

TOWN SEAL

**Town of Foxborough  
Board of Health**

**RULES AND REGULATIONS  
RELATIVE TO  
THE SALE AND DISTRIBUTION  
OF UNPASTEURIZED  
RAW MILK**

**These regulations are adopted in accordance with  
the authority granted by the General Laws of the  
Commonwealth of Massachusetts, Chapter 111,  
Section 31**

## Town of Foxborough, Massachusetts

### Board of Health

#### *Regulation pertaining to the*

#### *Sale and Distribution of Unpasteurized (Raw) Milk*

#### **Preamble**

This regulation is enacted by the Foxborough Board of Health this \_\_\_\_\_ day of \_\_\_\_\_, 2013, upon a vote of \_\_\_\_\_, by said Board. Provisions of this regulation are consistent with the expressed intent of the Board of Health to regulate the production, sale, distribution and consumption of raw milk, as hereinafter defined, consistent with, but with more stringent regulation than the current Regulation of raw milk, found in 330 CMR 27.00, also referred to as the "state regulation," which establishes, *inter alia*, standards and sanitation requirements for raw milk and sanitization requirements for raw milk for retail sale. It describes the requirements for producing and processing raw milk by all producers holding a Massachusetts Dairy Farm Certificate of Registration. The purpose of this Board of Health regulation, as well as 330 CMR 27.00, is to provide sanitary standards for the production, processing, and sale of fluid raw milk. This regulation is further intended to protect public health by minimizing the opportunities for contamination of raw milk being sold for direct consumption, thereby helping to prevent various illnesses, as set forth hereinbelow. Nothing in this regulation is to be construed to affect the production of raw milk which will be pasteurized. The Foxborough Board of Health has adopted these regulations that attempt to protect public health.

This regulation is promulgated pursuant to Massachusetts G.L. c. 111, § 31, which empowers local boards of health to promulgate local health regulations, and G.L. c. 94, § 13E, which allows local boards of health to "adopt bacterial standards for milk which are numerically less but not greater than such standards as may be established therefor (sic) under sections twelve and thirteen." G.L., c 94 §16J, and pursuant to any other enabling authority.

Although the health risks from the consumption of raw milk have resulted in the total ban on the sale of raw milk in currently 17 states, the Foxborough Board of Health after careful consideration of all evidence presented at the public hearing, has determined that the adoption of this regulation imposing additional safeguards and sanitary requirements should be implemented to address the public health issues raised by the sale of raw milk to consumers.

Nothing in this regulation shall be construed in such a way as to make it inconsistent with the existing state regulations found in 330 CMR 27.00. In any event where this regulation is more stringent than said state regulation, the terms of this regulation shall supersede those of the state regulation, so far as is legally permissible under the provisions of Massachusetts General Laws.

A permit to produce, sell and/or distribute raw milk is only a permit to carry out those activities. If the producer wishes to run an ancillary business on the same premises, said producer must apply for and meet all standards of applicable permits for those ancillary activities.

#### **§ 1. Limited sale of unpasteurized (raw) milk permissible**

The production and sale of unpasteurized milk for fluid consumption is permitted within the Town of Foxborough only when produced, marketed, and sold in conformance with this regulation, and when produced and sold for human consumption. Raw milk may not be sold or otherwise distributed in Foxborough as a pet food, pet supplement or animal feed.

## § 2. Definitions

For the purposes of this regulation:

“**Board of Health**” shall mean the Town of Foxborough Board of Health.

“**Cow share,**” or “**herd share**” are synonymous, and refer to an agreement, wherein consumers pay a farmer a fee for boarding their cow, or share of a cow, caring for the cow and milking the cow. The cow share owner then obtains (but does not purchase) the milk from his own cow.

“**Producer**” means the owner of the farm where which the raw milk is extracted from the cows forming the farm’s herd.

“**State raw milk regulation**” means any applicable Massachusetts General Law, including without limitation, G.L. c. 94, §§ 12 through 48D, and 300 CMR 27.00 (*et seq*).

“**unpasteurized milk,**” “**raw milk**” or “**unpasteurized (raw) milk**” means unpasteurized milk or any component or byproduct such as cheese, colostrum, sold for fluid consumption and does not include unpasteurized milk to be pasteurized.

