

Food Safety Threat and Disguised Protectionism: Confessing the Sins of the US Pasteurized Milk Ordinance

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Introduction

The US Grade A Pasteurized Milk Ordinance (PMO) is “incorporated by reference in Federal specifications for procurement of milk and milk products; is used as the sanitary regulation for milk and milk products served on interstate carriers; and is recognized by the Public Health Agencies, the milk industry, and many others as the national standard for milk sanitation.”¹ It also forms the standards used by the National Conference on Interstate Milk Shipments (NCIMS) in the US- made up of states and officials with responsibilities relating to milk quality and public health.

The Issue

Under the PMO, US Grade A standard is required for the following dairy products- Milk; acidified milk; cultured milk; concentrated milk; sweetened condensed milk; non-fat dry milk (including fortified); evaporated milk; dry whole milk; heavy cream; light cream; light whipping cream; sour cream; acidified sour cream; egg nog; half and half; yogurt; cottage cheese; whey and whey products). There are other dairy products- cheese; butter; ice cream- that do not require US Grade A milk.

Consistent with this, there is milk marketed from farms in the US that does not meet Grade A standard- it is Grade B milk, or perhaps does not even meet Grade B standard. Table 1 below provides some metrics. In California, Illinois, Ohio, and Missouri, in 2025 milk was marketed that did not meet fluid grade (US Grade A). This totaled just over 1.4 billion lbs, or 650,737 tonnes. For context, based on 1 litre milk weighing 1.03 kg, this amounts to about 6.3 million HL, which is well over 2025 milk production in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador combined (5.55 million HL).

Table 1 Milk Marketings by State Reporting Less than 100 Percent Fluid Grade Share, 2025

	Total Milk Marketed, Million Lbs	Fluid Grade Share Percent	Milk Marketed Not Satisfying Grade A Standard, Million Lbs
California	40,260.00	97	1,207.8
Illinois	1,686.00	98	33.72
Ohio	5,665.00	97	169.95
Missouri	780	97	23.40
Total			1,434.90

Source: *Milk Production, Disposition, and Income 2025 Summary (April 2026)* USDA-NASS

Milk not meeting US Grade A standard would not be saleable from farms in Canada. This is evident from a brief comparison of basic conditions for milk quality contained in the Grade A PMO with a representative Canadian province (Ontario). Table 2 provides a summary. The salient milk quality standards for US and Ontario Grade A are in some measures identical (drugs-zero tolerance); similar (cooling temperature and timing; bacteria counts); or the Ontario standard significantly exceeds US Grade A (somatic cell count- SCC). In Ontario, the standards summarized in the table are mandatory for all milk marketed; based on this comparison, it can be concluded that milk that did not meet the US Grade A standard would not be saleable at all in Ontario.

Farm milk quality standards in Canada are provincial, but broadly similar; however, there is a Canadian national standard for maximum SCC of 400,000

¹ 2023 Revision Grade “A” Pasteurized Milk Ordinance (PMO)

cells/ml². US Grade A allows up to 750,000 is cells/ml³; it is thus incompatible with the Canadian SCC standard. The high somatic cell level allowable within the US Grade A standard has also faced opposition in the US. The National Mastitis Council observed in 2005 that it had “sponsored proposals to the National Conference on Interstate Milk Shipments during four of the last five conferences to lower the legal limit of SCC in milk from the present value of 750,000 cells/ml”.

Risks from US Imports

Canada has imported a broad range of US dairy products on the basis of equivalence with Canadian standards, including those not subject to the US Grade A standard. The presence of sub-standard milk (Grade B, or less) used in US dairy manufacturing actually undermines this equivalence; it is the inverse of like-treatment- it actually holds Canadian product to a higher standard, with associated additional costs, versus imports from the US.

Moreover, US Grade A itself poses questions, as US milk within the tolerance of the US Grade A SCC standard would not be saleable in Canada- a Canadian producer supplying milk at this quality would suffer the loss of the farm’s Grade A milk standard and be cut off from milk shipments, until such time as documented remedial measures justified restoring the producer’s Grade A status.

Disguised Protectionism

The US has not extended equivalence of its Grade A milk standard to Canada, or apparently to other countries. The guidance for US importation of products covered under the Grade A PMO obtained from the National Conference for Interstate Milk Shipments website dates from the year 2000.⁴ It proposes three alternatives for the importation of dairy products into the US subject to the Grade A PMO:

1. A dairy firm outside of the United States could contract with any current NCIMS member’s regulatory/rating agency to provide the “Grade A” milk safety program in total. This would include the regulatory licensing, dairy farm and milk plant inspection and sampling, pasteurization equipment testing, laboratory certification and rating/NCIMS listing certification. To use this option the firm would be required to abide by all applicable NCIMS regulatory and rating requirements and the regulatory/rating agency would have to agree to treat the firm as if it were located within its jurisdiction for all purposes, including inspection and enforcement. Ratings of the firm would be check-rated by FDA.

