

NEW BRUNSWICK FARM PRODUCTS COMMISSION

ORDER NO. 2022-06

Pursuant to sections 11(2)(c), 11(3) and 57(1)(o)(p)(q) of the *Natural Products Act*, the New Brunswick Farm Products Commission makes the following Order:

Title

1. This order may be cited as the “**Milk Quality and Premise Penalty Order**”.

Definitions

2. In this Order
 - (a) "Act" means the *Natural Products Act*;
 - (b) “bacteria count” means standard plate count (SPC) and lab pasteurization count (LPC) and Individual Bacteria count (IBC);
 - (c) "Board" means the Dairy Farmers of New Brunswick;
 - (d) “bulk tank milk grader” means a person licensed by the Commission, who grades and samples milk, determines and records the volume of milk in a farm bulk tank and transfers milk from a farm bulk tank to a milk truck;
 - (e) “Commission” means the New Brunswick Farm Products Commission;
 - (f) “dairy plant” means a place in which a dairy product is manufactured or processed;
 - (g) "gross milk value" means, with respect to any period, the value of the raw milk of a producer purchased by the Board;
 - (h) “Individual Bacteria Count” means the determination of the number of the individual bacteria per millilitre of raw milk;
 - (i) "inhibitor" means any substance, other than a bacterial culture, that inhibits or is intended to inhibit the growth of bacteria and does not occur naturally in milk;
 - (j) "laboratory pasteurization count" means the determination of the number of bacteria per millilitre of raw milk able to remain viable after being subjected to laboratory pasteurization;
 - (k) “milk tank” means a stainless-steel tank that is designed and used exclusively for transporting raw milk, cream or potable water and is mounted on a trailer that is hauled by a truck tractor or is mounted on a truck;
 - (l) “milk truck” means a truck tractor that hauls a milk tank on a highway, as defined in the *Highway Act*;

- (m) “Proaction Program” means an on-farm food safety program implemented by Dairy Farmers of Canada;
- (n) "raw milk" means milk that has not been heated beyond 40°C or undergone any treatment that has an equivalent effect;
- (o) “Regulation” means Regulation 2022-81, the Milk Quality Regulation.
- (p) “shut-off ” means a period of time a producer is prohibited under this order from supplying raw milk for distribution to a dairy plant;
- (q) "standard plate count" means the determination of the number of viable bacteria per millilitre of raw milk.
- (r) “unacceptable individual bacteria count” means a individual bacteria count higher than the individual bacteria count limit in section 57 of the *Regulation*;
- (s) “unacceptable laboratory pasteurization count” means a laboratory pasteurization count higher than the laboratory pasteurization counts limits in section 57 of the *Regulation*;
- (t) “unacceptable somatic cell count” means a somatic cell count higher than the somatic cell count limits in section 58 of the *Regulation*;
- (u) “unacceptable standard plate count” means a bacteria count higher than the bacteria count limits in section 57 of the *Regulation*;

Notification

- 3(1) The Commission shall notify in writing a producer whose raw milk on testing is found to contain:
 - (a) an unacceptable bacteria count (one or more of SPC, IBC or LPC),
 - (b) an unacceptable somatic cell count,
 - (c) added water, or
 - (d) inhibitors or veterinary drug residues.and in the notice, indicate if a penalty has been incurred and the amount of the penalty.
- 3(2) The Commission shall notify in writing a producer who is prohibited under this order from supplying raw milk for distribution to a dairy plant because of a contravention of the standards set out in subsections 4(1) and (2), 5(1) and 5(2), and 6(1) and 6(2).
- 3(3) Notification mailed to a producer under subsection (2) shall be deemed to have been received by the producer not later than the third business day after the day of mailing.

3(4) Notwithstanding subsections (1) and (2), a notice may be given verbally or by email.

3(5) The Commission shall notify the Board of any penalties and/or shut-offs imposed on a producer.

Standards for bacteria count limit and somatic cell count limit and non- compliance

4(1) A producer shall incur a penalty as set out in subsection 2 if a test of the producer’s milk in the current month results in any of the following findings and the same unacceptable result has been found in at least 40% of the tests of the producer’s milk in the current month and the previous 2 consecutive months and at least one of the unacceptable tests being in the current month:

(a) an unacceptable bacteria count, or an unacceptable somatic cell count, or both.

4(2) With respect to a 1st, 2nd, 3rd or subsequent violation, a producer whose raw milk is found to contain unacceptable bacteria and/or somatic cell counts is subject to a penalty as set out in the following table:

Penalty, Shut-off and Reinstatement for Bacteria Count Limits and Somatic Cell Count Limits			
Penalty Instance within 12-month period	Penalty	Shut-off	Shut-off Reinstatement Requirements
1 st penalty	4% of the gross milk value*	N/A	N/A
2 nd penalty	5% of the gross milk value*	N/A	N/A
3 rd penalty	6% of the gross milk value*	N/A	N/A
4 th penalty	6% of the gross milk value*	1 st shut-off period of a minimum of 6 days	Producer’s raw milk meets all milk quality standards
5 th penalty	6% of the gross milk value*	2 nd shut-off period of a minimum of 12 days	Producer’s raw milk meets all milk quality standards and successfully undergoes a farm inspection as provided in the Regulation

6 th penalty	6% of the gross milk value*	3 rd shut-off period of a minimum of 24 days	Following a producer requested shut-off review, Commission deems producer to have exceptional circumstances
*A penalty applies to the producer's gross milk value sold in the month the producer incurred the penalty.			

