

DFPEI 2017-10
Dairy Farmers of Prince Edward Island

Order: 2017-10
Effective: 25 April 2017

Under the *Natural Products Marketing Act*, R.S.P.E.I.1988, Cap. N-3, and the Dairy Farmers of Prince Edward Island Regulations thereunder, Dairy Farmers of Prince Edward Island makes the following Order:

VIOLATIONS AND PENALTIES ORDER

Application

1. This order establishes the criteria for determining violations of the standards and rules established in orders made by Dairy Farmers of Prince Edward Island; or laws of the Government of Prince Edward Island and the Government of Canada; and the penalties that shall be applied in the event such violations occur.

Definitions

2. The words herein shall have the meanings as found in the Prince Edward Island Natural Products Marketing Act and the Dairy Farmers of Prince Edward Island Regulations under the Act, unless differentiated herein and as hereinafter defined:

- (1) “bulk milk tank” means a vessel for cooling and holding milk until it can be transferred to a transport vehicle;
- (2) “CQM” means the Canadian Quality Milk Program;
- (3) “dairy animal” means a cow of the bovine family kept for the purposes of milking;
- (4) “dairy farm” means a farm where dairy animals are kept for milking and from which milk is marketed or sold for processing in a dairy plant or for human consumption, and includes all buildings, yards and premises occupied or used in connection with the production of milk;
- (5) “DFPEI” means Dairy Farmers of Prince Edward Island;
- (6) “farm inspection” is the official viewing or examination of the dairy farm premises and operations, conducted by an inspector appointed by DFPEI, which is used to ensure that milk production is conducted in accordance with all DFPEI Orders or other applicable regulations;
- (7) “infraction” means a breach or infringement of any standard or rule established by DFPEI;

- (8) “inhibitor” means any substance, other than a bacterial culture, that does not occur naturally in milk and inhibits the growth of bacteria in milk or negatively affects the organoleptic properties of milk or dairy products;
- (9) “inspector” means a person who is a bulk milk grader and is appointed by the Board to inspect dairy farms, dairy barns, milking parlours, milking areas, milk houses, milk handling equipment and transport vehicles as described in this order, to ensure compliance with this order and other orders of the Board regulating the production, handling, storage, transportation and marketing of milk;
- (10) “milk” means a normal lacteal secretion obtained from the mammary gland of a dairy animal that is free of colostrum, and includes whole milk and such products of milk that are supplied, processed, distributed or sold in any form;
- (11) “proAction®” means a trademarked program developed by dairy farmers to ensure milk production meets societal expectations for animal welfare, biosecurity, environmental sustainability, food safety, livestock traceability and milk quality, and includes CQM;
- (12) “producer” means a person or partnership who holds quota and has no other interest in any other quota, who markets or sells milk that has been produced by a herd of dairy animals owned or controlled by the producer;
- (13) “raw milk” means milk that has not been heated beyond 40°C or undergone any treatment that has an equivalent effect;
- (14) “sale” means the act of selling milk and includes trade or barter;
- (15) “sample” means a representative part of the raw milk offered for sale that is presented for inspection, grading or for testing;
- (16) “standard” means a rule for the measure of quality or operations as established by DFPEI;
- (17) “validation” is the process of evaluation to ensure compliance with CQM or proAction® program standards. It may be accomplished through an independent evaluation of on farm program records or through a self-declaration, as directed by the Board; and
- (18) “violation” means the commission of one or more infractions as determined in this order.

Production standards

3. All raw milk sold or offered for sale in PEI shall meet the standards specified in the DFPEI Raw Milk Standards Order.

Operating Conditions

4. Milk shall be produced in conditions that meet the standards for dairy farms established in other DFPEI orders, and other laws and regulations of the Government of Prince Edward Island and the Government of Canada.

Prohibited milk

5. Milk shall not be offered for sale and DFPEI shall not purchase milk that:

- (1) comes from an animal 15 days prior to or 3 days after parturition, or such longer period as is required to ensure the milk is free of colostrum;
- (2) contains any inhibitor, chemical, toxin, drug or other foreign substance; and
- (3) comes from any dairy farm where an animal protection officer appointed by The Minister of Agriculture and Fisheries has determined that the animals kept on those premises are in distress, as defined in the “Animal Welfare Act R.S.P.E.I. 1988, Cap. A-11.2” and regulations thereunder.

