

ORDER 2008-12
AN ORDER ESTABLISHING THE INDEMNITY FUND UNDER THE
DAIRY FARMERS OF NEW BRUNSWICK
(the "**INDEMNITY FUND ORDER**")

BE IT ENACTED pursuant to

- Section 11(w,x) of the New Brunswick Regulation 2002-85 *Milk Plan Administration Regulation – Natural Products Act*; and
- Section 23 of the Natural Products Act, Chapter N- 1.2, and

DAIRY FARMERS OF NEW BRUNSWICK (hereinafter called the "Board") in its exercise of its Federal and Provincial powers, where applicable, in whole or in part, concurrently and in combination hereby repeals Order 12 – Indemnity Fund Order and replaces it with:

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- 1) **DEFINITIONS:** The terms referenced herein have the same meaning as given in the by-law, act, regulation, order or agreement in which the term was originally defined. If a term originates herein the term will be defined below.

- 2) **ESTABLISHMENT AND ADMINISTRATION**
 - a) The Board does hereby establish and shall maintain an Indemnity Fund (the "Indemnity Fund") to be used to indemnify Producers or protect Producers against financial loss suffered by them or on their behalf in respect of the marketing of Milk;

 - b) The Indemnity Fund shall be administered by the Board as follows:
 - i) All monies constituting the Indemnity Fund, pending the investment or application thereof, shall be deposited to the credit of a special account of the Board in a chartered bank or a duly licensed trust company;
 - ii) All monies of the Indemnity Fund that are not immediately required for the purposes thereof shall be invested in the manner in which trustees are authorized to invest trust funds under the Trustees Act of New Brunswick;
 - iii) The accounts of the Indemnity Fund shall be audited annually by a chartered accountant;
 - iv) The assets of the Indemnity Fund shall not be used as collateral for any loans negotiated by the Board or any other person; and
 - v) Upon request, the Board shall submit to the Commission, statements as to the status of the Indemnity Fund and such additional information as the Commission shall direct from time to time;

 - c) The Board, subject to the approval of the Advisory Committee, may pay from the Indemnity Fund:
 - i) Only those sums or expenses involved in the administration of the Indemnity Fund;
 - ii) All or a portion of the amount of any claim submitted to the Advisory Committee; and
 - iii) All or a portion of any monies surplus to the Indemnity Fund;

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iv) The Indemnity Fund hereby established shall be maintained at such level or levels as to principal amount as the Advisory Committee shall determine from time to time.

3) **LEVY**

- a) Subject to Section 2(b) hereof, the Board is authorized from time to time to levy and collect such amounts from the Producers as are required for the operation of the Indemnity Fund and the said amount paid into the Indemnity Fund shall not form part of any licence fee or service charge levied under the Plan;
- b) No such amount shall be levied and collected pursuant to Clause 2(a) hereof without the prior approval of the Commission;
- c) Any amounts levied as above shall be deducted from monies otherwise due and payable by the Board to Producers; and
- d) Any amounts levied to be collected by the Board shall be terminated and the Board shall cease to collect such amounts upon the Indemnity Fund attaining the maximum principal amount established pursuant to Clause 2(c) (iv) of this Order.

4) **ADVISORY COMMITTEE**

- a) There is hereby established an Advisory Committee to consist of two people. The composition of the Advisory Committee shall be as follows:
 - i) The Chairman of the Commission, or the Vice-Chairman of the Commission if so designated by the Chairman; and
 - ii) The Chairman of the Board, or the Vice-Chairman of the Board if so designated by the Chairman;
- b) Subject to the provisions of this Order, the Advisory Committee shall have absolute jurisdiction and discretion to approve or disapprove, in whole or in part, payment of monies out of the Indemnity Fund;
- c) The representative of the Commission shall be the Chairman of the Advisory Committee; and
- d) Two members of the Advisory Committee shall constitute a quorum and all questions before the Advisory Committee shall be decided by a majority of votes cast. Each member of the Advisory Committee shall be entitled to one vote on each question, but the Chairman of the Advisory Committee may have and exercise a tie-breaking or second vote.

