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*Full Service Trade Association Representing Dairy Processors, Manufacturers and Distributors Since 1928*

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To: New York City Department of Health and Mental Hygiene

From: Bruce W. Krupke, Executive Vice President

Date: Thursday, July 22, 2010

Subj: Board of Health repeal of Article 111 (Milk and Milk Products) and Article 117 (Dairy Food Products).

My name is Bruce W. Krupke, I am the Executive Vice President of the Northeast Dairy Foods Association, Inc. which is a full service membership trade association consisting of dairy product processors, manufacturers, distributors headquartered and doing business in New York City, and the Northeast United States. Our association's membership includes most of the licensed milk distributors that sell in New York City.

I am here today under the authorization of our board of directors and members to comment on the proposal to eliminate Articles 111 and 117 from the New York City Department of Health and Mental Hygiene Health Code.

Our association supports eliminating Articles 111 and 117 for the following reasons:

1. Both articles are duplicative of efforts already being conducted by the New York State Department of Agriculture and Markets out of Albany, NY and or the Federal government. Officially eliminating both articles will save the City essential costly services and resources.
2. Components of Article 111.33 that mandate maximum sell by coding dates for fluid milk products in NY City would be removed if your recommendation is approved. Elimination of this rule is supported by our association. All NY State milk processors located outside the City are allowed to set the sell by date on milk packaging. This system works very well and is closely monitored by the State Agriculture Department. In addition, the dairy processing industry carefully monitors the daily production of each milk package's shelf life. They clearly understand their production capabilities and closely adhere to procedures that would not allow milk to spoil prior to the expiration date. Hundreds of millions of milk packages are sold in the state each year. Consumer complaints to authorities on spoiled milk prior to the code dates are basically non-existent.

New York City is one of the last city municipalities to enforce milk code sell by dating requirements. I've attached a copy of a summary of milk code dating requirements for the Northeastern U.S. for your review. Few states, much less any cities continue to enforce maximum sell by dates which are less stringent than New York City's.

By continuing to enforce outdated milk code dating requirements, the City might actually and unintentionally be encouraging consumers to toss out good food. Milk product processing technology, distribution practices, transportation vehicles and retail refrigeration cases have improved dramatically over the past few decades. Average pasteurized milk can now easily last 14-20 days. By mandating a milk code sell by date of only 9 days sends messages to consumers the product might not be fresh enough to consume. In fact given adequate handling from farm to home refrigerator it still could be perfectly fresh and safe to eat. In addition, to comply with the NY City milk packaging code dating requirement, many milk processors are double dating their milk cartons which is very confusing for consumers. Those

that do not double date might even be holding the milk in their plant coolers until 9 code days remain making the milk older before it reaches the retail shelf in the City.

A new study from ShelfLifeAdvice.com says that 76% of U.S. consumers mistakenly believe certain foods are unsafe to eat after the date printed on the packaging has expired. A copy of this information is attached from the Convenience Store News for your further review.

The dairy distribution and retail industries are working to provide consumers and store dairy managers with information about how to keep perishable food in good quality and safe before consumer purchases. One organization our association works closely with is the American Dairy Association and Dairy Council. I would like to read to you the following statement provided to me by Richard C. Naczi, CEO of the Council:

“For more than ten years, dairy processors and food retailers have worked in collaboration with the American Dairy Association and Dairy Council Inc on an aggressive program designed to ensure milk and dairy food quality throughout New York State.

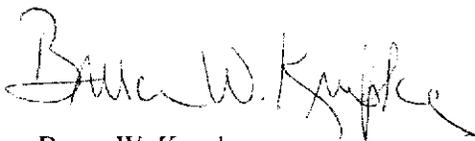
This program is conducted in more than 2000 stores in the New York, Northern New Jersey and Northeastern Pennsylvania region. In the metro New York area, a sample group of over 200 stores (including supermarkets, convenience and drug stores) are reviewed on a quarterly basis. Overall case conditions are assessed, including stock rotation, average temperature, and cleanliness, as well as any outstanding quality assurance issues. These reports are shared with chain headquarters of the respective stores, and are used to develop plans and set policies to further guarantee the safest, freshest dairy products are available for consumers to purchase.”