Infractions

6. An infraction shall be deemed to have occurred in any single instance where a raw milk production standard or operating condition has not been met, as determined by farm inspection, validation, milk inspection, milk grading, or milk testing required in DFPEI Orders. Infractions shall be recorded as indicated in this section:

- (1) for added water, when testing indicates a freezing point greater than that allowed in the DFPEI Raw Milk Standards Order;
- (2) for bacteria when, when testing indicates a bacteria count greater than that allowed in the DFPEI Raw Milk Standards Order;
- (3) for CQM and proAction®, when a producer fails a validation or is otherwise deemed to be in violation as determined in DFPEI orders;
- (4) for contaminants, when milk is accepted by a bulk milk grader, but is later found to contain any contaminant that was not detectable by inspection or grading;
- (5) for farm inspection, when a producer fails an inspection as determined in DFPEI orders;

Food safety
infractions

- (6) for inhibitors, when testing detects the presence of any inhibitor in milk that has been offered for sale; and
- (7) for somatic cells, when testing indicates the somatic cell count in milk is greater than that allowed in the DFPEI Raw Milk Standards Order.

- 7. (1) In the event an inspector determines that any infraction or dairy farm operating practice compromises, or has the potential to compromise, the safety of the milk produced on a farm for human consumption, the inspector may immediately prohibit the sale of milk from that farm until all food safety standards are met.
- (2) Notwithstanding any other penalty or restriction applied by this Order, where the milk of a producer is tested and found to contain inhibitors, an inspector shall immediately place all milk on the premises under detention and prohibit the sale of milk from that dairy farm.
- (3) If the milk of a producer is placed under detention under s. 7. (2), an inspector shall take samples from the bulk milk tank and cause the milk to be tested by the laboratory using the approved testing product to determine if the milk contains any inhibitors. The prohibition of sale of milk from the dairy farm may only be ended by an inspector when the tests performed as ordered in this section determine the milk on the dairy farm does not contain any inhibitors.

Added water
violations and
penalties

- 8. Added water (freezing point) violations occur when one infraction is recorded, except that the first infraction in any twelve-month period shall be excused. The following penalties shall apply for added water violations:
 - (1) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
 - (2) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
 - (3) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
 - (4) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and

- b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (5) for the fifth violation in a period of 12 consecutive months:
- a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (6) for the sixth or subsequent violation in a period of 12 consecutive months:
- a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Bacteria violations
and penalties

9. Bacteria violations occur when three infractions are recorded in any period of two consecutive calendar months, with at least one of those infractions recorded in the last month of that two-month period. The following penalties shall apply for bacteria violations:

- (1) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (2) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (4) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;

- (5) for the fifth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (6) for the sixth or subsequent violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Contaminant
violations and
penalties

10. Contaminant violations occur when one infraction is recorded. The following penalties shall apply for contaminant violations:

- (1) for all contaminant violations the producer shall be responsible for cost in accordance with S.16 of this order;
- (2) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (4) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (5) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (6) for the fifth violation in a period of 12 consecutive months:

- a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (7) for the sixth or subsequent violation in a period of 12 consecutive months:
- a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

CQM and
proAction®
violations and
penalties

11. CQM and proAction® violations are recorded when an infraction occurs and is not corrected in the time permitted by those programs, or as directed by a validator or inspector:

- (1) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (2) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (4) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (5) for the fifth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and

- b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (6) for the sixth or subsequent violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Farm inspection
violations and
penalties

12. Farm inspection violations occur when an infraction is observed by an inspector and is not corrected in the time and manner permitted in DFPEI Orders, or as directed by an inspector:

- (1) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (2) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (4) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (5) for the fifth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (6) for the sixth or subsequent violation in a period of 12 consecutive months:

- a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
- b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

13. Inhibitor violations occur when one infraction is recorded. The following penalties shall apply for inhibitor violations:

- (1) for all inhibitor violations the producer shall be responsible for cost in accordance with S.16 of this order;
- (2) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (4) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (5) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (6) for the fifth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (7) for the sixth or subsequent violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and

- b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Somatic cell count
violations and
penalties

