

DFPEI 2023-05
Dairy Farmers of Prince Edward Island

Order: 2023-05
Effective: 1 August 2023

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) "AWA" means the Animal Welfare Act R.S.P.E.I. 1988, Cap. A-11.2;
- (2) "bulk milk tank" means a vessel for cooling and holding milk until it can be transferred to a transport vehicle;
- (3) "Code of Practice" means the *Code of Practice for the Care and Handling of Dairy Cattle* and specifically the version currently adopted by DFPEI;
- (4) "dairy animal" means a cow of the bovine family kept for the purposes of milking;
- (5) "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;
- (6) "DFPEI" means Dairy Farmers of Prince Edward Island;
- (7) "distress" means, in respect of an animal,
 - (i) any pain, suffering, harm, extreme anxiety or other impairment of health or well-being,
 - (ii) any lack of care or treatment specified in the Code of Conduct;

- (iii) any occurrence of an activity prohibited under section 4, 5 or 6 of the AWA;
- (iv) “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;
- (v) “infraction” means a breach or infringement of any standard or rule established by DFPEI;
- (vi) “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;
- (vii) “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 and other orders of the Board, to ensure compliance with this order and other orders of the Board regulating the production, handling, storage, transportation and marketing of milk;
- (viii) “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;
- (ix) “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 that has been adopted by all provinces;
- (x) “producer” means a person 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;
- (xi) “raw milk” means milk that has not been heated beyond 40°C or undergone any treatment that has an equivalent effect;
- (xii) “sale” means the act of selling milk and includes trade or barter;
- (xiii) “sample” means a representative part of the raw milk offered for sale that is presented for inspection, grading or for testing;
- (xiv) “standard” means a rule for the measure of quality or operations as established by DFPEI;

(xv) “validation” is the process of evaluation to ensure compliance with 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

(xvi) “violation” means a failure to meet standards by the accumulation of one or more infractions as determined by 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 deemed as prohibited and 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;

(3) comes from any dairy farm where standards for care of the animals on that farm are not met, as determined by:

a. an animal protection officer appointed by The Minister of Agriculture and Land who has found that the animals kept on those premises are in distress, as defined in the AWA and regulations thereunder; or

b. an inspector or other appointed representative of DFPEI has found that standards of care in the current Code of Practice or any other standard of care related to cattle on the farm are not met, such that animals are judged to be in distress.

Application of Prohibition

6. In any instance where a dairy farm’s production is deemed to be prohibited milk, DFPEI shall immediately prohibit milk sales from that farm and place the milk on the farm under detention by placing a notice on the bulk milk tank and directing transporters to cease pick up of milk from that farm until requirements for reinstatement are met.

Infractions

7. 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. Violations shall be recorded as indicated in this section for any of the following violations:

- (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 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;
- (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.

Food safety
infractions

8. (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 contaminants or inhibitors, an inspector shall immediately place all milk on the premises under detention and prohibit the sale of milk from that dairy farm until the conditions for reinstatement are met.

Added water
violations and
penalties

9. 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

10. 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

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

- (1) When any contaminant violation occurs an inspector or other designated representative of DFPEI shall immediately prohibit sale of the milk from the farm and place any milk stored on the farm under detention until it is demonstrated that the source of contamination is eliminated and testing and or observation confirms the milk is free of contaminants;
- (2) for all contaminant violations the producer shall be responsible for costs in accordance with S.17 of this order;
- (3) 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;
- (4) 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;

- (5) 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;
- (6) 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 and until the conditions of reinstatement have been met;
- (7) 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
- (8) 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.

proAction®
violations and
penalties

12. proAction® violations are recorded when an infraction occurs and is not corrected in the time permitted by the program, 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 or any 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. if the producer does not comply with proAction standard within 105 days of the date of validation the producer shall be prohibited from selling milk until the farm achieves a transitional registration as specified in the current DFPEI proAction® Order.

13. 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.

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

- (1) When any inhibitor violation occurs an inspector or other designated representative of DFPEI shall immediately prohibit sale of the milk from the farm and place any milk stored on the farm under detention until it testing indicates that inhibitors are not present in the milk;
- (2) for all inhibitor violations the producer shall be responsible for costs in accordance with S.16 of this order;
- (3) for a first violation in a period of 12 consecutive months, the producer shall:
 - a. be prohibited from selling milk until subsequent testing has proven the milk produced on the farm is free from inhibitors; and
 - b. pay three dollars (\$3) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (4) for a second violation in a period of 12 consecutive months, the producer shall:
 - a. be prohibited from selling milk until subsequent testing has proven the milk produced on the farm is free from inhibitors; and
 - b. pay four dollars (\$4) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
- (5) for a third violation in a period of 12 consecutive months, the producer shall:
 - a. pay four dollars (\$5) per hL for all milk sold by the dairy farm during the month in which the violation occurred;
 - b. be prohibited from selling milk until subsequent testing has proven the milk produced on the farm is free from inhibitors; and
- (6) 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 and until subsequent testing has proven the milk produced on the farm is free from inhibitors;
- (7) 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 until subsequent testing has proven the milk produced on the farm is free from inhibitors; and
- (8) 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

15. Somatic cell count violations occur when infractions are recorded from forty percent (40%) of the tests completed 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

Special
circumstances

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

16. 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.17 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 the producer shall be prohibited from selling milk for a period of not less than six days and until subsequent testing or observation has proven the milk produced on the farm is free from inhibitors or contaminants; 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 and until subsequent testing or observation has proven the milk produced on the farm is free from inhibitors or contaminants.

Cost for Damages

17. 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;
- (4) any cost for disposal of the contaminated milk; and
- (5) any other cost directly attributable to handling and disposal of the contaminated milk.

Reinstatement

18. 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 section 5(3) of this order the requirement for reinstatement shall be a determination by the animal welfare officer or an inspector or representative designated by DFPEI that the circumstances that caused the animals on the farm to be in distress have been corrected and the farm is in compliance with all standards for animal care applicable in the AWA or the Code of Practice;
- (2) for a prohibition applied under sections 9(4), 10(4), 11(6), 13(4), 14(6) or 15(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;
- (3) for a prohibition applied under sections 9(5), 10(5), 11(7), 12(5), 13(5), or 15(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;
- (4) for a prohibition applied under sections 14(7) or 16(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 have passed a farm inspection completed not more than 3 months prior to the date the prohibition was ordered;
 - c. the farm must pass a proAction® validation; and
- (5) for a prohibition applied under sections 9(6), 10(6), 11(8) 12(6), 13(6), 14(8), 15(6) or 16(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 have passed a farm inspection completed not more than 3 months prior to the date the prohibition was ordered;
 - c. the farm must have passed a proAction® validation completed 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 review the circumstances and any recommendations provided by a committee of the Board to determine if the farm may be permitted to resume selling milk.

Reinstatement
costs

19. 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 or other required farm visits to ensure compliance;
- (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

20. DFPEI Order 2017-10 is hereby revoked.

Commencement

20. This order shall come into force on the 28th day of July 2023.

Dated at Charlottetown, PEI this 28th day of July 2023.



Gordon MacBeath, Chair



Connie Gorrill, Secretary