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The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

April 29, 2026

Mark Nelson
Hippy Cow Creamery
164 Blackburn Ave.
Cody, WY 82414

Mr. Nelson,

After an extensive review of your case, we offer the following guidance for your consideration. Our review included examination of our statutory requirements under Title 35, the intended deregulation of certain food products under Title 11, the Wyoming Food Safety Rule (FSR), and the authorities granted to the Director under those laws and regulations. Please note, this information is being provided with the assumption your business will be moving into a new location that would meet the requirements for a commercial food establishment license, as previously discussed with WDA.

This letter includes a large amount of statutory review, with our interpretation suggesting there is only one real way to sell raw milk lattes at this time - from the private home kitchen. Unfortunately, this remains true even if you were to obtain a commercial food license, since commercial food establishments are required to use pasteurized milk. The reasons for this, along with potential paths forward, are outlined below. We have also included a flowchart that illustrates the ways raw milk may be sold - either as a "dairy product" or as an "ingredient" in other food products.

The "producer to informed end consumer" chain does not present a valid exemption.

We initially hoped that the Wyoming Food Freedom Act (WFFA) requirement that sales "be directly between the producer and the informed end consumer" would offer a straightforward solution and only require some additional labeling and warnings to consumers. Unfortunately, this is not the case. The WFFA includes limiting language such as "except as otherwise provided by this act" and "as long as the sale is made in compliance with this act."¹ The inclusion of this language makes one part of W.S. § 11-49-103(d) impossible to escape.

Under W.S. § 11-49-103(d), "[h]omemade or uninspected food shall not be served or utilized as an ingredient in a commercial food establishment," meaning the ability to use raw milk in food items that are not "homemade" cannot be served. This "homemade" requirement and the "commercial food establishment" requirements are discussed further below.

¹ W.S. § 11-49-103(c)(i).

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Raw milk lattes do not qualify as a “homemade” food under the WFFA.

The WFFA defines “homemade” foods as “food that is prepared or processed in a private home kitchen, that is not licensed, inspected or regulated.” The raw milk being used to make the lattes would be an *ingredient* of that homemade food, not the final food product itself. Because the entirety of the process does not occur in a home kitchen, the final product (the latte) cannot be considered a “homemade” food.

The purported “exemptions” for dairy products do not provide the flexibility we hoped to find.

Closely tied to the theory of “homemade” is the purported exemption for “dairy products” under the WFFA. Multiple parts of the WFFA appear to provide additional consideration for dairy products. However, the WFFA does not explicitly allow for those dairy products to be used as ingredients in another food item unless that item is “homemade.” Upon a closer reading, the purported “exemptions” for dairy products merely expand the scope of *who* can sell those products, not what can be done with dairy products outside the home kitchen.

This becomes especially confusing in portions of the WFFA which states, in part: “[n]othing in this section shall prohibit the sale of homemade food from... where the food is produced or at the retail location of a third party seller [of]...dairy products.”² While “dairy products” would include raw milk, once that raw milk becomes an *ingredient*, it must remain connected to a “homemade” food and cannot enter a commercial food setting. This remains true even if the producer is using his/her own dairy products to make food in a commercial setting.

It should also be noted that “retail space,” as described in the WFFA, is entirely related to a *physical location*, not what is considered “retail” under the regulatory framework or the Wyoming Food Safety Rule.

A commercial food license will not resolve the issues surrounding the use of raw milk.

Because your lattes are not made entirely in your home kitchen, the coffee shop would qualify as an “establishment” under the Wyoming Food Safety Rule (FSR).³ Additionally, the statutory definition of “establishment” specifically does not include “a home kitchen where food is prepared and stored...”⁴ Similar is true of the definition for “commercial food establishment,” which specifically excludes farmers markets, transactions under the WFFA, and “any retail space selling homemade food.”⁵

All commercial coffee shops (i.e., those not part of a home kitchen under W.S. § 11-49-102(a)(iv)) are required to hold an establishment license and comply with the FSR, including provisions that require all milk to be pasteurized.⁶ Although the raw milk is from your farm, when that raw milk moves into a retail or commercial setting as an ingredient, it become subject to the FSR. If any establishment holding a license were to use raw milk, it would be in violation of the FSR, and their license would be at risk of suspension or revocation.⁷

² W.S. § 11-49-103(d).

³ Wyoming Food Safety Rule, Ch. 1, § 8(a)(iv).

⁴ W.S. § 35-7-110(a)(xi).

⁵ W.S. § 35-7-110(xxi).

⁶ Wyoming Food Safety Rule, Ch.3, § 8.

⁷ The FSR is derived from statutory requirements to establish and maintain a food safety system. (W.S. §35-7-123). The current FSR adopts the Food and Drug Administration’s Model Code, which bars adulteration, as well as the Grade A Pasteurized Milk Ordinance. (FSR, Ch. 14 § 1(a)(ii)). Since the FSR incorporates these federal regulations, raw milk is not viewed as an “approved source” (FDA 2022 Model Code § 3-201.11) and any resulting food made with the unapproved source would be considered “adulterated,” which does not comport with FSR, chapter 1, section 3.