14. Somatic cell count violations occur when ten infractions are recorded in any period of three consecutive calendar months, with at least one of those infractions recorded in the last month of that three-month period. The following penalties shall apply for somatic cell count violations:

- (1) for a first violation in a period of 12 consecutive months, the producer shall pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (2) for a second violation in a period of 12 consecutive months, the producer shall pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (3) for a third violation in a period of 12 consecutive months, the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred;
- (4) for a fourth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred, and
 - b. the producer shall be prohibited from selling milk for a period of not less than six days;
- (5) for the fifth violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (6) for the sixth or subsequent violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Special
circumstances

15. Where a contaminant or inhibitor violation occurs and it is determined the producer had knowledge of the contamination or presence of an inhibitor in the milk prior to it being offered for sale, the following penalties shall apply:

- (1) for all violations described in this section, the producer shall be responsible for costs in accordance with s.16 of this order;
- (2) for a first violation in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 12 days; and
- (3) for the second and subsequent violations in a period of 12 consecutive months:
 - a. the producer shall pay five dollars (\$5) per hL for all milk sold by the farm during the month in which the violation occurred; and
 - b. the producer shall be prohibited from selling milk for a period of not less than 24 days.

Cost for Damages

16. In the event the milk from a farm is determined to be contaminated by an inhibitor or any other contaminant and the contamination could not be determined by the bulk milk grader at the time of pick up, the producer shall be responsible for the cost of all resulting damages, including but not limited to:

- (1) the revenue due to all other producers for milk contained in the load or compartment that has been contaminated;
- (2) the regular transportation cost for the contaminated milk;
- (3) any transportation cost for delivery of the contaminated milk for disposal; and
- (4) any cost for disposal of the contaminated milk.

Reinstatement

17. The following requirements must be met for a producer to be permitted to sell milk following a prohibition applied as indicated in this order:

- (1) for a prohibition applied under sections 8(4), 9(4), 10(5), 11(4), 12(4) 13(5) or 14(4) of this order, an official sample of milk from the farm must pass all current standards as determined by grading and testing the milk;

(2) for a prohibition applied under sections 8(5), 9(5), 10(6), 11(5), 12(5) or 14(5) of this order:

- a. an official sample of milk from the farm must pass all current standards as determined by grading and testing the milk; and
- b. the farm must pass a farm inspection;

(3) for a prohibition applied under sections 13(6) or 15(2) of this order:

- a. an official sample of milk from the farm must pass all current standards as determined by grading and testing the milk;
- b. the farm must pass a farm inspection not more than 3 months prior to the date the prohibition was ordered;
- c. the farm must pass a CQM or proAction® validation not more than 3 months prior to the date the prohibition was ordered; and

(4) for a prohibition applied under sections 8(6), 9(6), 10(7) 11(6), 12(6), 13(7), 14(6) or 15(3) of this order:

- a. an official sample of milk from the farm must pass all current standards as determined by grading and testing the milk;
- b. the farm must pass a farm inspection not more than 3 months prior to the date the prohibition was ordered;
- c. the farm must pass a CQM or proAction® validation not more than three months prior to the date the prohibition was ordered;
- d. the producer must appear before the Board or a committee of the Board to provide evidence of what special circumstances contributed to the repeated violations and present a viable action plan to ensure that no more violations will occur on their farm; and
- e. the Board or committee or committee of the Board shall review the circumstances and determine if the farm may be permitted to resume selling milk.

Reinstatement
costs

18. Any additional costs incurred by DFPEI for reinstatement of a producer who has been prohibited from selling milk shall be for the account of the farm seeking reinstatement. These costs include but not limited to:

- (1) the cost of additional inspections or validations;
- (2) the time and travel costs incurred for an inspector to obtain and deliver additional official samples required for reinstatement; and
- (3) the cost of any additional laboratory testing required for reinstatement.

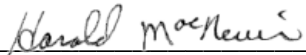
Revocation

19. DFPEI Order 2012-02, sections 13(6), 13(7) and 14 are hereby revoked.

Commencement

20. This order shall come into force on the 25th day of April 2017.

Dated at Charlottetown, PEI this 25th day of April 2017.



Harold MacNevin, Chair



Ronald Maynard, Secretary