

Murdo, Patricia

Subject: FW: Montana's "sell-by" milk rule

From: Hennes, Robert F. [<mailto:Robert.Hennes@fda.hhs.gov>]
Sent: Tuesday, March 25, 2014 11:03 AM
To: Murdo, Patricia; Nsofor, Obianuju
Cc: Sheehan, John; Metz, Monica
Subject: RE: Montana's "sell-by" milk rule

The Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments define reciprocity as:

“RECIPROACITY: For the purpose of the NCIMS agreements, reciprocity shall mean no action or requirements on the part of any Regulatory Agency will cause or require any action in excess of the requirements of the current edition of the *Grade “A” PMO* and related documents of the NCIMS agreements.”

FDA has for numerous years identified in the triennial State Program Evaluations of the Montana’s Grade “A” Milk Safety Program as not being in compliance with the definition of reciprocity as it relates to the State’s mandatory twelve (12) day “sell-by” dating requirement. Non-compliance with the definition of reciprocity is based on the issue that it applies additional action and requirements that are in excess of the requirements in the current edition of the *Grade “A” Pasteurized Milk Ordinance (PMO)*. The current and past PMOs have not addressed or required mandatory “sell-by”, “use-by”, or “best-by” dating on containers of milk and/or milk products, let alone a mandatory limit of twelve (12) days. Twelve (12) days is very antiquated for the current dairy industry across the country as most if not all are processing milk and/or milk products that they have established through their own in-house testing and sampling as eighteen (18) to twenty-one (21) days. Also, ultra-pasteurized milk and/or milk products can have a shelf life of 45-90 days under refrigerated conditions and aseptically (sterile) processed and packaged milk and/or milk products can be stored at ambient room temperatures for six (6) to nine (9) months.

Other States that may have mandatory “sell-by” dating requirements leave it up to the discretion of the dairy industry (individual milk plants) to establish their own “sell-by” time frames based on quality issues and not public health related issues.

We believe that “sell-by”, “use-by”, or “best-by” dating is a quality issue best addressed by the individual milk processing plants and that it is not considered a public health related issue. It should be left to the individual milk processing plants to establish such “sell-by”, “use-by”, or “best-by” dating and to control that dating themselves.

Bob Hennes, Team Leader
Milk Safety Team
FDA/OFS/DFDPS/DEB/MST

From: Murdo, Patricia [<mailto:PMURDO@mt.gov>]
Sent: Thursday, March 06, 2014 7:26 PM
To: Nsofor, Obianuju
Cc: Hennes, Robert F.
Subject: RE: Montana's "sell-by" milk rule

Dear Dr. Nsofor:

Thank you for addressing the Economic Affairs Committee in January. The topic of the sell-by date is important in Montana, as you may know, and I remember there being a question of whether Montana is out of compliance with some federal rule because of the 12-day sell-by date. Do you remember what that was? We will be discussing this issue again on March 27, this time hearing from local dairy producers, processors and distributors. Any help you can provide about compliance issues before that date would be much appreciated.

Thank you.

Pat Murdo

Legislative Analyst

Montana Legislative Services

406-444-3594