

ORDER 2011-06
AN ORDER DEFINING THE MILK MARKETING PROCESS UNDER THE
DAIRY FARMERS OF NEW BRUNSWICK
(the "MILK PLAN ORDER")

PURPOSE: The Board's plan is to carry out the purposes for which the Board was established. The purposes for which the Board was established are:

- (a) the promotion, control and regulation within New Brunswick of the marketing of Milk;
- (b) the promotion, control and regulation within New Brunswick of the production;
- (c) the promotion of the consumption and use of Milk; and
- (d) research activities pertaining to Milk. (the "Plan").

With this Order the Board is setting out its powers, the relevant parties involved, defining relevant terms, and outlining its Plan.

WHEREAS the New Brunswick Farm Products Commission (the "Commission") and the Dairy Farmers of New Brunswick (the "Board") are signatories to the National Milk Marketing Plan a Federal Provincial agreement established August 1, 1983 replacing the Interim Comprehensive Milk Marketing Plan of 1971 (hereinafter referred to as the "National Plan") under which National Plan, the Canadian Milk Supply Management Committee determines New Brunswick's amount of butterfat which in a full Quota Year is estimated to be required to meet the following:

1. New Brunswick's share of the Canadian Milk Production to meet Canadian requirements for Processed Dairy Products hereinafter referred to as the "Estimated Canadian Requirements" or "Federal Quota", and
2. New Brunswick's responsibility for Skim-off flowing from Fluid Milk Products used in the production of Processed Dairy Products, and
3. New Brunswick's Milk Production to meet Fluid Milk Products consumed in New Brunswick hereinafter referred to as "Fluid Quota".

AND WHEREAS the New Brunswick share of the Federal Quota, the Skim-off and Fluid Quota are hereinafter referred to as the "Provincial Quota".

AND WHEREAS in accordance with P(5), New Brunswick pools its Provincial Quota and based on the relevant provisions of the P(5), New Brunswick's Quota share within the P(5) is determined and hereinafter referred to as the "New Brunswick P(5) Quota".

AND WHEREAS by the Dairy Products Marketing Regulations under the Canadian Dairy Commission Act, the Board is authorized to allot a share of the New Brunswick P(5) Quota to any person who is entitled, or to suspend or cancel any of that portion that has been allotted and the administration of New Brunswick P(5) Quota is the responsibility of the Board under requirements set forth by the Canadian Dairy Commission.

AND WHEREAS by Regulation 2002-85, the Milk Plan and Levies Regulation under the Natural Products Act of New Brunswick, the Board has been vested with the power to require Milk to be marketed or produced and marketed on a Quota basis in New Brunswick.

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AND WHEREAS a Producer is allocated a share of the New Brunswick P(5) Quota under the National Plan, **subject to**

1. the New Brunswick Farm Products Commission licensing a person as a Producer of Milk under s. 46 of the Natural Products Act of New Brunswick (hereinafter referred to as a "Provincial Licence"); and
2. the Board's power to determine entitlement under the Dairy Products Marketing Regulations – Canadian Dairy Commission Act and its vested power under the Milk Plan and Levies Regulation – Natural Products Act to fix and allot or refuse to fix and allot to persons Quota on such basis as the Board considers proper (s. 11(g)) (hereinafter referred to as "Market Sharing Quota" or "Producer Quota"). Furthermore the Board has the vested power to cancel, reduce, suspend, increase (s. 11(k)) or refuse to increase a Quota (s. 11(i)), and regulate or prohibit transfer of Quota (s. 11(l))

AND WHEREAS upon a person receiving a Provincial Licence he/she is issued a federal licence for so long as the person continues to hold a share of the Federal Quota (hereinafter referred to as a "Federal Licence").

AND WHEREAS the Board supervises and controls the purchase, transportation, handling, storing, delivery, sale and distribution of unprocessed Milk as well as the care and collection of milk containers.

AND WHEREAS the Board has the vested power to market and regulate the production of Milk and to require all Producers to offer to sell and to sell the Milk to or through the Board and to regulate or prohibit the transfer of Quota and to impose such conditions and procedures on the transfer of Quota as the Board considers proper.

AND WHEREAS in accordance with P(10) the Board pools revenues from the sales of Milk and Milk components produced and marketed in New Brunswick in Special Classes.

AND WHEREAS in accordance with P(5) the Board pools revenues from the sales of Milk and Milk components produced and marketed in New Brunswick in Fluid Milk Products, Industrial Milk and Skim-off.

AND WHEREAS the Board, with respect to revenues received from the sales of Milk, has the vested, authorized and delegated powers to:

1. to use any money received by the Board to carry out the purposes of the Plan and to pay the expenses of the Board;
2. to fix levies or charges and to impose them on and collect them from Producers and to use the levies and charges authorized under the Milk Plan and Levies Regulation – Natural Products Act to finance the operation of the Plan;
3. fix and collect periodic licence fees and charges for services rendered by the Board from any and all Producers, and for this purpose to classify such Producers into groups, and fix the licence fees and charges or either of them payable by the members of the different

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groups in different amounts, and to recover any such licence fees and charges or either of them in any Court of competent jurisdiction;

4. use the levies or charges referred to **in 2 and 3 above** for the purposes of the Board, including the creation of reserves, the payment of expenses and losses resulting from the sale or disposal of Milk and the equalization or adjustment among Producers monies realized from the sale thereof during such periods of time as the Board may determine; and
5. deduct all expenses, if any, required under any agreement entered into between the Board and a milk marketing board, milk marketing agency of any province of Canada.

