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Last amendment included: M.R. 56/2020

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Dernière modification intégrée : R.M. 56/2020

THE FARM PRODUCTS MARKETING ACT
(C.C.S.M. c. F47)

Milk Quality Regulation*

Regulation 135/2017
Registered October 17, 2017

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SCHEDULES

* This regulation is made under the *Dairy Farmers of Manitoba Marketing Plan Regulation*, Manitoba Regulation 89/2004, and is Regulation No. 2, 2017 of Dairy Farmers of Manitoba.

Definitions

1 The following definitions apply in this regulation.

"Assurance Program" means the Canadian Quality Milk Program or proAction Program, whichever is applicable.

"Assurance Program requirements" means the requirements as approved by the board and prescribed in the Canadian Quality Milk Program or proAction Program manual(s), whichever is applicable.

"board" means Dairy Farmers of Manitoba.

"Canadian Quality Milk Program" means an on-farm food safety program developed under the auspices of Dairy Farmers of Canada and technically recognized by the Canadian Food Inspection Agency that provides standards for milk and meat production based on HACCP principles.

"CAR" means a Corrective Action Request issued by a validator as a result of non-compliance with an Assurance Program requirement.

"Dairy Farmers of Manitoba Equipment and Production Program" means the program adopted by the board of directors of the Dairy Farmers of Manitoba which includes requirements for the equipment and procedures for the storage, transportation and marketing of milk by producers to the board.

"facility" means a dairy farm operated by a registered producer which is subject to the requirements in Part 1 of the *Dairy Farms Regulation*, Manitoba Regulation 138/2015.

"field service representative" means a person designated by the board to inspect and maintain compliance with milk quality standards.

"HACCP" as set out in *Hazard Analysis and Critical Control Point System and Guidelines for its Applications: Annex to the Recommended International Code of Practice - General Principles of Food Hygiene* (CAC/RCP 1- (1969), Rev. 3 (1997)), a hazard analysis critical control point system is science-based and systematic, and identifies specific hazards and measures for their control to ensure the safety of food. HACCP is a tool for assessing hazards and establishing control systems that focus on prevention, rather than rely mainly on end product testing.

"proAction" means the Assurance Program as adopted by the board which includes requirements for food safety (CQM Program), animal care, livestock traceability, biosecurity and environmental sustainability.

"self-declaration" means an attestation by a producer of compliance with the Assurance Program requirements.

"self-declaration audit" means an on-farm assessment by a validator to verify a self-declaration.

"substandard milk" means

- (a) contaminated milk or milk diluted with water or adulterated in any other way;
- (b) milk from which any cream has been taken;
- (c) milk to which cream has been added;
- (d) milk or cream to which foreign fat, colouring matter, preservative or other chemical substance of any kind has been added;
- (e) milk taken from a cow that is diseased at the time the milk is taken from it;
- (f) milk that contains an antibiotic or any other substance that inhibits the growth of a bacteria culture;
- (g) milk that has a bacterial count of 122,000 or more per millilitre on the immuno-fluoro-electronic method;
- (h) milk that has a somatic cell count of 400,000 or more per millilitre;
- (i) milk that has any disagreeable odour, taste or appearance;
- (j) milk that contains any substance, matter or thing prohibited by the regulations made pursuant to *The Dairy Act*;
- (k) milk that contains a substance, matter or thing in excess of the amount thereof permitted by the regulations made pursuant to *The Dairy Act*;
- (l) milk that has any substance, matter or thing removed therefrom contrary to the regulations made pursuant to *The Dairy Act*;
- (m) milk that comes from premises that do not comply with the standards set out in the regulations made pursuant to *The Dairy Act*;
- (n) milk that is produced by a producer that does not meet the standards set out in the Assurance Program as adopted by the board;
- (o) milk that is produced by a producer who does not comply with the applicable on-farm requirements specified in the *Recommended Code of Practice for the Care and Handling of Dairy Cattle*, published by Agriculture Canada and incorporated by reference into the *Animal Care Regulation*, Manitoba Regulation 126/98, by section 2 and Schedule A of that regulation.

