NEWFOUNDLAND AND LABRADOR
REGULATION 69/98

Milk Regulations, 1998

under the

Milk Scheme, 1998

and the

Natural Products Marketing Act

Amended by:
3/00
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13/01
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90/02
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44/04
76/04
6/05
9/05
20/05
6/06
21/07
23/07
2/08
39/08
14/10
8/11
52/11
69/11
16/13
2/15
2/16

NEWFOUNDLAND AND LABRADOR
REGULATION 69/98
Milk Regulations, 1998
under the
Milk Scheme, 1998
and the
Natural Products Marketing Act
(Filed July 20, 1998)

Under the authority of section 8 of the Milk Scheme, 1998 and the Natural Products Marketing Act, the Dairy Farmers of Newfoundland and Labrador make the following regulations.
Dated at St. John’s, July 17, 1998.
Martin Hammond
Secretary-Manager
Dairy Farmers of
Newfoundland and Labrador
REGULATIONS
Analysis

1. Short title
2. Definitions
   PART I
   LICENSING
3. Monthly report required
4. Licence refusal, suspension or revocation
5. Licence return required
6. Licences non-transferable
7. Distributors
   PART II
   QUOTAS
8. Provincial quota
9. Milk quota
10. Quota increase
11. Quota decrease
12. Minimum quota
13. Maintenance of production
14. Lease, transfer or sale of quota increase
15. Quota lease
16. New entrants
16.1 New entrant quota
17. Quota restrictions
18. Fees
19. Rep. by NR 78/01 s2
20. Deduction of penalty
21. Authority for deduction
   PART III
   PRICE OF MILK
22. Minimum price for milk

23. Exportation of milk

24. Export price

25. Allocation

   PART IV

   SERVICE CHARGE

26. Service charge

27. Collection of service charge

   PART V

   IMPORTATION OF MILK

28. Licence required

29. Pre-packaged milk

30. Availability of milk

31. UHT milk, buttermilk and lactose-free milk

   PART VI

   GENERAL

32. School milk

   PART VII

   REPEAL

33. Repeal

Short title

1. These regulations may be cited as the Milk Regulations, 1998.

69/98 s1

Back to Top

Definitions

2. (1) In these regulations
   (a) [Rep. by 52/11 s1]
   (b) "catastrophe" means a situation which affects a dairy farm unit of a registered producer and over which the registered producer has little or no control and which affects his or her production and includes,
      (i) severe illness or death of the registered producer,
      (ii) sudden death or loss of a significant portion of the registered producer’s producing herd of cows,
      (iii) destruction of the registered producer’s production facilities,
      (iv) severe outbreaks of a disease not caused by the negligence of the registered producer which affects a significant part of the registered producer’s producing herd of cows, and
      (v) a disease which requires slaughter by health authorities of a significant part of the registered producer’s producing herd of cows;
(b.1) "new entrant" means a person who has not previously held a financial interest in a milk quota issued by the DFNL;

(c) "new entrant reserve" means the bank of quota established by the DFNL to be held for new entrants;

(c.1) "pay period" means a calendar month in which milk is produced by registered producers and delivered to registered processors, and at the conclusion of which monetary payments shall be made by registered processors to registered producers and the DFNL;

(d) "production" means the quantity in litres of milk per day produced by a registered producer and delivered to a registered processor; and

(e) "quarter" means a fiscal quarter-year of the DFNL as determined by the DFNL.

(2) The words "Act", "DFNL", "licence", "milk" and "producer" have the same meaning as in the Milk Scheme, 1998.

PART I
LICENSING

Back to Top

Monthly report required

3. A processor shall report on a monthly basis to the DFNL the amount of milk which was purchased and marketed in the previous month.

Licence refusal, suspension or revocation

4. The DFNL may refuse to issue or renew a licence, may suspend or revoke a licence where the applicant or licensee contravenes a condition of the licence, or an order or regulation of the DFNL.

Licence return required

5. A licensee who ceases to be a producer or processor shall immediately notify the DFNL of that fact and his or her licence shall be immediately cancelled by the DFNL.

Licences non-transferable

6. Licences issued by the DFNL shall not be transferable.

Distributors

7. (1) A distributor shall be licensed by the DFNL.

(2) A processor shall provide to the DFNL a list of his or her distributors, and those distributors shall be considered to be registered distributors for the purposes of these regulations.

PART II
QUOTAS

Back to Top

Provincial quota

8. The DFNL shall, prior to January 1 of each year set the provincial milk quota for the following year.

Milk quota

9. The DFNL shall set out the daily quota allocated to a registered producer in that producer’s licence.
Quota increase
10. (1) An increase in quota shall be allocated on the following basis:
   (a) 60% proportionally to registered producers based on their quota holdings;
   (b) 20% to the new entrants reserve; and
   (c) 20% to applicants approved by DNFL.
(2) If the new entrant reserve is:
   (a) less than 1200 litres per day, the percentage referred to in paragraph (1)(b) shall be allocated to registered producers in accordance with paragraph (1)(a); and
   (b) greater than or equal to 1200 litres per day, then 1200 litres shall be distributed to a new entrant approved by DFNL.
(3) If the 20% referred to in paragraph (1)(c) is not distributed, the quota shall be allocated to registered producers in accordance with paragraph (1)(a).
(4) Notwithstanding subsection (1), a quota may be available for distribution due to unusual or special circumstances as determined by the DFNL.