AND WHEREAS the Board, inter alia, is vested with the power to make such orders as are considered by the Board necessary or advisable to regulate effectively the marketing or production and marketing of Milk in New Brunswick.

AND WHEREAS these recitals form part of this Order.

NOW THEREFORE BE IT ENACTED pursuant to

- prescribed powers given the Board under the relevant provisions of the Natural Products Act;
- New Brunswick Regulation 2002-85 – *Milk Plan and Levies Regulation – Natural Products Act*;
- New Brunswick Regulation 2002-86 – *Milk Plan Administration Regulation – Natural Products Act*;
- New Brunswick Regulation 2010-19 – *Milk Quality Regulation – Natural Products Act*;
- New Brunswick Farm Products Commission Order – 2010-05 – *Milk Quality & Premises Penalty Order*
- delegated and vested powers, as the case may be, given the Board by the Commission, and any and all amendments or successor Commission Orders;
- The powers of directors and shareholders under section 60(1), 79(1)(a) and (b) and other relevant provisions of the *Business Corporations Act*, R.S.N.B. 1973, Chap. B-9.1, ("NBBCA");
- prescribed powers given the Board under the *Canadian Dairy Commission Act* (R.S. 1985, c. C-15, s.9.1) (the "CDC Act");
- prescribed powers under the Federal Regulation – SOR/94-466 - *Dairy Products Marketing Regulation – CDC Act*;
- prescribed powers under The Federal Regulation – SOR/94-627 - *New Brunswick Milk Order – Agricultural Products Marketing Act*, and amendments or successor legislation thereto;
- The Boards signatory rights and powers agreed to and provided for under the National Plan, P(10), and P(5);

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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 2009-03 – Milk Plan Order and replaces it with:

ORDER 2011-06
MILK PLAN

1) DEFINITIONS

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 in this Order the term will be defined below.

Agreements means

- a) the National Plan with accompanied Memorandum of Agreement and Appendix;
- b) Comprehensive Agreement on Special Classes or P10, and amendments thereto, (hereinafter referred to as "P10"); and
- c) Agreement on All Milk Pooling or P5, and amendments thereto, (hereinafter referred to as "P5").

The National Plan, P10 and P5 are collectively referred to as the Agreements and independently as the National Plan, P10 or P5.

Due Board Any financial obligation owed to the Board by a Producer, which obligation may include, but is not limited to, levies, charges, Board expenses and penalties.

License means a Producer Licence, Provincial Licence and Federal Licence when referred to independently and a Licence when referred to collectively.

Milk means milk from cows (as defined in Canadian Dairy Commission Act and New Brunswick Regulation 86-11 under the Natural Products Act, formerly known as the Dairy Products Act) and means milk and cream (as defined in the National Plan). Related terms are:

Harmonized Milk Classification System: Under the Agreements, Milk produced in Canada is sold to processors through a Harmonized Milk Classification System for the manufacture of the following products:

Fluid Milk Products means Milk marketed for consumer use in liquid form and classified within Class 1 of the Harmonized Milk Classification System.

Processed Dairy Products means any product, other than Fluid Milk Products, made from Milk and classified within Class 2 to 4 of the Harmonized Milk Classification System.

Special Classes means a program within the P10 that allows eligible further processors, distributors and animal feed manufacturers with the means to access Canadian

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manufactured dairy ingredients, at prices that will allow them to remain competitive in the marketplace.

Industrial Milk means all Milk utilized for Processed Dairy Products.

Skim-off is the amount of cream calculated in terms of butterfat, recovered from standardization of the butterfat content of Fluid Milk Products and used in the production of Processed Dairy Products.

Quota means Federal Quota, Provincial Quota, New Brunswick P5 Quota, Producer Quota, Daily Quota, Saleable Daily Quota, Non-Saleable Daily Quota, and Monthly Quota when referred to independently and means Quota when referred to collectively. **Quota** is measured by:

Daily Quota represents the daily Production entitlement allocated to Producers by the Board to bring forward sufficient Production to fulfil the New Brunswick P5 Quota. Daily Quota is expressed in kilograms and tenths and hundreds thereof of butterfat; and there are three classifications that combine to form a Producer's Daily Quota:

- 1) **Saleable Daily Quota** means the kilograms and tenths thereof that can be offered for sale on the Quota Exchange or the kilograms and tenths and hundreds thereof that can be transferred in accordance to the terms and conditions of the Board Orders; and
- 2) **Non-Saleable Daily Quota** means the kilograms and tenths and hundreds thereof that cannot be sold on the Quota Exchange but that can be transferred in accordance to the terms and conditions of the Board Orders; and
- 3) **Temporary Daily Quota** means the kilograms and tenths thereof that are provided for the sole use of a Producer who the Board has deemed to be a New Entrant and is subject to the terms and conditions of the Board Orders.