"tested" means tested by a duly qualified laboratory designated by the board in accordance with the procedure set by the board in this regulation.

"Validation" is the process of evaluation to determine compliance with the Assurance Program requirements.

"Validator" means a field service representative person appointed by the board to evaluate compliance with the Assurance Program requirements.

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Bacteria

2(1) In this section, **"contravention"** means the marketing of milk that is tested and found to have a bacteria count of 122,000 or more per millilitre on the imuno-fluoro-electronic method on 10% or more of the daily tests in any three-month period.

2(2) A producer who commits a contravention is subject to the following penalties:

(a) for the producer's first contravention in a 12-month period, \$3 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(b) for the producer's second contravention in a 12-month period, \$4 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(c) for the producer's third contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(d) for the producer's fourth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups for six days;

(e) for the producer's fifth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 12 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility;

(f) for the producer's sixth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 24 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility.

2(3) In addition to the suspension periods in subsection (2), a producer's milk pick-up suspension for a fourth, fifth or sixth contravention continues until a milk sample is tested and found to have a bacteria count less than 122,000 per millilitre on the imuno-fluoro-electronic method, a somatic cell count of less than 400,000 and a freezing point of less than -0.507°C on the thermistor method.

2(4) A producer who requires milk samples to be tested for the purposes of subsection (3) for reinstatement following a suspension of pick-ups shall pay a service charge, as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

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Adulteration

3(1) In this section, "**contravention**" means the marketing of milk that is tested on the thermistor method and found to have a freezing point of -0.507°C or warmer on 5% or more of the daily tests in any three-month period.

3(2) A producer who commits a contravention is subject to the following penalties:

(a) for the producer's first contravention in a 12-month period, \$3 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(b) for the producer's second contravention in a 12-month period, \$4 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(c) for the producer's third contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(d) for the producer's fourth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a six-day suspension of milk pick-ups;

(e) for the producer's fifth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 12 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility;

(f) for the producer's sixth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 24 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility.

3(3) In addition to the suspension periods in subsection (2), a producer's milk pick-up suspension for a fourth, fifth or sixth contravention continues until a milk sample is tested and found to have a bacteria count less than 122,000 per millilitre on the imuno-fluoro-electronic method, a somatic cell count of less than 400,000 and a freezing point of less than -0.507°C on the thermistor method.

3(4) A producer who requires milk samples to be tested for the purposes of subsection (3) for reinstatement following a suspension of pick-ups shall pay a service charge, as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

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Production standards

4(1) A producer must allow a field service representative to enter and inspect a facility, take samples from the facility and observe and monitor production and marketing activities within the facility.

4(2) In this section, "**contravention**" means

(a) the marketing of milk that has been produced at a facility that is not equipped or operated in accordance with the applicable provisions of *The Dairy Act* and the regulations made under it;

(b) the refusal by a registered producer to allow a field service representative to enter and inspect a facility; or

(c) the marketing of milk that has been produced at a facility that is not equipped or operated in accordance with the applicable provisions of the Dairy Farmers of Manitoba Equipment and Production Program.

4(3) A producer who commits a contravention is subject to the following penalties:

(a) for the producer's first contravention in a 12-month period, \$3 per hectolitre of all milk marketed by the producer in the month in which the contravention occurs;

(b) for the producer's second contravention in a 12-month period, \$4 per hectolitre of all milk marketed by the producer in the month in which the contravention occurs;

(c) for the producer's third contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the month in which the contravention occurs;

(d) for the producer's fourth or subsequent contravention in a 12-month period, \$7 per hectolitre of all milk marketed by the producer in the month in which the contravention occurs.

4(4) If a producer commits four or more contraventions in a 12-month period, milk pick-ups from that producer shall be suspended until the producer's premises and equipment are inspected by a dairy inspector appointed under *The Dairy Act* and found to comply with *The Dairy Act* and the regulations made under it.

4(5) A producer who requires milk samples for the purposes of subsection (4) for reinstatement following suspension of pick-ups shall pay a service charge, as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

4(6) A producer who commits a contravention of clause (2)(b) is subject to a penalty of a six-day suspension of milk pick-ups.

