

ORDER 2011-05
AN ORDER DEFINING THE QUOTA POLICIES OF THE
DAIRY FARMERS OF NEW BRUNSWICK
(the "**DAILY QUOTA TRANSFER ORDER**")

PURPOSE: To establish the rules governing the transfer of Daily Quota and imposes such conditions and procedures on the transfer of Quota as the Board considers proper.

WHEREAS by the Milk Plan and Levies Regulation - Natural Products Act 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.

WHEREAS the Board has the vested power to market and regulate the production of Milk and to require 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) and P(5) the Board pools revenues from the sales of Milk and Milk components produced and marketed in New Brunswick in special classes of Milk to service domestic and external markets.

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

- *Milk Plan Order – Dairy Farmers of New Brunswick and all of its Orders, and amendments or successor thereto;*

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 2010-02 – Daily Quota Transfer Order and replaces it with:

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DAILY QUOTA TRANSFER ORDER

- 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.

Catastrophe means a situation, which occurs suddenly, over which the Producer has little or no control, and which severely affects the health of the Producer or of the producing herd of cows.

Due Producer means the amount presented on the Producer's monthly milk statement that represents the net proceeds associated to the milk that the Producer delivered within that

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month less any advance and after removing all marketing charges and other deductions including any debts that may be owed to the Board.

New Producer means a person who is interested in starting a farm operation but has never been a Producer before.

New Entrant means a person who has been approved under the New Entrant Program.

Non-Saleable Daily Quota means Daily Quota that can not be offered for sale on the Quota Exchange, the amount of which is determined by the Board and is subject to adjustments by the Board from time to time.

On-going Farm Operation means a continuously operative dairy farm business, including all land and buildings related thereto, together with 100% of the milking herd of cows and allotted Daily Quota.

Quota Exchange means that procedure established herein whereby a Producer may offer to sell or bid to buy Daily Quota at certain stated prices.

Quota Exchange Selling Price, or QESP means that price at which a volume of Daily Quota offered for sale by Producers will equal, or very nearly equal, a volume of Daily Quota bid for purchase by Producers.

Saleable Daily Quota means the Daily Quota a Producer can offer for sale on the Quota Exchange, the amount of which the Board determines and is subject to adjustments by the Board from time to time.

Transfer means the exchange of Daily Quota between Producers as authorized and approved by the Board.

- 2) **DAILY QUOTA TRANSFERS TERMS AND CONDITIONS:** Transfers are subject to Board approval upon terms and conditions as it deems necessary and, without limiting the generality of the forgoing, are subject to the terms and conditions of this Order, which terms and conditions are as follows:
- a) Transfers must be made directly by and between the Producers without the involvement of any intermediary or third party acting or participating for financial benefit.
 - b) Transfers must take place on the Quota Exchange as outlined in Section 3 herein, except Transfers exempted under this Order.
 - c) Producers involved in the Transfer of Daily Quota in accordance with **Section 4(a) (b), or (c)** herein will not be allowed to participate in the Quota Exchange on the effective date of the Transfer.
 - d) Transfers must be completed by the Producer on forms provided by the Board.

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- e) Transfers must be submitted by the Producer to the Board prior to the deadline for submission being 4:00 p.m. on the first business day of the calendar month. It is the Producer's responsibility to complete the Transfer forms and to confirm that the Board has received the completed forms.
- f) Transfers received by the Board after the deadline for submission or any incomplete Transfers shall not be accepted.
- g) Producers may withdraw or amend their Transfer forms, provided such amendment is in writing in prescribed form and received by the Board prior to the submission deadline.
- h) When the Transfer becomes effective, the Producer selling Daily Quota shall repay to the Board the amount of money associated with the amount of Credits that exceeds the resulting Maximum Credits allowable to the selling Producer after the sale. The amount repaid is determined by the prevailing Domestic Market Rate.
- i) The Daily Quota Transfer shall only take effect when the selling Producer has paid in full any debts owed to the Board.

