulatory requirements that would allow non-potentially hazardous foods to be processed/prepared in a home kitchen.

Kentucky has a home-based processor law that allows explicitly named food items to be prepared in the farmer's home kitchen and sold at restricted locations; only farmers can qualify. However, other home processing of potentially hazardous foods is prohibited.

Maryland permits on-farm processing of non-potentially hazardous food products. Such establishments are subject to inspection; and only farmers can qualify; farmers must comply with certain requirements, and the regulations specifically prohibit certain foods.

Raw Milk

Currently, Puerto Rico and 21 states, including Virginia, do not allow the sale of raw milk by any means.

On-farm sales of raw milk

Twenty-nine other states allow on-farm sales of raw milk with limitations.

Kansas and Nebraska allow the sale of raw milk from cows, goats or sheep without inspection or other requirements. These two states allow un-graded and un-inspected raw milk for personal consumption to be sold at the farm.

Two states allow sales of un-inspected raw milk from cows, goats or sheep *limited by volume of sales*. New Hampshire¹ allows raw milk sales if limited to less than five gallons per day. Vermont allows raw milk sales if limited to less than 25 quarts of milk in any one day.

Four states allow sales of raw goats' milk without inspection *limited by volume of sales or the number of goats milking*. Arkansas and Oklahoma¹ allow raw milk sales of goat's milk if the volume of sales is less than 100 gallons per month. Mississippi and Oregon allow raw milk sales of goat's milk at the farm only if the flock is limited to nine or fewer goats milking.

Kentucky and Rhode Island allow the sale of raw goats' milk with a doctor's prescription.

¹ These states are also listed under states that allow raw milk sales with permitting/licensing, inspection and sampling

Oregon is the only state that allows the sale of limited quantities of raw cow's milk if the farm has three or fewer cows and no more than two of the three cows are lactating at the same time. Raw milk may only be sold directly from the premises where produced and may not be advertised.

Twenty-one states allow raw cows' milk sales with permitting/licensing, inspection, and sampling. They are Arizona, Massachusetts, New Mexico, Texas, California, Maine, New York, Utah, Connecticut, Minnesota, Oklahoma, Wisconsin, Idaho, Missouri, Pennsylvania, Washington, Illinois, Nevada, South Carolina, New Hampshire, and South Dakota.

Off-the-farm retail sales of raw milk

Thirty-eight states do not allow off-the-farm retail sales of raw milk.

Ten states (Arizona, California, Connecticut, Idaho, Maine, New Mexico, Oregon, Pennsylvania, South Carolina and Washington) allow the retail sale of raw milk from licensed or permitted and inspected facilities to consumers away from the farm.

Two states place special restrictions on raw milk sales. Oregon allows only raw goats' milk to be sold at retail. South Carolina does not permit the sale of raw milk in any establishment regulated under the State's Food Code (see chart on page 8 of Tab D of the briefing book accompanying this report for additional information). The ban on raw milk sales in South Carolina includes all restaurants, grocery stores, convenience stores, retail markets and all other places offering food for sale.

Cheese Production

All fifty states and Puerto Rico require that all cheese produced and offered for retail sale off-the-farm must be from inspected facilities that use only pasteurized milk or age the cheese a minimum of 60 days above 35 degrees Fahrenheit.

Kansas is the only state to allow the unregulated sale of butter, cheese and other dairy products directly to the final consumer on the farm where produced if the butter, cheese or other dairy products were processed on the farm and produced solely from milk and cream produced on the farm.

Delaware, Iowa, Maryland, New Hampshire, North Dakota, Rhode Island and Puerto Rico do not allow any raw milk cheese to be produced. All milk used in cheese production must be pasteurized first.

Animal Shares

An animal share operation is an operation in which an individual purchases ownership in an animal (i.e. cow, goat, sheep, etc.) and through that ownership, is able to obtain unpasteurized

milk for personal consumption from that animal. There are currently no laws or regulations in Virginia that specifically address animal share operations. The evaluation of these operations to determine legality is handled on a case-by-case basis, and the determination that such an operation is or is not legal must be based on two Virginia Supreme Court decisions concerning schemes to circumvent the regulatory prohibition on raw milk sales. (Additional information on animal shares is available under Tab I of the briefing book.)

Arizona, Colorado, Idaho, Illinois, New York and Washington are the only states that allow animal-share operations to provide raw milk to consumers if they comply with licensing, permitting and inspection requirements.

Florida, Iowa, Montana, Nevada, North Carolina, West Virginia, Wisconsin and Puerto Rico each have banned animal-shares as a means to obtain raw milk.

The remaining thirty-seven states, including Virginia, do not have laws or regulations specifically dealing with animal-shares as a means to obtain raw milk.