## § 3. Standards for the sale of unpasteurized (raw) milk

(a) Unpasteurized milk for fluid consumption shall be sold directly from the producer to the end user and shall not be resold.

(b) Unpasteurized milk shall be sold or sampled only from the farm on which it was produced. Unpasteurized milk shall not be sold or otherwise distributed at any location other than on the farm on which the milk was produced.

(c) Unpasteurized milk operations shall conform to reasonable sanitary standards, including, but not limited to the following:

(1) Unpasteurized milk shall be derived from healthy animals which are subject to licensed veterinary care, including tuberculosis and brucellosis testing and rabies vaccination, according to accepted testing and vaccinations standards as established by the Board. Test results and verification of vaccinations shall be posted on the farm in a prominent place and be easily visible to customers.

(2) The animal's udders and teats shall be cleaned and sanitized prior to milking.

(3) Milking equipment shall be of sanitary construction, cleaned after each milking, and sanitized prior to the next milking.

(4) Milking shall be conducted in a clean environment

(5) The farm shall be connected to the Town water supply, or shall have a potable water supply which is sampled for bacteriological examination according to agency standards every three years and whenever any alteration or repair of the water supply has been made.

(6) If an animal is treated with antibiotics, that animal's milk shall be tested for and found at a level within the limits set by §3(D)(7)(a)(iv), below, for a period of 7 days, before its milk is offered for sale as raw consumable milk.

(7) All cows from which raw milk will be taken for sale as "raw milk product" shall be designated as "Raw Milk production animals" and shall be so identified on a separate list kept on premise.

(d) Unpasteurized milk shall conform to the following production and marketing standards:

**(1) Record keeping and reporting.**

(A) A producer shall collect one composite sample of unpasteurized milk each day and keep the previous 14 days' samples frozen. The producer shall provide samples to the Board of Health if requested.

(B) A producer shall require each customer to provide said producer with his/her address, telephone number, and email address when available.

(i) The producer may assign the customer a "customer number," which that customer may supply at the time of any subsequent purchases, for ease and efficiency.

(ii) This registration is intended to be used to notify participating customers of any issues involving food safety.

(iii) Nothing in this section shall be construed to prohibit the producer from using said registration list for direct marketing and event notification of participating customers.

(iv) List of current customers shall be made available to Board of Health upon request. Information shall include name, residential address, valid phone number, and email address.

(C) A producer shall maintain a list of transactions for at least one year which shall include customer names, the date of each purchase, and the amount purchased.

(D) A producer must comply with all Town of Foxborough regulations relating to weights and measures. Filling equipment, should mechanical

filling equipment be utilized in the process, must be sealed in compliance therewith.

**(2) Labeling.**

Unpasteurized (raw) milk shall be labeled as such, and shall comply with food labeling requirements of 105 CMR 520. In addition thereto, the label shall contain:

- (A) The date the milk was obtained from the animal.
- (B) The name, address, zip code, and telephone number of the producer.
- (C) The common name of the type of animal producing the milk (e.g. cattle, goat, sheep) or an image of the animal.
- (D) The words "Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated." on the container's principal display panel, and these words shall be clearly readable in letters at least one-eighth inch in height and prominently displayed.
- (E) The words "WARNING: This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn." on the container's principal display panel and clearly readable in letters at least one-sixteenth inch in height.

**(3) Temperature.**

Unpasteurized milk shall be cooled to 40 degrees Fahrenheit within two hours of the finish of milking and so maintained until it is obtained by the consumer.

**(4) Customer inspection and notification.**

- (A) A sign with the words "Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated." and "This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn." shall be displayed prominently on the farm, in the sales or distribution room, in a place where it can be easily seen by customers. The lettering shall be at least one inch in height and shall be clearly readable.
- (B) Offering of sampling of raw milk products is only permitted on the farm where it is produced. In the event that the producer wishes to give samples of raw milk, the point of sampling must comply with all parts of this regulation, including, without limitation, the requirement of a posted

warning as set forth hereinabove at § 3(d)(4)(A). Self sampling (by the customer) of any products is not allowed.

**(5) Inspection.**

The Board of Health shall, from time to time, at least quarterly inspect the producer's facility and determine that the producer is in compliance with any and all requirements within this regulation.