3) TRANSFERS THROUGH THE QUOTA EXCHANGE

a) **The Exchange**

The Board provides a mechanism for Producers wishing to buy or sell Daily Quota called the Quota Exchange. Quota Exchanges will operate monthly when sufficient quantities of Daily Quota are offered and bid for at prices that permit the clearing mechanism to operate.

b) **Requirements to Participate on the Exchange**

- i) Only Producers can participate in the Quota Exchange.
- ii) A Producer cannot offer to sell Daily Quota and bid to buy Daily Quota on the same Quota Exchange.
- iii) A Producer cannot offer to sell Daily Quota or bid to buy Daily Quota at a price which exceeds \$28,000 on or after August 1, 2009 or \$25,000 on or after August 1, 2012; and
- iv) Offer to Sell forms signed by the Producer's Business Representative are to be submitted to the Board in accordance with **Section 2 (d,e,f,g) herein** that legibly state:
 - (1) the amount of Daily Quota (expressed in kilograms and tenths of a kilogram, as hundredths are non-saleable) offered for sale;
 - (2) the offer to sell price to the nearest dollar per kilogram; and
 - (3) the month of the Quota Exchange the offer to sell is submitted.
- v) Bids to Buy forms signed by the Producer's Business Representative are to be submitted in accordance with **Section 2 (d,e,f,g) herein** and legibly state:

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- (1) the amount of Daily Quota (expressed in kilograms and tenths of a kilogram, as hundredths are non-saleable).
- (2) the bid price to the nearest dollar per kilogram (Bid Price).
- (3) the month of the Quota Exchange the Bid to Buy is submitted.
- vi) Bids to Buy will only be accepted when accompanied by a letter from the Producer's financial institution confirming that the funds required to cover the amount being bid for at the price being bid are available. In instances where the Due Producer shown on the Producer's milk statement in the month prior to the exchange is sufficient to cover off the amount bid for at the bid price, a confirmation of funds will not be required. Producers are not allowed to combine their Due Producer amount and their confirmation of funds to cover off the amount bid for at the bid price.

c) Process to Classify Daily Quota as Non-Saleable in respect to the Bid to Buy

Effective June 1, 2007, the Bid Price will determine the percentage of the Daily Quota purchased through the Quota Exchange that will be classified as Non-Saleable Quota in the hands of the successful purchasing Producer. Table A below establishes the Bid Price range and the corresponding percentage of Daily Quota purchased being classified as Non-Saleable Daily Quota in the hands of the purchasing Producer:

TABLE A

Bid Price range	% Non-Saleable
\$1 to \$12,800	0%
\$12,801 to \$15,000	5%
\$15,001 to \$20,000	10%
\$20,001 to \$25,000	15%
\$25,001 to \$27,000	25%
\$27,001 to \$28,000	40%

d) Clearing the Exchange

Volumes of Daily Quota offered for sale are ranked in ascending order of price while volumes of Daily Quota bid for purchase are ranked in descending order of Bid Price. The point where the difference between the cumulative volume offered for sale and the cumulative volume bid for purchase is the least will determine the price at which the exchange will be cleared and the volume that will be transferred between successful purchasers and successful sellers. This cleared price is the Quota Exchange Selling Price (QESP).

e) Determining the QESP

The QESP shall be the price that the Daily Quota is sold and bought for on that Quota Exchange. When there are two QESP prices where the exchange clears, the lesser of the two prices, on the purchaser's side, will be chosen as the QESP.

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f) Determining the Daily Quota to be Sold and Purchased

- i) In the event the cumulative amount of Daily Quota of the Offers to Sell at or below the QESP equals the cumulative amount of Daily Quota of the Bids to Buy at or above the QESP, the Daily Quota will be sold and purchased as follows:
 - (1) each successful seller at or below the QESP will sell 100% of the Daily Quota they offered for sale and be paid the QESP less any debts owed to the Board, if any; and
 - (2) each successful purchaser will buy 100% of the Daily Quota they bid to buy and pay the QESP.