2. The importing country, or a political subdivision thereof, may become a full member of the NCIMS subject to all NCIMS rules and enjoying all privileges of a U.S. State. This would require, among other things, that the milk regulatory agency (ies) of the importing countries adopt and enforce rules and regulations which are the same as those required in the United States and abide by all applicable NCIMS regulatory and rating requirements. Their ratings would be check-rated by FDA in the same way as State ratings. FDA would certify their rating, sampling surveillance and laboratory evaluation officers.

3. FDA can evaluate the importing country’s system of assuring the safety of dairy products and compare the effect of that system with the effect of the United States system on the safety of dairy products produced domestically. The NCIMS has adopted a procedure to accept FDA findings of equivalence and to allow NCIMS member States to accept products produced within the scope of such a finding.

Effectively, Option 1 provides the opportunity for a dairy foods firm outside of the US to have its entire supply chain inspected to US Grade A PMO standard, with associated redundancies in cost. Option 2 proposes that a country wishing to export products subject to the US Grade A PMO simply adopt the US Grade A PMO in its

² <https://www.dairyfarmers.ca/proaction/how-it-works/milk-quality>

³ <https://www.dairyfarmers.ca/proaction/how-it-works/milk-quality>

⁴ https://gams.fda.gov/active/M-I-00-4_FINAL.pdf

domestic policy/regulations. Option 3 sets up the prospect for regulatory equivalence arrangements. The current information provided on the FDA website, updated in 2023, is that “The FDA has been engaged in equivalence discussions on grade A dairy with Canada, the European Union, and New Zealand”⁵; however, this has not yet occurred.

Thus, quite apart from trade policy measures applied to imports by the US, the Grade A PMO must create additional costs of dairy trade with the US to potential exporters, effectively acting as a technical barrier to trade.

Loss of Regulatory Capacity

In April, 2025, it was announced that the FDA was suspending proficiency testing of milk testing labs that form a key component of the Grade A PMO. Routine milk testing in laboratories was not stopped and continues; rather, official proficiency testing of laboratories testing milk was stopped. The nature of the proficiency test was described by Polzin (2025):

“each year FDA (in cooperation with state partners) sends out standardized samples of milk or dairy products which are spiked with known levels of bacteria or residues. Laboratory analysts test these samples as if they were routine, and report their results. Passing the proficiency test is generally required to maintain a laboratory’s certification under the NCIMS program. If an analyst or lab has unacceptable results, they must undergo retraining or other corrective action”.

This recent lack of official laboratory proficiency testing creates additional risks for Canada in terms of dairy product imports from the US. Indeed, it exacerbates the existing risks associated with dairy products made from milk not compliant with US Grade A that would be unsaleable in Canada, and higher tolerances within US Grade A. Polzin concludes that “the FDA’s suspension of the Grade “A” Milk Proficiency Testing Program in April

2025 might represent an inflection point for the U.S. dairy safety system”.

It also begs the question of the impact on exporters of dairy products to the US that are subject to the PMO. It is unclear what occurs to an exporter dependent upon certification of not just a US standard, but also a US agency itself for certification, when that agency has effectively been decommissioned.

Conclusion

The US has a bifurcated system of milk quality. Its requirements for Grade A standards allow for milk that would not be saleable from Canadian farms based on safety and quality. Moreover, it allows for a significant volume of milk that does not even meet US Grade A standard. The US spending cuts to laboratory proficiency testing undermine the integrity of the US Grade A milk standard, which both invites an expansion of the milk volume that does not satisfy US Grade A, and undermines confidence in products that allegedly satisfy the Grade A standard.

At the same time, the US wields the Grade A PMO as a non-tariff trade barrier. It has taken over 25 years for the US to establish equivalence agreements regarding US Grade A milk with other countries, and it is unclear whether the US is actually serious about it or if it will ever happen. In turn, this questions the US commitment to the WTO Sanitary and Phytosanitary (SPS) Measures (and, by extension, the Agreement on Agriculture). Article IV (1) of the SPS Agreement states that “Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level of sanitary or phytosanitary protection.”

⁵ <https://www.fda.gov/food/international-cooperation-food-safety/equivalence-and-food-safety>

The US has not taken this approach with Canada, despite the evidence of the rigour and robustness of Canadian provincial milk quality and safety standards (only a small fraction of which is presented here) that meet or exceed that in the Grade A PMO.

Absent the equivalence in standards route, imports into the US must fall back on arranging for US inspection of Canadian dairy supply chains, or adopting wholeheartedly the US system in a reformed Canadian dairy regulatory system. In the first case, Canada must now consider that any US NCIMS member's regulatory/rating agency it might contract with for US Grade A milk certification lacks the integrity of official testing programs. In the second case, Canada is very likely unprepared to mimic a system that allows for a substantial volume of sub-Grade A standard milk to be sold- more than the equivalent volume than is produced in Atlantic Canada. Either of these options is very likely unacceptable to Canadians.

