REPEALED

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ABROGÉ

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

Milk Quality Regulation*

Regulation 168/2007
Registered December 17, 2007

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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.1, 2007 of 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.

"**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.

"**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 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 imuno-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 Canadian Quality Milk 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 Canadian Quality Milk Program requirements.

"**Validator**" means a person appointed by the board to evaluate compliance with the Canadian Quality Milk Program requirements.

M.R. 79/2012; 84/2016; 95/2016

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 and $7 per hectolitre for each additional contravention in the latest 12-month period.

2(4) Where a producer is liable to pay a penalty under clause 2(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.

M.R. 79/2012

Adulteration

3(1) In this section, "**contravention**" means the marketing of milk that is tested by the Thermistor method and found to have a freezing point of -0.507°C or warmer.

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 and $7 per hectolitre for each additional contravention in the latest 12-month period.

3(4) If a producer is liable to pay a penalty under clause (3)(d), milk pickups from that producer are suspended until two consecutive milk samples taken at least six days apart are tested and found to have a freezing point lower than -0.507°C.

M.R. 79/2012; 252/2014

Production standards

4(1) 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 marketing of milk that has been produced at a facility that is not equipped or operated in accordance with the applicable provisions of the Canadian Quality Milk Program;

(c) non-compliance with a direction by a field service representative to correct or remedy a contravention under clause (a) or (b); or

(d) the refusal by a registered producer to allow a field service representative to enter and inspect a facility.

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 and $7 per hectolitre for each additional 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.

4(4) A registered 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.

M.R. 79/2012; 95/2016

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.

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 and $7 per hectolitre for each additional contravention in the latest 12-month period.

5(4) A producer who commits five or more contraventions in the latest 12-month period in addition to the penalties set out in clause (3)(d) shall be suspended from milk pickups if

(a) before July 31, 2013 five or more contraventions in the latest 12-month period are as a result of marketing milk that has a somatic cell count of 500,000 or more per millilitre;

(b) after July 31, 2013 five or more contraventions in the latest 12-month period are as a result of marketing milk that has a somatic cell count of 400,000 or more per millilitre.

5(5) A producer who is suspended from milk pickups shall be suspended until two consecutive milk samples taken at least six days apart are tested and to have a somatic cell count of less than

(a) 500,000 per millilitre where the suspension is imposed under clause (4)(a); or

(b) 400,000 per millilitre where the suspension is imposed under clause (4)(b).

M.R. 79/2012

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 addition, 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 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).

Penalties under more than one section

7 Where a producer in a month commits contraventions under section 2, 3, 4, 5 or 6 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, 5 or 6 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 within 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.

Canadian Quality Milk Program

11(1) In this section, "**contravention**" means failing to successfully implement requirements or failing to successfully achieve registration or failing to maintain registration in the Canadian Quality Milk Program.

11(2) Registration in the Canadian Quality Milk Program is mandatory for all registered producers and all producers must have successfully completed the following Canadian Quality Milk Program requirements and continue to maintain them on or before the following deadlines:

(a) standard operating procedures and treatment records by January 1, 2008;

(b) bulk tank temperature and emergency plans/corrective plans by July 31, 2008; and

(c) water bacteria test and temperature and equipment check by July 31, 2009.

11(3) All registered producers must be registered with the Canadian Quality Milk Program by July 31, 2010.

11(4) A producer shall pay a penalty with respect to all milk marketed by the producer that contravenes subsections (2) and (3) as follows:

(a) breach of clause (2)(a), a penalty of $1 per hectolitre based upon all milk marketed in the month of August 2007;

(b) breach of clause (2)(a) or (b), a penalty of $2 per hectolitre for all milk marketed in the month of August 2008;

(c) breach of clause (2)(a) or (b) or (c), a penalty of $3 per hectolitre for all milk marketed in the month of August 2009;

(d) breach of clauses (2)(a) or (b) or (c) or subsection (3), a penalty of $4 per hectolitre for all milk marketed in the month of August 2010 and $4 per hectolitre each month thereafter if not registered.

11(5) A penalty under clause (4)(a) is due and payable by the producer to the board on January 15, 2008 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.

11(6) A penalty under clauses (4)(b) and (c) is due and payable by the producer to the board on September 1 of each year, 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.

11(7) A penalty under clause (4)(d) is due and payable by the producer to the board each month commencing September 1, 2010, 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 in each preceding month.

11(8) Where a producer is liable to pay a penalty under clause (4)(a) the penalty shall be refunded to the producer if the producer remedies the contravention by January 31, 2008.

11(9) Where a producer is liable to pay a penalty under clause (4)(b) or (c) the penalty shall be refunded to the producer if the producer remedies the contravention by November 30 of the year in which the penalty is paid. No refund will be made for a penalty under clause (4)(d).

Marketing of substandard milk

12(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 pickups shall continue until the board is satisfied that such producer's milk may reasonably be expected to comply with quality standards.

12(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.

12(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.

12(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.

M.R. 84/2016

Appeal

13(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.

13(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;

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

13(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*.

13(4) Any appeal of a suspension of pickup of milk will not act as a stay of the suspension.

Repeal

14 The *Milk Quality Regulation*, Manitoba Regulation 132/2006, is repealed.

Coming into force

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

APPROVED
December 5, 2007

Dairy Farmers of Manitoba:

David Wiens
Chairman

Brent Achtemichuk
Secretary

APPROVED
December 14, 2007

Manitoba Farm Products Marketing Council:

David Gislason
Chairman

G. H. MacKenzie
Secretary