- ii) In the event the cumulative amount of Daily Quota of the Offers to Sell at or below the QESP is less than the cumulative amount of Daily Quota of the Bids to Buy at or above the QESP, the Daily Quota will be sold and purchased as follows:
 - (1) each successful seller at or below the QESP will sell 100% of the Daily Quota they offered for sale and be paid the QESP less Due Board, if any; and
 - (2) each successful purchaser at or above the QESP will purchase an amount of the Daily Quota they Bid to Buy and pay the QESP, a purchaser who is a New Entrant will be given priority over the available quota to be purchased at the QESP on 12 consecutive exchanges following their first bid or until the New Entrant has accumulated 12 kilos; and, after allocating this portion, by allocating 50% of the available quota to be purchased in rounds of 0.1 kilo to all successful buyers; and, after allocating this portion, the balance of the available quota will be prorated across the unfilled balance of successful bids.

- iii) In the event the cumulative amount of Daily Quota of the Offers to Sell at or below the QESP is greater than the cumulative amount of Daily Quota of the Bids to Buy at or above the QESP, the Daily Quota will be sold and purchased as follows:
 - (1) successful sellers, in ascending order of Offer to Sell price, will in effect sell 100% of the Daily Quota they offered for sale and be paid the QESP less Due Board, if any, until a point is reached where there is insufficient Daily Quota to satisfy 100% of the Offers to Sells that remain;
 - (a) at this point the successful seller(s) at the next ascending Offer to Sell price will sell a percentage of the Daily Quota they Offered for Sale, the percentage being the Daily Quota that remains to be sold as a percentage of the total Daily Quota offered for sale at that price; and
 - (b) beyond this point, successful seller(s) that remain will sell no Daily Quota.
 - (2) each successful purchaser will buy 100% of the Daily Quota they bid to buy and pay the QESP.

- iv) The Board shall have the option to add Daily Quota to the Quota Exchange to exactly balance the Quota Exchange.

g) Communication of Exchange Results

The results of the clearing of the Quota Exchange will be made available to Producers three working days after the first working day of the month.

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h) Resulting Classification

The Daily Quota purchased will be classified in the hands of the purchaser as Saleable Daily Quota and Non-Saleable Daily Quota and paid for at the QESP.

i) Collecting from Successful Purchasers

Producers must pay the Board the QESP for the Daily Quota so purchased on or before the last day of the month of that Quota Exchange. Failure to pay for the Quota will lead to its cancellation and the Daily Quota will revert to the Board and dealt with at the Board's discretion. In cases where the Board accepts a delay in payment, the Board will impose on the purchasing Producer interest charges at a rate of prime +5% on outstanding balances.

j) Payment to Successful Sellers

Producers who are successful in selling Daily Quota on the Quota Exchange will be advised in writing and paid by the Board on or before the last day of the month of that Quota Exchange;

i) The Board shall deduct from a Producer who has been successful in selling all of his Daily Quota on a Quota Exchange a Security Deposit equivalent to \$1,000 per kilogram of Daily Quota being sold or any other additional amount that is sufficient to cover any debts owed to the Board.

ii) The Board will refund the Security Deposit, (if any, after recovering any debts the Producer owed to the Board) the month following the effective date of the sale of Quota.

k) Effective Date of Daily Quota Successfully Purchased or Sold through Exchange

The Transfer of the Daily Quota takes effect on the first day of the month following the month in which the Quota Exchange operated.

l) Rights of Board to Cancel or Postpone Exchange

The Board reserves the right to cancel or postpone a Quota Exchange at any time for any reason it deems necessary; and

i) If the Board cancels or postpones a Quota Exchange, Producers must resubmit their bids or offers before the next Quota Exchange in accordance with the procedures set out in this section.