Should your Department eliminate 111 and 117, our association will be very proactive and initiate a new education program targeting milk delivery personnel and dairy managers in retail stores in New York City. This initiative will include training materials and communications to continue to make sure milk is properly handled, rotated, inventoried, stored, shipped and correct dairy case temperature is adhered to. A sample of these communication pieces and information are attached for your review. We will also launch a communication campaign to consumers to remind them to transport perishable foods like dairy products from their retailer to their home quickly and to check the temperature of their refrigerators to be between 35 and 40 deg. Fahrenheit for best dairy and other perishable food keeping quality and freshness.

Consumers in New York City will not see any changes in the quality of milk should Articles 111 and 117 be eliminated. In fact with our proactive initiatives and easier to read sell by dates consumers will benefit from your action.

We strongly encourage the New York City Board of Health repeal Articles 111 and 117. Thank you for your consideration of our association’s opinion and position regarding this hearing.

Respectfully,



Bruce W. Krupke  
Executive Vice President

Enclosures (3)

Summary of Milk Code Dating Requirements for the Northeast United States as of November 1, 2008

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- CT - CGS 22-197b and RCSA 22-133-131

Fresh fluid milk and milk products (cream, yogurt, sour cream, fresh cheeses) must be labeled with a "sell by" date and the words "keep refrigerated". The dating requirement is open.

Shelf stable products must be labeled with the words "keep refrigerated after opening"

- NH - NH does not have any code dating requirements for pasteurized milk and milk products. It is up to the discretion of the processors. If all products are being included, NH does allow retail sale of raw milk and has a 5 day date code requirement for that.
- MA - Regulated by the Dept. of Health. None
- ME: Regulated by the Ag. Dept. Open dating
- NJ - Regulated by the Department of Health. None, but must be supported by data that milk can last that long. A form has to be filled out to use if applying for more than 20 days for pasteurized fluid products.
- NY:- Regulated by the Ag. Dept. Open Dating, meaning no dates required. Milk plants are closely monitored by the NY Agriculture Department to ensure the products are lasting as long as marked.
- New York City - Regulated by the City Dept. of Health Maximums of 9 Days pasteurized; 45 Days for Ultra-Pasteurized products.
- PA - Regulated by the Ag. Dept. Maximum 17 days for fluid milk, none for ultra-pasteurized
- RI - None. Regulated by the Dept. of Health
- VT: Regulated by the Ag. Dept. They do not regulate dairy product sell-by dating in Vermont.

# Convenience Store News

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## Americans Wasting Billions by Tossing Food Mistakenly Believed to Be Spoiled

A new study from ShelfLifeAdvice.com and Harris Interactive says that 76 percent of U.S. consumers mistakenly believe certain foods are unsafe to eat after the date printed on the packaging has passed.

"Food scientists agree that most foods, if stored properly, can be safely consumed for days or even weeks past the package date," said Joe Regenstein, professor of food science at Cornell University and a member of the ShelfLifeAdvice.com Board of Advisors. "The dates on food packages are very conservative; if the product was stored properly, it should last well beyond the date on the package."

The survey was conducted online by Harris Interactive in March for ShelfLifeAdvice.com, a Web site that provides shelf-life data on hundreds of food products, plus storage and handling tips that help consumers maximize longevity, safety and freshness of food.

The study asked 2,482 American adults which, if any, of 10 refrigerated food products were considered unsafe to eat past the printed package date. Almost half of the respondents believed eggs were one of these products.

"Sell-by dates anticipate consumption after the printed date. When eggs are stored in the refrigerator, they should last at least three to five weeks after the sell-by date," said Regenstein.

The dating on milk was even more misunderstood than eggs, with 61 percent of respondents mistakenly believing the printed date is the final date milk can safely be consumed.

"Generally, milk has no off flavor up to five days after the printed date passes. When off flavors can be detected, the off flavors are produced by [harmless] bacteria, so even this milk could be consumed without making one sick," explained Clair Hicks, professor of food science at the University of Kentucky and also a member of the ShelfLifeAdvice.com Board of Advisors.