The implication is that US Grade A is a matter of serious disguised protectionism, and one that lacks integrity and could threaten the safety of Canadians through dairy imports from the US.

Why Raise These Concerns Now?

Based on statements it has made, such as in the most recent National Trade Estimates published by the US Trade Representative, the US continues to have serious concerns with Canadian dairy. This was most recently underscored with the threat of 50 percent tariffs under Section 338, effective August 19th, 2026, if Canada is not prepared to meet US demands regarding allocation of tariff-rate quotas under CUSMA/USMCA. Canada had previously established a means of allocating dairy tariff-rate quotas found compliant under the CUSMA/USMCA dispute resolution mechanism.

Canada has been prepared to accept dairy imports from the US as like product. But the situation has changed. With the suspension of proficiency testing of milk testing labs in the US, the dubious status of US milk quality and safety regulation surely becomes more difficult to

ignore- even as it wields its Pasteurized Milk Ordinance as disguised protection, in contrast to its commitments under the WTO-SPS Agreement. Moreover, the aggressive stance recently taken by the US against Canada seems at odds with Canada's acceptance of US milk safety and quality standards, apparently out of a sense of greater good in the bilateral relationship, or one of building goodwill with the US.

A logical and measured response for Canada could be to require labeling of its dairy imports from the US to indicate that they are not made from milk that does not satisfy US Grade A; presumably this is an issue for butter and cheese imported from the US.

Secondly, Canada could request renewal of US funding for milk lab proficiency testing, and a serious review of milk quality standards- as per the recommendation of its own bovine mastitis organization- as a condition to retain existing and future dairy trade with Canada.

Finally, the wielding of the PMO as an instrument of disguised protectionism by the US warrants focused discussion. It is simply unacceptable that it has been put on ice for at least 25 years, and its existing guidance appears clearly outside of the US commitment to the WTO-SPS Agreement.

References

- Polzin, Leonard. 2025. Suspension of FDA's Grade "A" Milk Proficiency Testing Program – A Comprehensive Analysis. University of Wisconsin Farm Management Extension <https://farms.extension.wisc.edu/articles/suspension-of-fdas-grade-a-milk-proficiency-testing-program-a-comprehensive-analysis/>
- National Mastitis Council. 2005. Human Health Risks Associated with High Somatic Cell Count: Milk Symposium Summary <https://www.nmconline.org/wp-content/uploads/2020/09/Human-Health-Risks-Associated-with-High-SCC-Milk-FINAL-May-2020.pdf>

Table 2 Comparison of Grade A PMO Chemical, Physical, Bacteriological, and Temperature Standards with Ontario Milk Act

		US FDA Pasteurized Milk Ordinance	Ontario Milk Act R.R.O. 1990, Regulation 761
GRADE "A" RAW MILK AND MILK PRODUCTS FOR PASTEURIZATION, ULTRAPASTEURIZATION, ASEPTIC PROCESSING AND PACKAGING, RETORT PROCESSED AFTER PACKAGING OR FERMENTED HIGHACID, SHELF- STABLE PROCESSING AND PACKAGING	Temperature	Cooled to 10°C (50°F) or less within four (4) hours after starting the milking operation. The milk shall then be cooled within two (2) more hours to 7°C (45°F) or less. Provided, that the blend temperature after the first milking and subsequent milkings does not exceed 10°C (50°F). NOTE: Milk sample submitted for testing cooled and maintained at 0°C (32°F) to 4.5°C (40°F), where sample temperature is >4.5°C (40°F), but ≤7.0°C (45°F) and less than three (3) hours after collection has not increased in temperature.	Conventional Milking System: i. 10°C or lower within one hour after the completion of milking, and ii. 4°C or lower within two hours after the completion of milking. Automatic milking system, the following requirements apply: 1. Within three hours after the farm bulk tank has been emptied, the milk shall be cooled, without freezing, to a temperature of 4°C or lower. 2. After the milk has initially been cooled to a temperature of 4°C or lower, its temperature shall not exceed 4°C for more than 15 minutes in total before the next time the tank is emptied
	Bacterial Limits	Individual producer milk not to exceed 100,000 per mL prior to commingling with other producer milk. Not to exceed 300,000 per mL as commingled milk prior to pasteurization.	The milk of every producer, for each millilitre of cow's milk, 50,000 colony forming units of bacteria (or 121,000 individual bacteria count).
	Drugs	No positive results on drug residue detection methods as referenced in Section 6.-Laboratory Techniques of this Ordinance	Reject milk that contains an inhibitor when tested by an official method
	Somatic Cell Count	< 750,000	< 400,000