4(7) A producer who commits a contravention of clause (2)(c) shall pay a penalty as established by the board and outlined in Schedule B (Dairy Farmers of Manitoba Equipment and Production Program Fees, Charges and Penalties).

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Somatic cell count

5(1) In this section, "**contravention**" means the marketing of milk that is tested and found to have a somatic cell count of 400,000 or more per millilitre on 10% or more of the daily test in any three-month period.

5(2) A producer who commits a contravention is subject to the following penalties:

(a) for the producer's first contravention in a 12-month period, \$3 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(b) for the producer's second contravention in a 12-month period, \$4 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(c) for the producer's third contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention;

(d) for the producer's fourth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a six-day suspension of milk pick-ups;

(e) for the producer's fifth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 12 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility;

(f) for the producer's sixth contravention in a 12-month period, \$5 per hectolitre of all milk marketed by the producer in the latest month included in the contravention and a suspension of milk pick-ups lasting for 24 days and any further period required for the board to complete a satisfactory farm inspection of the producer's facility.

5(3) In addition to the suspension periods in subsection (2), a producer's milk pick-up suspension for a fourth, fifth or sixth contravention continues until a milk sample is tested and found to have a bacteria count less than 122,000 per millilitre on the imuno-fluoro-electronic method, a somatic cell count of less than 400,000 and a freezing point of less than -0.507°C on the thermistor method.

5(4) A producer who requires milk samples to be tested for the purposes of subsection (3) for reinstatement following a suspension of pick-ups shall pay a service charge, as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

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Antibiotics

6(1) The following definitions apply in this section.

"**contravention**" means the marketing of milk that is tested and found to contain an antibiotic substance or other substance that inhibits the growth of a bacteria culture.

"damaged milk" means all milk transported in a truck other than the milk of the contravening producer or producers.

6(2) A producer who commits a contravention is subject to a penalty as follows:

(a) where a truckload of milk cannot be marketed because of a contravention under this section, the producer whose milk is found to be in contravention shall not be paid for his or her milk marketed on that day and, in addition, is liable to the board in an amount equal to the value of the damaged milk plus the cost, including transportation, discarding and other related costs, of disposing of all of the milk in that load;

(b) where more than one producer is liable under clause (a) in respect of the same truckload, each producer is liable in the same proportion that the producer's milk has to the volume of the damaged milk.

6(3) When a producer becomes subject to a penalty under subsection (2) in respect of milk marketed in any month

(a) the board shall give notice in writing, as soon as possible, to the producer of the penalty payable and the method of calculation of the penalty;

(b) the producer shall pay the penalty to the board on or before a date 90 days after the issue of the notice by the board;

(c) the board may

(i) at any time deduct and retain the amount of the penalty from the proceeds of any program payments from the monthly Quota Exchange System due to the producer, and

(ii) at any time after the date referred to in clause (b), deduct and retain the amount of the penalty from money that the board receives from the sale of milk marketed by the producer; and

(d) interest at the rate set by the board from time to time shall be payable and collected on any amounts unpaid from the date referred to in clause (b).

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Assurance Program penalties

7(1) A producer must meet Assurance Program requirements by the end of the month following the producer's assigned validation or self-declaration month.

7(2) A producer is deemed in non-compliance with Assurance Program requirements if

(a) the producer does not have a self-declaration form approved by the end of the month following the producer's assigned self-declaration month;

(b) the producer's self-declaration audit is not approved;

(c) as a result of no action by the producer the validation was not conducted by the end of the month following the producer's assigned validation month; or

(d) the producer does not pass the validation by the end of the month following the producer's assigned validation month because CAR(s) were not closed due to the producer not satisfying the CAR(s).

7(3) A producer who is not compliant with the Assurance Program requirements by the end of the month following the producer's assigned validation or self-declaration month is subject to a penalty as established by the board and outlined in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

7(4) For each month of non-compliance following the assigned validation or self-declaration month, the producer is subject to a penalty as established by the board and outlined in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties).