Meat and Poultry Products

Of the 28 states, including Virginia, that currently have state meat and poultry inspection programs, none allow on-farm sales of un-inspected meat and poultry products. These states are reviewed annually by USDA/FSIS, and are required to enforce regulations for meat and poultry inspection programs that are at least “equal to” federal requirements. Under a cooperative agreement with the USDA, 50% of the cost of the inspection programs in these states is provided by the federal government. To maintain this agreement, all laws, regulations and operations must be at least equal to the federal program.

Of the states that do not have state meat and poultry inspection programs, only one has addressed the on-farm sales issue as it relates to raw meat. Maryland recently enacted regulations concerning on-farm home processing. An individual licensed in accordance with these regulations may, while operating a farm where animals are raised commercially, weigh, package, label and sell or distribute raw meats when the meats originate from animals that are raised, fed or managed on the farm, and have been slaughtered and chilled at a plant inspected and regulated by the USDA. States adjacent to Maryland have expressed concerns regarding their recently enacted legislation allowing on-farm sales/distribution of raw meats.

Note: For a more detailed description of what other states are doing concerning on-farm and off-farm sales, refer to Tabs D through I of the briefing book accompanying this report.

KEY FINDINGS

1. Virginia Food Laws are already more lenient than those of most states. Virginia is one of only two states that allow the processing/preparation and sale of both potentially hazardous and other high-risk foods from a home kitchen.

2. Fresh fruits and vegetables and fresh eggs (requiring no inspection) and other low-risk foods (requiring inspection) such as baked goods, jams and jellies represent the least risk when sold directly to consumers. It is important to note that “low risk” does not equal “no risk”. For instance, eggs should be refrigerated at 45° F to control the growth of Salmonella Enteritidis, a microorganism that is responsible for foodborne illness outbreaks associated with consuming undercooked eggs.
3. Allowing the sale of raw meat and poultry from the farm is not an option because it would jeopardize the state’s “equal to” status as well as public health. Virginia’s Meat and Poultry Inspection Program operates under a cooperative agreement with USDA, whereby 50% of the cost of the inspection program is provided by the federal government. To maintain this agreement, all laws, regulations and operations must be at least equal to the federal program. If un-inspected meat sales were allowed, Virginia would lose its “equal to” status and \$1.5 million in matching federal funds for the Meat and Poultry Inspection Program, as well as 40 inspector positions for which VDACS would be required to pay termination costs. The total cost to the state for losing the state program would be approximately \$2 million.
4. The predominant issue addressed by small producers who spoke at the August 2005 listening sessions was the sale of unpasteurized milk. These small producers expressed the desire to sell unpasteurized milk and to accept minimal regulation of their operation.
5. The sale of unpasteurized milk directly to consumers represents a substantial risk to human health. If the General Assembly were to allow the sale of unpasteurized milk Virginia, such sales should be allowed only under the strictest inspection regime. It is critical to understand that inspection can only verify that minimal sanitation standards are being met and will not guarantee the product is safe for human consumption.
6. Most states that allow sales of unpasteurized milk regulate the sales. Those states typically require adherence to the same sanitary standards that are required for Grade “A” raw milk for pasteurization. These standards, which are identified in 2 VAC 5-490, Regulations Governing Grade “A” Milk, identify the minimum sanitation requirements for dairy farms, the maximum levels of total bacteria, Coliform bacteria and somatic cells permitted in the raw product, the minimum numbers of inspections and samples necessary for each grade “A” farm, and other issues related to public health, sanitation, adulteration and quality. Once again, it must be understood that these standards were developed for raw products that are intended to be pasteurized. Although adherence to these standards will ensure a product that is safe for consumption once it has been pasteurized, there is absolutely no assurance that the raw product will be free of pathogenic microorganisms and safe to consume without pasteurization. Consequently, it is reasonable to expect that if the sale of raw milk directly to consumers is allowed, there will be an increase in the number of foodborne illnesses associated with the consumption of raw milk and raw milk products.
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addressing the sale of raw milk, and each operation must be evaluated on a case-by-case basis utilizing advice provided by the Office of the Attorney General.

8. If the state were to allow regulated on-farm sales of raw milk, the state would incur significant additional costs in public health and inspections. VDACS estimated that a program including inspection, permitting and sampling of raw milk would cost more than \$144,000 each year. VDH indicated that their cost would depend on the number of persons who became ill from consuming raw milk. VDH estimated \$160 per half day to interview and follow up with a single case. Division of Consolidated Laboratory Services estimated \$180-\$340 to test a single stool specimen for an unknown bacterial agent and \$60 to \$100 to fingerprint a sample. This does not include the cost of health care incurred by individuals. *(A more detailed cost analysis is available under Tab N of the briefing book accompanying this report.)*
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13. Consumer demand for "natural" or "organic foods" is a growing national trend. Many consumers are concerned about such things as antibiotics, additives, genetic modification and pesticides in their food and believe that natural or organic foods represent a safer, healthier choice. A growing number of consumers believe it is their right to choose where and from whom they purchase their food.

CONCLUSION

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RECOMMENDATIONS

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