The “leased property” portion of the “producer” definition is unclear and other language in the statute does not support extending the concept of the “private home kitchen.”

We understand why the reference to “leased property” in the definition of “producer” raises questions and, at first glance, appears to provide some flexibility. We examined that possibility carefully. However, nothing else in the statute seems to support interpreting the phrase in a way that would extend the meaning of “private home kitchen.” Much like the challenges surrounding the “producer to informed end consumer” concept, relying on the “leased property” language does not provide the flexibility we had hoped for and would not allow the lattes to be made outside of the home kitchen.

The statute defines a “producer,” in part, as “any person who grows, harvests, prepares or processes any food or drink on the person’s owned or leased property.”⁸ When we reviewed the remainder of the WFFA with this language in mind, several issues became apparent. First, the term “leased property” appears only once in the entire statute - within this definition – and every other operative section consistently refers to “homemade” food or “the ranch, farm or home where the food is produced.” This single use makes it difficult to connect to other portions of the WFFA, particularly those governing “homemade” foods, and offers no additional context to explain why it was included.

Given the structure of the WFFA, the reasonable interpretation is that “leased property” was included to ensure that farmers and ranchers who lease land (e.g., pasture, hay fields, farmland) would still be considered “producers.” Based on its singular use and the consistent residential/domicile language throughout the statute, we do not believe “leased property” was intended to include leased buildings or kitchens.⁹ In other words, it clarifies *who* may qualify as a producer, rather than expanding the scope of where “homemade” foods may originate.

The statute’s sales and enforcement provisions also do not resolve the issue. The WFFA states that “[n]othing in this section shall prohibit the sale of homemade food from...where the food is produced or at the retail location of a third party seller for...dairy products.”¹⁰ The first part of this sentence refers to your home and dairy; the second expands sales to third-parties and their retail locations. While this may remove some WDA oversight, it does not broaden the ability to use WFFA items, like raw milk, as ingredients outside the home kitchen. Again, this would prevent you from making lattes at leased property under a “homemade” theory.

Even if “leased property” were interpreted more broadly, it would still not solve the underlying problem. The statutory framework simply does not support extending the “private home kitchen” to leased commercial space at this time. Without that extension, the use of raw milk as an ingredient would require adherence to the FSR and a commercial food license, as discussed above.

No exemption authority exists under the WFFA, Title 35, or the FSR. However, you may request for a “variance” from the FSR.

As the number of potential solutions shrank, we were left hoping the Director’s statutory authority would allow him to grant an exception or exemption. Unfortunately, neither the WFFA nor Title 35 grant the Director the authority to create exceptions or exemptions. Without explicit statutory authority, the Director cannot waive provisions of either state statute or the FSR.

⁸ W.S. § 11-49-102(a)(vi).

⁹ The one clear exception would be a leased *home*, where someone is legally domiciled.

¹⁰ W.S. § 11-49-103(d).

However, the FSR does allow individuals to request a "variance." A variance request must include justification and supporting rationale.¹¹ Please note, the variance may still not be enough to override the current statutes, even if it provides relief from the FSR.

Recommendations

While we did not find a solution that would allow you to resume selling raw milk lattes in the same fashion as you have been, the following options are provided for your consideration:

1. Ensure the entire preparation process occurs in the home kitchen, including brewing the coffee. This would allow the raw milk lattes to remain a "homemade" food item.
2. Request a variance from the Food Safety Rule. There are several forms we can provide for you if you are interested. The process includes an opportunity for input from all twenty-three county health departments but also allows you to provide your rationale and scientific evidence.
3. Create a "latte station" or similar customer-operated preparation area. Raw milk could be brought to the location, as a WFFA item, and sold to the customer. Coffee could then be sold from the commercially licensed coffee shop, and the customer would independently combine all ingredients at the "latte station." While admittedly cumbersome, it would keep the "commercial food establishment" and "producer to informed end consumer" frameworks separate.

I would like to thank you for your patience and continued communication throughout this process. We have already begun working with several legislators on potential statutory clarifications to reduce conflicts in the laws, such as the one you are experiencing now. We have also had discussions with Governor Gordon's office to see if there are any potential short-term solutions, but he may be similarly limited by statute.

As a final note, I would like to emphasize that no one at WDA enjoys having to tell a local producer "no." The issues within the WFFA have been known for some time and, as in this case, occasionally become impossible to overcome. I am optimistic that the statutes can be clarified but also remain bound to enforce the laws as written until those solutions are realized. If our office finds any other potential solutions, we will relay those to you immediately. Please feel free to reach out to our office if you have any further questions.

Sincerely,



Doug Miyamoto
Director

CC: Governor's Policy Office
Park County Dept. of Health
WY Legislature: Joint Agriculture Committee
Sen. Barry Crago
Rep. Tomi Strock
Rep. Rachel Williams

¹¹ Wyoming Food Safety Rule, Ch. 1, §§ 5-7.