Monthly Quota shall be calculated by multiplying a Producer's Daily Quota by 2 times a Producer's number of regularly scheduled pickup days. [example: 15 pickups x 2 or 16 pickups x 2]

Quota, the amount of which is calculated and allocated for certain periods, that is:

Quota Year means the period of allocation of the Federal Quota, typically between August 1 and July 31; and

Dairy Year means a 12-month period commencing on each August 1st.

Quota shall be transferred by Quota Exchange or such other method as approved by the Board.

Quota Exchange means that definition given it in the Daily Quota Transfer Order.

Credits flow from Daily Quota and are made available to Producers by the Board in recognition of the difficulties associated with exactly matching Monthly Production to Monthly Quota and are represented as the continuous accrual of the difference between a Producers Monthly Production of butterfat and Monthly Quota. The Board restricts the accrual of the difference within prescribed Credit limits as follows:

Maximum Credits is set at [(+)(plus)10] times a Producer's Daily Quota effective August 1, 2009. Any positive difference that remains after Credits are accrued up to the Producer's Maximum Credits shall be deemed by the Board to be over quota in the hands of the Producer and classified as Marginal Market Production and subject to the terms and conditions set out in the **Producer Milk Pooling Order**. Those producers who have

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an accumulation greater than +10 times but less than +15 times on August 1, 2009 will be permitted to carry that accumulation forward but will not be permitted to accumulate any additional credits beyond their current position until such a time as their credit position falls below the +10 times permitted after August 1, 2009.

Minimum Credits is set at [-(-negative) 30] times a Producer's Daily Quota. Any negative difference remaining after Credits are accrued down to the Producer's Minimum Credits shall be deemed by the Board to be un-accruable in the hands of the Producer and referred to as lost production.

Plan means the purposes of the Board as set out in Part 1 of the Milk Plan and Levies Regulation – Natural Products Act.

Producer means a person who holds a valid License under the Natural Products Act to produce, sell and supply milk from his or her own herd to the Board and who is in the process of obtaining or has obtained an allotment of Daily Quota in accordance with the Daily Quota Transfer Order and who complies with the requirements set out in the Daily Quota Order.

New Entrant means a person that has been deemed by the Board to have met the New Entrant Program criteria of being a Canadian Citizen or have landed immigrant status; be 18 years of age or older; have never owned milk quota, and who has been approved by the Board to participate in the New Entrant Program upon having obtained a Producer license in accordance with the Natural Products Act and after having acquired the necessary amount of Daily Quota in accordance with Section 3 of the Daily Quota Transfer Order and who will be granted Temporary Daily Quota in accordance with Section 7 of the Daily Quota Order.

Production means the amount of Milk produced on the farm and sold to the Board and is measured by Monthly Production. Monthly Production and related Production terms are defined as follows:

Monthly Production means the total litres of Milk in a calendar month reported to the Board and the kilograms of butterfat, protein and lactose & other solids contained in said Milk as calculated by the Board using the Producer's component tests provided to the Board by the New Brunswick Provincial Dairy Laboratory.

Transfer means the exchange of Daily Quota between Producers as authorized by the Board as defined in the Daily Quota Transfer Order.

2) **THE PLAN**

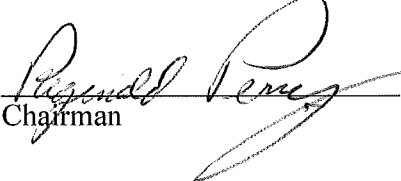
To effect its purpose, and to carry out its Plan, the Board:


- i) Promotes the consumption and use of Milk;
- ii) Research activities pertaining to Milk;

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- iii) Requires Milk to be marketed or produced and marketed on a Quota basis;
- iv) Regulates or prohibits the transfer of Quota and imposes such conditions and procedures on the transfer of Quota as the Board considers proper;
- v) Supervises and controls the purchase, transportation, handling, storing, delivery, sale and distribution of unprocessed Milk as well as the care and collection of milk containers;
- vi) Requires the price or prices payable or owing to persons for Milk to be paid to or through the Board and to recover such prices or prices in a court of competent jurisdiction;
- vii) Requires a Producer to offer to sell and to sell Milk only to or through the Board and pools the revenues from such sales of Milk;
- viii) Pools revenues from the sale of Milk in accordance with its duties and responsibilities as a signatory to the National Plan, P(10), P(5) and Commission Order No. 96-4;
- ix) Fixes levies, charges and penalties for those purposes established by the Board and collect the levies, charges and penalties and all Board expenses from money received by the Board; and
- x) Will make such orders as are considered by the Board necessary or advisable to regulate effectively the marketing or the production and marketing of Milk.

This Order takes effect August 1, 2011


Chairman


Secretary/Manager