7(5) A producer who is not compliant with the Assurance Program requirements after three months of penalties shall have 14 days to comply and a producer who does not comply within the 14 days shall have their Assurance Program registration withdrawn on the first day of the following month.

7(6) A producer cannot apply for re-registration in the Assurance Program for a minimum period of three months after the withdrawal of registration.

7(7) A producer who does not apply for re-registration within one month of the three-month withdrawal of registration shall be subject to a suspension of milk pick-ups until the producer is re-registered.

7(8) A producer who is re-registered and has any CAR(s) must be compliant by the end of the month following re-registration. A producer who is not compliant shall be subject to a suspension of milk pick-ups until the producer is compliant.

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Assurance Program service charges

8(1) A producer who requires more than two validation visits to meet Assurance Program requirements shall pay a service charge, as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties), for the third and each additional visit required thereafter, until validation occurs.

8(2) A producer who does not have an Assurance Program self-declaration form approved by the end of the month following the month during which the form is due, as provided in the notice from the board, shall pay a service charge as prescribed in Schedule A (Milk Quality and Assurance Program Fees, Charges and Penalties) for the first and each reminder notice sent thereafter, until the self-declaration form is received.

Penalties under more than one section

9 Where a producer in a month commits contraventions under section 2, 3, 4, 5, 6, 7 or 8 of this regulation, the producer shall pay the penalties for the contraventions under each section.

Notification

10(1) The board shall provide written notice to a producer who is subject to a penalty or charge under any of sections 2 to 8.

10(2) The board may determine the date on which a suspension of milk pick-ups commences under any of sections 2 to 5.

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Due date for penalties

11 A penalty under this regulation is due and payable by the producer to the board and the amount of the penalty shall be deducted and retained from money that the board receives from the sale of milk marketed by the producer.

Testing procedure

12(1) For the purpose of determining compliance with quality standards for bacteria, freezing point, and somatic cell count, milk that is marketed by a producer will be tested on a regular basis.

12(2) The test results used for the purpose of determining a producer's compliance with quality standards for bacteria, freezing point, and somatic cell count will be the daily test of that producer's milk.

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Marketing of substandard milk

13(1) Despite the penalty provisions of this regulation, the board may at any time, without prior notice, refuse to pick up, accept or market milk from a producer if, based on reasonable grounds, the board is of the opinion that the milk is substandard milk or that the milk will not be accepted for delivery by a processor or the marketing of the milk will not be in the public interest or health. The suspension of pick-ups shall continue until the board is satisfied that such producer's milk may reasonably be expected to comply with quality standards.

13(2) The board may cancel or suspend the registration or licence of a producer, or suspend, reduce or cancel, either on a temporary basis or on a permanent basis the daily quota of a producer if such producer repeatedly markets substandard milk to the board.

13(3) The board may cancel or suspend the registration of a producer, or suspend, reduce or cancel, either on a temporary basis or on a permanent basis the daily quota of a producer if such producer markets to the board substandard milk as defined in clause (o) of the definition "substandard milk" in section 1.

13(4) Despite the penalty provisions in subsections (1), (2) and (3), the board may, instead of suspending the registration, licence or daily quota of a producer, impose a financial penalty as determined by the board. However the penalty must not be greater than the value of the milk to be marketed by the producer to the board during the period of suspension.

Appeal

14(1) A producer may after notice of penalty or suspension of pick-up and within 60 days of the notice give written notice to the board of an appeal of the penalty or suspension of pick-up. The board shall hear the appeal at the next duly scheduled meeting of the board. The appeal shall be held in accordance with the rules set out for hearings by the board.

14(2) The board may at the appeal hearing dismiss the appeal or waive or reduce a penalty or a suspension of pick-up under this regulation if it is satisfied that it is appropriate to do so, considering any factors the board reasonably considers relevant including, but not limited to, the following:

- (a) public interest in a good quality milk supply;
- (b) reasonable requirements of manufacturers and processors;
- (c) effects of the contravention on other milk producers;
- (d) any special circumstances of the contravention or the producer;
- (e) any measures taken or promised by the producer to prevent further contraventions.

