REPEALED

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ABROGÉ

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Milk Quality Regulation*

Regulation 132/2006
Registered June 26, 2006

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Definitions

1 In this regulation,

"**board**" means Dairy Farmers of Manitoba.

* This regulation is made under the *Dairy Farmers of Manitoba Marketing Plan Regulation*, Manitoba Regulation 89/2004, and is Regulation No. 2, 2006 of Dairy Farmers of Manitoba.

"**latest 12-month period**" when used in reference to a contravention, means the 12-month period beginning on the first day of the month 11 months before the month in which the contravention occurred and ending on the last day of the month in which the contravention occurred.

"**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 her;

(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 imuno-fluoro-electronic method;

(h) milk that has a somatic cell count of 500,000 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*; or

(m) milk that comes from premises that do not comply with the standards set out in the regulations made pursuant to *The Dairy Act*.

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

Penalty re 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.

2(2) A producer who commits a contravention under this section is to receive a warning from the board for the first contravention in the latest 12-month period.

2(3) A producer who commits more than one contravention in the latest 12-month period shall pay a penalty with respect to all milk marketed by the producer in the month in which the contravention occurs of

(a) $3. per hectolitre if the contravention is the producer's second contravention in the latest 12-month period;

(b) $4. per hectolitre if the contravention is the producer's third contravention in the latest 12-month period;

(c) $5. per hectolitre if the contravention is the producer's fourth contravention in the latest 12-month period; and

(d) $7. per hectolitre if the contravention is the producer's fifth contravention in the latest 12-month period.

2(4) Where a producer is liable to pay a penalty under clause (3)(d), milk pickups from that producer shall be suspended until two consecutive milk samples taken at least six days apart are tested and found to have a bacteria count which would not constitute a contravention.

Penalty re adulteration

3(1) In this section, "**contravention**" means the marketing of milk that is tested by the cryoscope method and found to have a freezing point of –0.505°C or higher.

3(2) A producer who commits a contravention under this section is to receive a warning from the board for the first contravention in the latest 12-month period.

3(3) A producer who commits more than one contravention in the latest 12-month period shall pay a penalty with respect to all milk marketed by the producer in the month in which the contravention occurs of

(a) $3. per hectolitre if the contravention is the producer's second contravention in the latest 12-month period;

(b) $4. per hectolitre if the contravention is the producer's third contravention in the latest 12-month period;

(c) $5. per hectolitre if the contravention is the producer's fourth contravention in the latest 12-month period; and

(d) $7. per hectolitre if the contravention is the producer's fifth contravention in the latest 12-month period.

3(4) Where a producer is liable to pay a penalty under clause (3)(d), milk pickups from that producer shall be suspended until two consecutive milk samples taken at least six days apart are tested and found to have a freezing point of less than –0.505°C.

Penalty re premises

4(1) In this section, "**contravention**" means the marketing of milk that has been

(a) produced in premises that do not comply with *The Dairy Act* or regulations made under it; or

(b) handled with equipment that does not comply with *The Dairy Act* or regulations made under it.

4(2) A producer who commits a contravention in the latest 12-month period shall

pay a penalty with respect to all milk marketed by the producer in the month in which the contravention occurs of

(a) $3. per hectolitre if the contravention is the producer's first contravention in the latest 12-month period;

(b) $4. per hectolitre if the contravention is the producer's second contravention in the latest 12-month period;

(c) $5. per hectolitre if the contravention is the producer's third contravention in the latest 12-month period; and

(d) $7. per hectolitre if the contravention is the producer's fourth contravention in the latest 12-month period.

4(3) Where a producer is liable to pay a penalty under clause (2)(d), milk pickups 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 regulations made under it.

Penalty re 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 500,000 or more per millilitre.

5(2) A producer who commits a contravention under this section is to receive a warning from the board for the first contravention in the latest 12-month period.

5(3) A producer who commits more than one contravention in the latest 12-month period shall pay a penalty with respect to all milk marketed by the producer in the month in which the contravention occurs of

(a) $3. per hectolitre if the contravention is the producer's second contravention in the latest 12-month period;

(b) $4. per hectolitre if the contravention is the producer's third contravention in the latest 12-month period;

(c) $5. per hectolitre if the contravention is the producer's fourth contravention in the latest 12-month period; and

(d) $7. per hectolitre if the contravention is the producer's fifth contravention in the latest 12-month period.

5(4) Where a producer is liable to pay a penalty under clause (3)(d), milk pickups from that producer shall be suspended until two consecutive milk samples taken at least six days apart are tested and found to have a somatic cell count of less than 500,000 per millilitre.

Penalty re 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 shall pay 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 additions, is liable to the board in an amount equal to the value of the damaged milk plus the cost, including transportation, dumping 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) Where a producer becomes liable to pay 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 daily quota sale 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).

Penalties under more than one section

7 Where a producer in a month commits contraventions under more than one section of this regulation, the producer shall pay the penalties for the contraventions under each section.

Notification

8(1) Where a producer is liable to pay a penalty under section 2, 3, 4 or 5 of this regulation, the board shall notify the producer in writing within three days of the test results, stating the amount of the penalty and how it was calculated.

8(2) Where a producer is liable to a suspension of milk pickup under section 2, 3, 4, or 5, the board shall notify the producer in writing withing three days of the test results and suspension shall be effective as of the sixth day of the month that the notification is given.

Due date for penalties

9 A penalty under this regulation is due and payable by the producer to the board within seven days after the issue of the notice under section 8, 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

10(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.

10(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 average of all of the tests of that producer's milk in the month.

Marketing of substandard milk

11(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 that milk is substandard milk or that milk will not be accepted for delivery by a processor or the marketing of that milk will not be in the public interest or health. The suspension of pickups shall continue until the board is satisfied that such producer's milk may reasonably be expected to comply with quality standards.

11(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.

Appeal

12(1) A producer may within five days of notice of penalty or suspension of pickup give written notice to the board of an appeal of the penalty or suspension of pickup. 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.

12(2) The board may at the appeal hearing dismiss the appeal or waive or reduce a penalty or a suspension of pickup 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;

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(e) any measures taken or promised by the producer to prevent further contraventions.

12(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*.

12(4) Any appeal of a suspension of pickup of milk will not act as a stay of the suspension.

Repeal

13(1) The *Milk Quality Penalties Regulation*, Manitoba Regulation 229/2004, is repealed.

13(2) The *Damaged Milk Charges Regulation*, Manitoba Regulation 15/2002, is repealed.

Coming into force

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

April 11, 2006

DAIRY FARMERS OF MANITOBA:

William Swan
Chairman

W.J.S. Wade
Secretary

APPROVED

June 23, 2006

MANITOBA FARM
PRODUCTS MARKETING COUNCIL:

David Gislason
Chair

G.H. MacKenzie
Secretary

The Queen's Printer
for the Province of Manitoba