Based on the study, ShelfLifeAdvice.com estimates that if 61 percent of Americans needlessly discard just a quarter-gallon of milk each month, they would be wasting more than \$700 million a year. Combining this figure with the other foods in the survey, ShelfLifeAdvice.com estimates that billions are wasted by American households every year.

According to a University of Arizona study funded by the USDA, Americans throw away more than 40 percent — about 29 million tons — of all the food the country produces each year. This has a significant environmental and economic impact.

ShelfLifeAdvice.com is a free Web site with comprehensive shelf life and storage information on hundreds of foods, with data from university, government and other reliable sources. For more information about the survey and additional facts about food shelf life, visit <http://shelflifeadvice.com/media>.

# Milk.

Keep it Cold!

**One degree can  
affect milk quality.**

Temperature control is important  
in avoiding heat shock.

Shelf life decreases as storage  
temperature increases.

Store all dairy products in a properly  
refrigerated zone at 32°F to 40°F.

Average shelf life is 10 days.

Store ice cream  
at -10°F to -20°F.

Do not stack  
products over  
cooling vents.



# Make your dairy case more profitable.

## Hygiene

The milk case should always be sparkling clean in order to build customers' confidence in hygiene, freshness and quality of food.

To maintain a clean dairy case, follow daily and monthly cleaning procedures:

### DAILY CLEANING SCHEDULE:

- Wipe down glass doors and mirrors with approved cleaning products.
- Wipe down any milk spillage in the dairy cooler.

### MONTHLY CLEANING SCHEDULE:

- Deep clean the milk case with approved products.
- Wash shelves with approved cleaning products.

## Temperature Control

Milk that is exposed to temperatures outside the recommended 32 to 40 degree range will deteriorate quickly resulting in customer complaints, loss of stock, time and profits.

### UPON DELIVERY:

- Milk should be moved directly from the delivery truck to the cooler.
- Milk should be filled into the cooler promptly to avoid elevating product temperature.

### DAILY:

- Check milk case temperature.
- Check milk case lights.
- Check milk temperature at delivery.
- Report any refrigerator problems to your maintenance department immediately.

## Milk Sales

- It is important to ensure that the full range of milk products is in stock during business hours
- It is recommended that weekly milk sales printouts are used to identify daily sales for the entire range of products. Remember that this will only help identify daily sales of the entire range.
- The printouts will not provide a true picture if out-of-stocks occurred during business hours.
- To get a true picture of the out-of-stock situation, an out-of-stock report should be completed daily. This will minimize the guesswork when placing orders.



## Planograms

- Comply with the approved product range list.
- Maintain corporate planogram integrity.
- Planograms should reflect demographics to meet consumer demand.

## Rotation

The following routine will be of assistance:

- Make sure that new stock is at the back.
- Make sure that old stock is at the front.
- Check for conditions of older stock.
- Remove damaged or outdated items.
- Know how to face up when required with use by dates to the front.
- Topping up: Milk must be rotated every time the milk case is filled.

## Use-By-Code Policy

As a suggestion, Keep it Fresh!! Stores and/or suppliers should take milk, dairy or refrigerated products from shelves approximately 3 DAYS from the expiration date to maintain fresh impression.

## Stockweight

Good stocking procedures should be regarded as a part of good customer relations. There should always be enough products on display to meet customers' demands.

### QUANTITIES.

The amount of stock orders depends on the following factors:

- The rate of sales over previous ordering periods.
- Stock-on-hand at the time of ordering.

Reasons for out-of-stocks should be noted

### PRIOR TO ORDERING:

- Be familiar with all commodities concerned.
- Determine stock levels.
- To assist in ordering, refer to the daily in-store out-of-stock report.

It is a challenge for a store to order so that product quality can be maintained and out-of-stocks eliminated while making profit at the same time. Efficient ordering is a key to the success of any dairy department.