14(3) If the board upholds the financial penalty, the penalty will take effect seven days after the decision of the board, but enforcement will be stayed if the board receives confirmation that the producer has made an appeal to Manitoba council in accordance with the procedure set out in *The Farm Products Marketing Act*.

14(4) Any appeal of a suspension of pick-up of milk will not act as a stay of the suspension.

Transition

14.1(1) For the purpose of determining if a producer committed a contravention under section 2, 3 or 5 during a three-month period ending in July or August 2020, the board may use a test of a producer's milk taken before the coming into force of this section in doing so.

14.1(2) When determining a penalty under subsection 2(2), the board must treat the following as a contravention if committed during the applicable 12-month period:

- (a) a contravention under subsection 2(1) of this regulation as it read immediately before the coming into force of this section;
- (b) a contravention under subsection 2(1) of this regulation as it read immediately before the coming into force of the *Milk Quality Regulation, amendment*, Manitoba Regulation 41/2020.

14.1(3) When determining a penalty under subsection 3(2), the board must treat the following as a contravention if committed during the applicable 12-month period:

(a) a contravention under subsection 3(1) of this regulation as it read immediately before the coming into force of this section;

(b) a contravention under subsection 3(1) of this regulation as it read immediately before the coming into force of the *Milk Quality Regulation, amendment*, Manitoba Regulation 41/2020.

14.1(4) When determining a penalty under subsection 5(2), the board must treat the following as a contravention if committed during the applicable 12-month period:

(a) a contravention under subsection 5(1) of this regulation as it read immediately before the coming into force of this section;

(b) a contravention under subsection 5(1) of this regulation as it read immediately before the coming into force of the *Milk Quality Regulation, amendment*, Manitoba Regulation 41/2020.

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Repeal

15 The *Milk Quality Regulation*, Manitoba Regulation 168/2007, is repealed.

Coming into force

16 This regulation comes into force on the day it is registered under *The Statutes and Regulations Act*.

October 10, 2017

Dairy Farmers of Manitoba:

David Wiens, Chairman

Brent Achtemichuk, Corporate Secretary

APPROVED

October 13, 2017

Manitoba Farm Products Marketing Council:

Ed Helwer, Chair

Ingrid Peters-Fransen, Secretary

SCHEDULE A

MILK QUALITY AND ASSURANCE PROGRAM FEES,
CHARGES AND PENALTIES

| Section number of regulation | Fees, charges and penalties | Rate |
|-------------------------------------|---|--|
| 2(4), 3(4), 4(5), 5(4) | Each additional sampling to meet quality standards required for reinstatement after suspension of pick-up | Laboratory service fee as set by Horizon Lab |
| 4(4), 8(1) | Third and subsequent validation visit when required to meet Assurance Program or production standards requirements | \$450 |
| 7(3), 7(4) | For each month of non-compliance following the assigned Assurance Program validation or self-declaration month | \$4/hl per month including the entire month in which non-compliance occurred |
| 7(5) | For each month a producer is withdrawn from registration until re-registration | \$4/hl per month including the entire month in which re-registration occurred |
| 8(2) | For each month a producer does not have an approved Assurance Program self-declaration form as required under subsection 8(2) | \$4/hl per month including the month following the month during which the form was due |

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SCHEDULE B

EQUIPMENT AND PRODUCTION PROGRAM FEES,
CHARGES AND PENALTIES

| Section number of program | Fees, charges and penalties | Rate |
|----------------------------------|--|--|
| 1 a. | Bulk tank not meeting tank capacity requirement | \$100 penalty in addition to stop charge |
| 1 b. | Calibration not done within 90 days | \$1/hl penalty until calibration done |
| 1 c. | 5-year calibration fee | As per contract in force between DFM and calibration company |
| 1 c. | 5-year calibration not done within 90 days of anniversary date | \$1/hl penalty until calibration done |
| 1 d. | No dipstick or non-approved dipstick | \$1/hl penalty until approved dipstick installed |
| 1 e. | Non-compliant slope on bulk tank | \$1/hl penalty until slope corrected |
| 2 a. | Providing less or no 5-hour window for pick-up | \$100 in addition to stop charge |

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