4) TRANSFERS EXEMPT FROM THE QUOTA EXCHANGE AND THE TERMS AND CONDITIONS OF THE EXEMPTED TRANSFERS

Subject to being licenced by the Commission and Board approval, the following types of Transfers are exempt from being transferred through the Quota Exchange:

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a) **On-Going Farm Operation / Name Change**

- i) In instances where the ownership of the site changes hands or the existing owner desires to change the name of the farm on the Producer statement, the Producer being transferred the Daily Quota in this manner will not be allowed to sell any Daily Quota for at least 6 months following the Transfer, inclusive of the month in which the Transfer is to become effective;
- ii) Non-Saleable Daily Quota is transferable; and
- iii) the accumulation of Credits is transferable.

b) **New Producer being transferred a portion of Producer's Daily Quota**

- i) a Transfer of less than 50% of a Producers Daily Quota will be allowed in situations where the Transfer is towards the establishment of a new farm operation to be owned by a New Producer;
- ii) New Producers obtaining Daily Quota in this manner will not be allowed to receive Daily Quota from more than one Producer;
- iii) New Producers obtaining Daily Quota in this manner will not be allowed to sell any Daily Quota for at least 12 months following the Transfer, inclusive of the month in which the Transfer is to become effective;
- iv) Non-Saleable Daily Quota shall be transferred in proportion to the ratio of Non-Saleable Quota to Total Daily Quota holdings of the Producer(s) transferring the Daily Quota to the New Producer; and
- v) Credits are not transferable.

c) **Catastrophe Transfer**

In the event a Producer's supply of milk to the Board ceases completely as a result of a catastrophe, the Producer may be given permission to be out of production for a period not exceeding 12 months and retain his Daily Quota and retain his Solids Non-Fat 12 month rolling ratio.

- i) A Producer who requires this special consideration must submit a written request to the Board within three months of the occurrence of the Catastrophe and provide satisfactory evidence of the catastrophic events that caused the Producer to cease shipping milk; and
- ii) A Producer who is granted a Catastrophe Transfer can direct the Board to issue a monthly non-cumulative incentive block based on the Producer's Daily Quota to one or more Producers for a period not exceeding 12 months or at the direction of the Producer who suffered the Catastrophe upon advising the Board in writing of the date when he wants to conclude the Transfer and the date he wishes to resume milk shipments; and
- iii) the Board may attach such terms and conditions to the Transfer as it shall determine.

d) **Renovation and Construction of New Facilities Transfer**

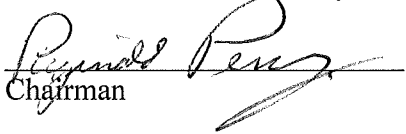
In the event a Producer wishes to renovate or construct new milking or housing facilities for his milking herd which will require him to cease supplying milk to the Board, the

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Producer may be given permission to be out of production for a period not exceeding 12 months and retain his Daily Quota and retain his Solids Non-Fat 12 month rolling ratio.

- i) A Producer who requires this special consideration must submit a written request providing details of the renovation or construction plans to the Board that have been reviewed by the New Brunswick Farm Products Commission three months prior to starting said renovation or construction; and must be shipping milk at the time the application is submitted; and must not have sold any more than 50% of his Daily Quota holdings in the three months prior to submitting his application; and must maintain the minimum Daily Quota holdings as set out in the Daily Quota Order;
- ii) A Producer who is granted a Renovation and Construction of New Facilities Transfer can direct the Board to issue a monthly non-cumulative incentive block based on the Producer's Daily Quota to one or more Producers for the duration of the Transfer or at the direction of the Producer who was granted the Transfer upon advising the Board he wants to conclude the Transfer and the date he wishes to resume milk shipments; and
- iii) the Board may attach such terms and conditions to the Transfer as it shall determine.

This Order takes effect May 1, 2011


Chairman


Secretary/Manager