4(3) For the purposes of subsection (1), where the same sample of raw milk tests unacceptable for standard plate count and laboratory pasteurization count, it shall be deemed to be one unacceptable count and the Commission has the discretion to decide which one it shall be.

Standards for the presence of water standard and non- compliance

5(1) A producer is subject to a penalty as set out in subsection (2) if a test of the producer's raw milk results in a freezing temperature higher than that specified in Section 59 of the *Regulation*.

5(2) With respect to a 1st, 2nd, 3rd or subsequent violation within a 12-month period, a producer whose raw milk is found to contain the presence of water is subject to a penalty as set out in the following table:

Penalty, Shut-off and Reinstatement for Presence of Water in a 12-month period			
Penalty Instance	Penalty	Shut-off	Shut-off Reinstatement requirements
1 st penalty	4% of the gross milk value*	N/A	N/A
2 nd penalty	5% of the gross milk value*	N/A	N/A
3 rd penalty	6% of the gross milk value*	N/A	N/A
4 th penalty	6% of the gross milk value*	1 st shut-off period of a minimum of 6 days	Producer's raw milk meets all milk quality standards
5 th penalty	6% of the gross milk value*	2 nd shut-off period of a minimum of 12 days	Producer's raw milk meets all milk quality standards and successfully undergoes a farm inspection as

			provided in the Regulation
6 th penalty	6% of the gross milk value*	3 rd shut-off period of a minimum of 24 days	Following a producer requested shut-off review, Commission deems producer to have exceptional circumstances
*A penalty applies to the producer's gross milk value sold in the month the producer incurred the penalty.			

Standards for the presence of inhibitors and non- compliance

- 6(1) A producer whose raw milk is found to contain inhibitors or veterinary drug residues shall, upon notification to that effect, remove and dispose of any raw milk in his or her farm bulk tank.
- 6(2) With respect to a 1st, 2nd, 3rd or subsequent violation, a producer whose raw milk is found to contain an inhibitor or veterinary drug is subject to a penalty as set out in the following table:

Penalty, Shut-off and Reinstatement for Milk Containing Inhibitor(s) in a 12-month period			
Penalty Instance within 12-month period	Penalty	Shut-off	Shut-off Reinstatement requirements
1 st penalty	8% of the gross milk value*	N/A	N/A
2 nd penalty	12% of the gross milk value*	1 st shut-off period of a minimum of 6 days	Producer's raw milk meets all milk quality standards
3 rd penalty	16% of the gross milk value*	2 nd shut-off period of a minimum of 12 days	Producer's raw milk meets all milk quality standards as provided in the Regulation, and successfully meets the requirements of the Proaction program as administered by the Board
4 th penalty	16% of the gross milk value*	3 rd shut-off period of a minimum of 24 days	Following a producer requested shut-off review, Commission deems producer to have exceptional circumstances

*A penalty applies to the producer's gross milk value sold in the month the producer incurred the penalty.

Premises

- 7(1) In this section, "infraction" means the marketing of raw milk that has been:
- (a) produced on the premises of a dairy farm that does not comply with the Regulation, or
 - (b) handled with milking equipment and utensils that do not comply with the Regulation.
- 7(2) A producer who commits an infraction under subsection (1) and whose premises or equipment and utensils, in the opinion of the inspector, does not comply with the Regulation shall incur a penalty according to the following procedure:
- (a) following the first report by the inspector of an infraction, the producer shall receive a written warning indicating the failure to comply with the Regulation and the date by which the producer is required to comply with the Regulation;
 - (b) following the second report by the inspector of an infraction, the producer will receive a second written warning indicating the failure to comply with the Regulation; and
 - (c) following the third report by the inspector of an infraction, the producer shall pay the penalty set out in subsection (3).
- 7(3) The penalty for an infraction under this section shall be equal to 5% of the gross milk value for the month in which the infraction occurred and will continue to be charged each subsequent month until the producer has taken steps to comply with the Regulation.

Shut-off period

- 8(1) During a shut-off period a bulk tank milk grader shall not transfer raw milk from a farm bulk tank to a milk truck without the approval of the Commission.
- 8(2) A producer wanting to be considered for a re-evaluation of a shut-off after a third shut-off must submit an application to the Commission to explain their exceptional circumstances and demonstrate that the appropriate measures have

been taken to deliver raw milk that meets the applicable shut-off reinstatement requirements set out in this order.

- 8(3) A producer who has been subject to a third shut-off period shall only be permitted to supply raw milk for distribution to a dairy plant if the Commission determines the producer's circumstances to be exceptional and all applicable shut-off reinstatement requirements have been met.

Payment of penalties

- 9(1) The amount of a penalty shall be determined by the Board in accordance with the method by which the penalty is calculated as set out in this Order.
- 9(2) A penalty is payable on or before the fifteenth day of the month next following the month for which the penalty was imposed.
- 9(3) A penalty is payable to the Board and shall be deducted by the Board from the money payable to a producer for the raw milk purchased by the Board from the producer.
- 9(4) The Board shall deposit a penalty in a fund established for that purpose by the Commission.
- 9(5) The fund referred to in subsection (4) shall be used for the purpose of improving raw milk quality.
10. Order No. 2022-04 is hereby repealed.
11. This Order shall come into force on January 1, 2023.

Dated in Fredericton, N.B., this 15th day of December, 2022.



Robert Shannon
Chairman