

Introduction

This document provides Dairy Plant Inspectors and Environmental Health Officers (EHOs) with guidance and communication material to support food premises operators to be in compliance with the [Milk Industry Act](#) (MIA), [Food Premises Regulation](#) (FPR) and the [Dairy Plant Exception Regulation](#) (DPER).

A “food premises” that meets the definition of “dairy plant” in the MIA (e.g., a food premises that processes dairy products) must be licensed as a dairy plant under the MIA. However, a food premises may be exempt from needing a dairy plant licence if they fully meet conditions in the DPER to qualify for an exception.

Background

The DPER came into force November 2019 to allow food premises (e.g., small scale premises) to make certain dairy products under specific circumstances **without** needing to be licensed as a **dairy plant**. Prior to the DPER, almost all types of processing or manufacturing of dairy products at a food premises required the operator of the food premises to obtain a dairy plant licence, with limited exceptions.

The requirements for an exception under the DPER differ depending on if the location is a food premises or a food service establishment. Operators should consider the distinctions between food premises, food service establishments, and dairy plants to determine whether an exception is necessary and if so, which exception may apply.

What is a food premises?

“Food premises” are defined in the *Public Health Act’s* FPR as places where food intended for public consumption is sold, offered for sale, supplied, handled, prepared, packaged, displayed, served, processed, stored, transported, or dispensed. Some examples of food premises include retail food stores, food manufacturers or processors.

EHOs in the regional health authorities provide approvals to operate food premises under section 3 (3) of the FPR and inspect food premises.

What is a food service establishment?

“Food service establishment” is defined under the FPR as a type of food premises that serves food to the public for immediate consumption, such as restaurants, cafes, food trucks, caterers, and delicatessens. A food service establishment operator must have a valid operating permit to operate the establishment.

EHOs in regional health authorities issue operating permits under section 8 of the FPR and conduct inspections at food service establishments. These permits must be renewed annually and are not transferable to a new owner and is not transferable to a temporary event.

What is a dairy plant?

“Dairy plants” are defined in the MIA as places or buildings where milk is received from dairy farmers, or dairy products are processed, manufactured, or pasteurized. Dairy plants are required to hold and maintain a dairy plant licence and meet specific requirements outlined in the MIA and Milk Industry Standards Regulation. These requirements apply to plant design and construction, food safety management plans (e.g., equipment preventative maintenance, product recall and traceability plans, allergen management plans), regular finished product testing, controlled access and workflows, operating practices, cleaning and sanitation and dairy worker education and licensing requirements. Only licensed dairy plants can receive and pasteurize raw milk.

Dairy Plant Inspectors employed by the BC Centre for Disease Control (BCCDC) issue licences and inspect dairy plants under the MIA.

Dairy Plant Inspectors are statutory decision-makers who have the authority to perform the duties and functions in section 12 of the MIA related to:

- licensing of persons to operate a dairy plant if the person does not demonstrate that they meet the requirements set out in section 2 or 3 of the DPER; and
- licensing of dairy plant personnel.

Dairy Plant Licensing

EHOs must verify that an operator of a food premises or food service establishment is processing dairy products, without needing a dairy plant licence, only if conditions outlined in section 2 **or** 3 of the DPER are fully met. If an EHO determines that the operator is unable to meet either section 2 or 3 of the DPER, then the operator cannot process, manufacture, or pasteurize dairy products unless the operator is licensed by a Dairy Plant Inspector as a dairy plant under the MIA.

If an EHO finds that a dairy plant operator fails to meet the conditions stated in the DPER and a Dairy Plant Inspector finds that the operator does not satisfy the requirements of the MIA, the operator may be subject to enforcement actions by the BCCDC.

Meeting the Criteria of the Dairy Plant Exception Regulation

EHOs verify that the operator meets either section 2 **or** 3 of the DPER. This will remove the operator from the requirement to obtain a dairy plant licence under the MIA. Please see the appendix for a summary of the exception process.

Meeting Section 2 of DPER

A food premises is **not** a dairy plant under section 2 **if** all of the following requirements are met. Verify that:

- Dairy products (e.g., ice cream, gelato, frozen yogurt and soft-serve) are processed or manufactured using a commercially supplied prepared mix that contains all milk-based ingredients and is supplied by a licensed dairy plant;
- Frozen dairy products are processed using only a freezing device; and
- The operator develops, maintains, and follows written procedures that are approved by an EHO at a health authority, as prescribed by section 23 of the FPR.

A food premises that is not a dairy plant may add lower-risk ingredients, as needed, to frozen dairy products. Lower-risk ingredients include:

- Pasteurized eggs
- Pasteurized nuts
- Pasteurized fruit
- Flavourings and inclusions that are cooked, baked or ready-to-eat (e.g., cookie pieces, fruit jams or cooked compote, dried fruit, maraschino cherries, chocolate chips and syrups)

Meeting Section 3 of DPER

A food service establishment is **not** a dairy plant under section 3 **if** all of the following requirements are met. Verify that:

- Dairy products are only processed or manufactured using milk-based ingredients that have been provided by a licensed dairy plant;
- Dairy products are processed entirely at their food service establishment or at another food premises that they operate to exclusively transfer (not sell) to that food service establishment;
- Dairy products are only sold for the purpose of immediate consumption (and not for wholesale or retail);
- Products are not labelled in a manner that would make them suitable for wholesale or retail distribution; and
- The operator develops, maintains, and follows written procedures that are approved by an EHO at a health authority, as prescribed by section 23 of the FPR.

Inspectors may refer operators to the *Guidelines for the Production of Dairy Products in Food Establishments* which provides restaurant partners (owners, managers, chefs, and kitchen staff) a standard framework for the processing of dairy products intended for immediate consumption to ensure that food safety standards are met.

References

B.C. *Milk Industry Act*, Dairy Plant Exception Regulation, B.C. Reg. 224/2019

B.C. *Public Health Act*, Food Premises Regulation, B.C. Reg. 210/99

Guidelines for the Production of Dairy Products in Food Establishments

<https://foodsafetyplans.foodsafe.ca/dairy-guidelines.html>

Ministerial Orders M438/2018, M200/2020, and M255/2020

Appendix: Expectations under the Dairy Plant Exception Regulation, Food Premises Regulation and Milk Industry Act

Use the flow diagram below as a guide to help with applying the appropriate legislation on operators who wish to produce dairy products.