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5) **PAYMENTS FROM THE INDEMNITY FUND**

- a) Subject to the prior approval of the Advisory Committee, the Board may pay from the Indemnity Fund to the Board such sums as are required to reimburse the Board for
- b) expenses involved in the administration of the Indemnity Fund;
- c) all or a portion of the amount of any claim made against the Indemnity Fund pursuant to section 6 hereof; and
- d) such sums as are deemed to be surplus monies.

6) **CLAIMS**

- a) The Board may make a claim on the Indemnity Fund by filing with the Advisory Committee a Notice of Claim of the Board's intent to claim together with all relevant supporting documents to substantiate and verify the financial loss for which indemnity or protection is being sought;
- b) The Notice of Claim shall be delivered to the Chairman of the Advisory Committee, either personally or by registered mail, who shall forthwith convene a meeting of the Advisory Committee to be held within fourteen days of the date of service or delivery of the Notice of Claim, for the purpose of considering and dealing with the claim;
- c) The Board may claim against the Indemnity Fund if the claim relates to monies due to the Board from sales of raw Milk to a third party (the "Debtor");
- d) A claim may include an amount for interest calculated in accordance with normal Board procedures, together with any and all costs incurred by the Board in collecting or attempting to collect such claim or part thereof, including legal fees and expenses;
- e) Prior to approving any such claim against the Indemnity Fund, the Advisory Committee may direct the Board to exhaust other legal remedies against the Debtor, and in any event, the Advisory Committee shall satisfy itself that all reasonable steps have been taken to collect the amount of the claim by other legal remedies;
- f) Upon being satisfied that the requirements of this Order have been met, the Advisory Committee shall direct that the Claim of the Board, or such portion of the claim as the Advisory Committee deems just, be approved and paid from the Indemnity Fund; and
- g) In the event that there are insufficient monies in the Indemnity Fund to satisfy a valid claim of the Board, such monies as are then available shall be paid to the Board from the

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Indemnity Fund, together with such other monies as are subsequently received by the Indemnity Fund from any levy imposed pursuant to Clause 2 hereof, as are required to fully satisfy the Claim.

7) **OTHER SOURCES**

- a) If any money is received by the Board from any other source relevant to a claim for which monies have been received by the Board from the Indemnity Fund, the Board, upon receipt of such money, shall deposit in the Indemnity Fund such portion of the money as is required to repay the Indemnity Fund for claims against it with respect to the relevant Debtor.

8) **TRANSITION**

- a) The Indemnity Fund established and maintained by the Board pursuant to the Order of the Board enacted on May 15, 1992 and subsequently continued is hereby deemed to be the Indemnity Fund established herein and shall be administered in accordance with the provisions of this Order.

9) **AMENDMENT**


- a) This Order may not be repealed or amended without the approval and consent of the Commission.

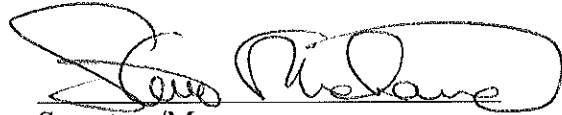
10) **DISSOLUTION**

- a) Upon the repealing of this Order and the dissolution of the Indemnity Fund and after payment of all debts and liabilities of the Indemnity Fund, the monies remaining shall be used by the Board to promote the sale of Milk and milk products. Such monies may only be expended by the Board with the prior approval of the Advisory Committee. For this purpose, the Advisory Committee shall be deemed to survive the repeal of this Order and the dissolution of the Indemnity Fund.

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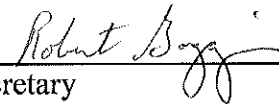
This Order comes into effect March 1, 2008


Chairman


Secretary/Manager

APPROVED by the New Brunswick Farm Products Commission


Chairman


Secretary