(A) Any room in which milk is stored in bulk, and/or from which the individual bottles for retail sale or distribution are filled, must be in compliance with the State Sanitary Code provisions governing food establishments, in addition to any standards imposed by the state regulations.

(B) Any pipelines, transfer lines or associated equipment whereby the milk is transported from the point of extraction from the cow, to the holding tank, must be sanitized after each use, and maintained in a sanitary condition at all times prior to the next milking procedure.

**(6) Bottling.**

Unpasteurized milk shall be sold in containers which have been filled by the producer. Producers shall ensure that only clean bottles are filled and distributed. In addition hereto, provisions of §3(d)(1)(D), above, must be met and adhered to.

(A) If bottles are to be filled by hand, the person or persons filling such containers shall pass a certification course in hand washing and glove use, prior to being permitted to carry out such duty. Standard Operating Procedures relative to hand washing and glove use must be developed in written form and be available on-site for reference.

**(7) Testing.**

(A) A producer shall have unpasteurized milk tested weekly by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 15,000 cfu/ml;

(ii) Total coliform count: 10 cfu/ml;

(iii) Somatic cell count: 350,000/ml.

(iv) Antibiotic levels: 0.

(B) The producer shall assure that all test results are forwarded to the Board of Health by the laboratory, simultaneously with the results being forwarded to the producer, immediately upon completion of testing.

(C) In the event that the test limits set forth in section 7(A) are exceeded, the producer is to halt all sales and distribution of the raw milk, and shall notify the Board of Health within two hours of learning of said result, and shall notify each customer identifiable through participation on the provisions set forth in §3(d)(1)(B), above; to whom milk from that batch was sold or distributed of such failing result, immediately and with no delay. Said customers are to be instructed to return or dispose of the milk, and not to consume it. The producer shall ascertain from each such customer the names of all persons consuming the affected milk, and quantities consumed by each such customer. This information is to be given to the Board of Health within 24 hours of the initial notification under this section.

(i) The producer must be given clearance by the Board of Health to recommence sales and distribution, following such an event.

(ii) The Board of Health shall clear the producer to recommence sales and distribution upon the occurrence of the producer achieving test results that are within normal and accepted limits, as set forth in § 3(d)(7)(A), above.

(D) The producer shall keep test results on file for one year and shall post results of testing from the prior 2 months on the farm in a prominent place that is easily visible to customers. The producer shall provide test results to the farm's customers if requested. If the producer maintains a web page, the results of all tests must be posted on that web page within 30 days of receipt by the producer from the laboratory chosen under § 3(d)(7)(A), above.

(E) In the event that the Board of Health requires additional, supplemental or confirmatory testing, the cost of such additional laboratory testing shall be borne by the producer.

#### **(8) Registration.**

Each producer operating under this subsection shall register with the Board of Health, and shall attain an annual permit to produce and distribute. This permit shall expire on December 31, of the year in which it is issued.

(A) Prior to initiating sales, there shall be a plan review of the facility in accordance with the Food Code and 105 CMR 590. The BOH has a period of up to 30 days to review and accept or deny the plan. Expedited proceedings may be ordered by the Board for good cause shown. Plan review guidance is available at the Board of Health office as per the Food Code and 105 CMR 590.

(1) As part of this plan review, all sanitizers and associated equipment must be approved, maintained and calibrated, as set forth in the State Sanitary Code, and/or Board of Health rules and regulations.

(B) Penalties for a violation of this section are set forth in §8(a), below.

**(9) Reporting.**

(A) In the event that any complaint received by the producer alleges any incident involving foodborne illness, said complaint shall be forwarded to the Board of Health immediately upon receipt by the producer.

(1) The Board of Health shall initiate an investigation of an alleged complaint involving an allegation of a foodborne illness on or before the first business day following the allegation or complaint.

(e) The producer must post the source of the cows' nutrition, whether it be grass, grain, or a mixture, or other source, in a conspicuous place in the sales room, in such a manner that the consumers can be informed of this.

**§ 4. Delivery of unpasteurized (raw) milk**

(a) Delivery of bottled unpasteurized milk off of the premises of the producing farm is not permitted to be carried out by the producer or his agent.

