

Texas Administrative Code, Title 25

Subchapter B: Grade A Raw for Retail Milk and Milk Products

Stakeholders' Proposal

Explanation: The underlined text is suggested new language; strike-throughs indicate existing language that should be deleted. Each proposed change is explained in italicized text after that section.

Rule 217.32: Selling of Raw Milk and Raw Milk Products to the Consumer

Raw milk and raw milk products may be sold by the milk producer directly to the consumer ~~only at the point of production, i.e., at the farm,~~ provided that such producer has been issued a Grade A Raw for Retail Milk Permit in accordance with Section 217.81 of this title (relating to Permits, Fees and Enforcement), and complies with all the sections in this chapter relating to Grade A Raw for Retail Milk. For purposes of this provision, sales made “directly to the consumer” includes sales at the farm, farmer’s markets, farm stands, food cooperatives, community supported agriculture groups, buying clubs, fairs, trade days and flea markets, consumer’s residences or designated delivery locations for multiple consumers, and any other location acceptable to the department.

Explanation: The restriction that raw dairy be sold “only at the point of production” does not provide any health or safety benefits and serves as an unnecessary restriction on individuals’ access and farmers’ businesses. The proposed change preserves the direct farm-to-consumer nature of the sales, ensuring that individuals know the source of the raw dairy and prohibiting sales in stores and other secondary retail outlets. The proposed change allows direct farm-to-consumer sales in specific locations, such as farmers markets.

There is also a minor proposed clarification. Subchapter B refers to “milk and milk products” in every section except this one, presumably due to an oversight.

Rule 217.25: Labeling

(a) All bottles, containers, and packages enclosing milk as defined in §217.1 of this title (relating to Definitions) shall be conspicuously labeled or marked with:

- (1) the name of the product as given in the definition in §217.1 of this title;
- (2) the grade of the contents;
- (3) the quantity of the contents; and
- (4) the name, address and zip code of the raw milk for retail dairy.
- (5) the following statement: “This product contains raw milk products that have not been pasteurized”

(b) The labeling information which is required on all bottles, containers or packages of milk shall be in letters of an acceptable size, kind and color satisfactory to the department and shall contain no marks or words which are misleading. All labeling must be easily legible under ordinary conditions of purchase. All labeling on milk

containers must be approved by the Texas Department of Health, Milk and Dairy Products Division.

***Explanation:** The proposed change ensures that consumers are aware that the product is not pasteurized.*

NEW Rule 217.34: Transportation of Raw for Retail Milk and Milk Products

- (a) Raw for Retail milk and milk products shall be cooled to a temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less in accordance with §217.28(1) and §217.29 (s), and shall be kept at a temperature of 7 degrees Celsius or less throughout storage and transport.
- (b) Upon delivery to the consumer or consumer's designated agent, the producer's responsibility for maintenance of temperature standards shall cease.

***Explanation:** Subchapter B already requires raw dairy to be cooled to 45 degrees Fahrenheit within 2 hours. This new section will clarify that the dairy must be kept at or below that temperature until it is under the physical control of the consumer or the consumer's designated agent.*

Discussion on the Texas Food Establishment Rules (TFER)

The Texas Food Establishment Rules (TFER) do not explicitly address the sale of Grade A Raw for Retail Milk to consumers.

The first section of the TFER applies to all food. Section 229.164(b)(1)(A) requires that all “food must be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food.”

The TFER also includes one provision addressing raw animal foods, and lists milk among them:

Section 229.164(s) states that “if an animal food such as beef, eggs, fish, lamb, **milk**, pork, poultry or shellfish is served or sold **raw**, undercooked, or without otherwise being processed to eliminate pathogens,” the permit holder must provide a disclosure.

Despite this clear acknowledgement that raw milk may be served or sold by food retail establishments, there has been some concern that the TFER language appears to require pasteurized dairy only. We recommend that, when the TFER rules are open for amendment again, the following language be added to the section on pasteurized dairy to clarify this issue:

(4) Eggs and milk products, pasteurized

...

(B) Fluid and dry milk and milk products complying with grade A standards as specified in law shall be obtained pasteurized, unless intended to be consumed raw in accordance with the Grade A Raw for Retail regulatory provisions in Title 25, Chapter 217