## REMEMBER:

- *Keep a daily record of out-of-stocks to assist you in ordering.*
- *Customers shop elsewhere if milk varieties continue to be out-of-stock.*
- *A large percentage of customers will not substitute a pack size.*

## BOE Public Hearing – Cyrus Schwartz Testimony July 22, 2010

### A Brief History

Historically, NYC has recognized technological advances in sanitation, equipment design, and raw milk quality by periodically extending the time period during which milk can be sold after pasteurization. In 1987, the NYC Board of Health recognized that the then-current 4-day limit from pasteurization to sale was unnecessarily strict and extended the time period to 9 days. Technological advancements and improvements in milk processing practices have dramatically improved in the past 23 years making the need for a now misleading "expiration date" requirement obsolete. The time has come for NYC to approach milk coding in the same manner as the rest of NY State and most other jurisdictions by allowing the milk manufacturing industry to set the "best before" date (commonly known as shelf life) for milk based upon internal tests of each processing plant, in line with all other food products.

### Milk Coding is Not a Safety Issue

All milk is required to undergo pasteurization which eliminates or reduces to a safe number all pathogenic micro-organisms reasonably expected to be in the raw product. The combination of temperature control and Good Management Practices following pasteurization helps ensure the elimination of pathogenic contamination and minimization of microbial growth. This allows shelf life to be determined by taste rather than health concerns. In other words, the bacteria that will eventually spoil the product are spoilage type bacteria, not pathogens.

In the rest of NY State and in most other jurisdictions, the coding for milk and other perishable food products is determined by the manufacturers. Manufacturers make such decisions based upon when a product might go stale (e.g., bread), develop off-flavors (e.g., carrot juice), or spoil (e.g., dairy products). Some canned products are presumed to be good forever. Perishable foods like juice, eggs, yogurt, etc. all have the possibility of spoiling due to bacteria or mold growth and carry "best before" dates that are fairly short (from several days to a few months). These dates can vary quite a bit by manufacturer and even by product within the same food category based upon the manufacturers' internal shelf life tests and/or the condition of the companies' plants.

### Milk Safety is Already Regulated

Milk safety including testing, licensing for farms, manufacturing plants, distributors, and even retail stores is overseen by the New York State Department of Agriculture and Markets (NYSDAM). All safety issues for milk and milk products are thoroughly regulated by this department and they do not have any requirements for putting a specific date on milk products. In addition, on a Federal level there are no requirements for product dating except for a few rare instances such as infant formula and some baby food.

### Be Consistent with NY State and the rest of the country

New York State and the vast majority of states throughout the nation have abolished any requirement for dating on milk. As mentioned above, the necessity and safety issues for a fixed expiration code are no longer relevant. Rather, most places adopt what is known as

"open dating" which is a date placed on milk by the manufacturer which guides retailers as to how long they should sell a specific milk product. This helps retailers monitor their product rotation, and also gives consumers a good idea of the latest available time to purchase the milk which will still give optimal taste even after being brought home and used under normal circumstances.

### **The Current 9 day Code is Outdated, Misleading and Promotes Waste.**

Not only is a required "expiration date" on milk bottles no longer necessary, but it actually causes confusion to consumers, and causes needless waste for both consumers and retailers.

Consumers are confused by the current "dual-coding" on milk in New York City and often reject purchasing milk in NYC in favor of surrounding counties due to the misbelief that milk in the city may not last as long as other counties. In addition, consumers may throw out good milk at home if it passed the 9 day code even though the milk will last for many more days with good quality and good taste.

Retailers are also hurt by NYC's short shelf-life date. Retailers only have a few days to sell the milk by the time it actually gets on the floor because of the short code. With a very short "expiration" date consumers push the most recent dates to the back in favor of fresher dates. Then the retailers are not able to sell their milk. This causes retailers to throw out good milk even though the milk will last many days longer than the date on the bottle.

### **In Conclusion**

Eliminating NYC's 9-day coding requirement will not detract from the regulation of legitimate, milk-related health concerns. In fact going to "open dating" will actually lead to better manufacturing practices, encourage manufacturing plants to improve the quality in their plants in order to extend the real shelf life, give consumers a better product, and eliminate unnecessary and burdensome waste.