**§5. Standard Operating Procedures**

Standard Operating Procedures (SOPs) covering various aspects of milk production must be developed in written form and must be available to staff, customers, and Board of Health inspectors for review. These procedures must be reviewed by milk producer and updated periodically and will be part of, and submitted with the licensing/re-licensing application. Topics for which SOPs must be developed include (but are not limited to):

1. Refrigeration logs
2. Hand washing & glove use
3. Sanitation – methods and frequencies
4. Testing
5. Product packaging , storage, shelf life
6. Record keeping and reporting
7. Customer notification – criteria and method
8. Maintenance - scheduled inspections
9. Health records of cows
10. Other

**§6. Cow Share organizations/operations**

(a) Cow sharing is expressly banned in the Town of Foxborough.

## §7. Liability Insurance

Any farm producing, selling or otherwise distributing raw milk must carry general liability insurance insuring against losses of One Million (\$1,000,000.00) per occurrence, and with an aggregate of Three Million (\$3,000,000.00) per year, at a minimum. Proof of such insurance must be provided to the Board of Health annually as part of the licensing/re-licensing application.

## §8. Penalties

- (a) Penalties assess hereunder are in addition to any penalties assessed under the state regulations, and are assessed as penalties due and payable to the Town of Foxborough. There shall be three means of enforcement as set forth herein below.
1. Noncriminal penalties shall be enforced by the issuance of noncriminal disposition tickets by the Board of Health or a duly authorized agent of the Board of Health under Article VIII §5 of the General Bylaws of the Town of Foxborough.
  2. Upon the issuance of a complaint to the Wrentham District Court, and the entry of a guilty finding by that Court, statutory fines shall be imposed.
- (b) Unless otherwise enumerated under section 8(e), below, penalties for any infraction under Sections three through five of this regulation shall be assessed as follows:
- (1) For the first infraction, as determined after notice and hearing by the Board of Health, revocation of permit to sell or distribute raw milk for a period of not more than 30 days.
  - (2) For second infraction of the same regulation, as determined after notice and hearing by the Board of Health, revocation of permit to sell or distribute raw milk for a period of not more than 60 days.
  - (3) For third infraction of the same regulation, as determined after notice and hearing by the Board of Health, revocation of permit to sell or distribute raw milk for a period of up to and including a permanent revocation.
- (c) For certain infractions there shall be a more stringent penalty. The following infractions and penalties shall be the exceptions to those enumerated in §8(b) and are referred to in said §8(b).
- (1) In the event that a report is not filed within the time limits set forth in §3(d)(7)(c), or mandatory action is not taken in the time prescribed by §3(d)(9)(A), there shall be for the first offense, a mandatory suspension of Board of Health permit to sell or distribute raw milk for a period of not less than 2 days, nor more than 30 days.
  - (2) In the event that a report is not filed within the time limits set forth in §3(d)(7)(c), or mandatory action is not taken in the time prescribed by §3(d)(9)(A), there shall be, for a subsequent offense within one hundred eighty (180) days of the prior infraction, a mandatory suspension of Board of Health permit to sell or distribute raw milk, for a period of not less than 30 days, nor more than 60 days, unless by a preponderance of the evidence, it is demonstrated that such failure to report in a

timely manner is willful, in which case the suspension shall be up to a permanent revocation of the permit.

**§9. Permitting Process**

Producers must procure certain permits from the Board of Health.

(A) A producer shall pay a fee for the plan review process, which fee shall be set by the Board of Health.

(B) Upon approval of the plan review, and for each subsequent year, a producer shall attain an annual permit for sale and distribution of raw milk, and shall pay an annual fee for such permit, which fee is to be established by the Board of Health. Such fees shall cover the period of January 1 to December 31 of the given year.

(C) Application for Permit Renewal must be submitted to Board of Health, not later than 30 days prior to the expiration of existing permit (by December 1<sup>st</sup>) or late fee (per BOH fee schedule) will be assessed. Application fee must accompany all applications.

(D) Permit will be given to an individual person who must have currently valid Food Handling Certification such as Serve Safe (or equivalent).

**§10. Severability**

If any provision of this Board of Health regulation shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of this Board of Health regulation, which shall remain in full force and effect; and to this end the provisions of this Board of Health regulation are hereby declared severable.

**§11. Effective Date**

**By the Foxborough Board of Health**

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**Paul A. Mullins, Chairman**

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**Paul Q. Steeves, Vice Chairman**

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**Eric S. Arvedon, Clerk**

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