Quota decrease
11. (1) A decrease in quota shall be applied to all registered producers on a proportional basis.
(2) Notwithstanding subsection (1), a registered producer shall not have his or her quota reduced to less than 500 litres a day.

Minimum quota
12. The minimum quota under which a registered producer may operate under the Milk Scheme, 1998 is 500 litres per day.

Maintenance of production
13. (1) If a registered producer fails to produce 90% of his or her quota on an annual basis for two consecutive calendar years, that registered producer’s quota in the following year shall be calculated at his or her average production over the two years divided by 0.90.
(2) In calculating a registered producer’s production under subsection (1), the DFNL shall exclude any production which exceeded 110% of the quarterly equivalent of the registered producer’s quota.
(3) For new entrants, subsection (1) shall not apply until the beginning of the second year of operation.
(4) Notwithstanding subsection (1), a registered producer’s quota shall not be reduced below 500 litres a day.
(5) The DFNL shall notify by registered mail all registered producers who fail to produce 90% of their quota on an annual basis in a year.
(6) A registered producer who is in violation of subsection (1) or subsection (3) and who intends to apply for a waiver under subsection (7) shall inform the DFNL of that fact in writing before September 1 in a year, outlining the particulars of the reasons and circumstances of his or her request.
(7) Notwithstanding another provision of these regulations, the application of this section may be waived by the DFNL in whole or in part or subject to the conditions that the DFNL may determine if
   (a) the registered producer satisfies the DFNL that the adverse performance for a calendar year occurred as a result of a catastrophe; or
   (b) the waiver is justified and reasonable
      (i) on compassionate grounds, or
      (ii) for another just and equitable ground.
Lease, transfer or sale of quota increase

14. Where an increase in quota is granted by the DFNL, that increase shall not be sold, leased or transferred for a period of one year from the grant of the increase.
69/98 s14

Quota lease

15. A quota may be leased with the prior written approval of the DFNL.
69/98 s15

New entrants

16. (1) A person may apply to the DFNL for a milk quota as a new entrant.
(2) An application made under subsection (1) shall
(a) be in the form and contain the documents and information required by the DFNL; and
(b) be accompanied by a fee of $200.
(3) A person who applies under subsection (1) shall
(a) be a Canadian citizen;
(b) be 19 years of age or more;
(c) provide to the DFNL a business plan, for a period of time considered necessary by the DFNL, that demonstrates to the satisfaction of the DFNL that the proposed dairy operation is financially and otherwise viable and sustainable; and
(d) intend to establish a new and separate dairy operation that includes all of the following:
(i) land,
(ii) one or more buildings,
(iii) equipment, and
(iv) a daily milk quota of not fewer than 1200 litres.
(4) A person who applies under subsection (1) or his or her spouse or person with whom he or she is cohabiting shall not have a financial interest in another milk quota issued by the DFNL.
(5) A person who is employed by a dairy operation at the time of his or her application under subsection (1) shall not, by reason only of that employment, be considered to have a financial interest for the purposes of subsection (4).
(6) An application under subsection (1) that is approved by the DFNL is subject to the site for the proposed dairy operation obtaining all permits and approvals required for that operation under a law of a city, municipality or the province.

New entrant quota

16.1 (1) The DFNL may determine the
(a) number of litres of milk quotas to be made available to new entrants in a year; and
(b) number of persons whose application to be a new entrant under subsection 16(1) may be approved in a year.
(2) The DFNL shall determine with respect to a person applying to be a new entrant under subsection 16(1) the
(a) volume of milk quota to be issued to the new entrant;
(b) manner in which the milk quota shall be acquired by the new entrant; and
(c) terms and conditions applicable to the milk quota issued to the new entrant.

Quota restrictions
17. (1) Quotas shall not be sold, transferred, leased, assigned or otherwise dealt with by registered producers without the prior written approval of the DFNL.

(2) The DFNL may transfer that portion of a quota which has been fully utilized by the holder of it, or a portion of that quota upon receipt by the DFNL of an application in writing, in a form prescribed by the DFNL including evidence of the written consent of a registered secured creditor of the vendor to the proposed transfer in advance of that transfer.

(3) In the event of a transfer of all or a portion of a registered producer’s quota under this section, the registered producer holding the quota and the proposed transferee shall satisfy the DFNL that the transfer shall result in the existence or continuation of a separate dairy, including

(a) land;
(b) building;
(c) equipment; and
(d) a herd having a minimum milk quota of 500 litres per day.

(4) Notwithstanding section 12, if the proposed transfer will result in a quota of less than 500 litres per day, the DFNL may approve the transfer of the quota or a portion of it subject to the conditions that it may impose, if that proposed transfer would be in the best interests of

(a) the applicant;
(b) the proposed transferee;
(c) the DFNL; and
(d) the industry.

Fees

18. (1) The DFNL may prescribe fees for costs incurred by it in connection with the consideration of an application for the transfer of quota.

(2) Fees required under subsection (1) shall be paid prior to the transfer being approved.

(3) Transfers of milk quotas shall not be approved until all debts, fees, charges, levies and other amounts due to the DFNL by the transferor or by the transferee have been paid in full.

Deduction of penalty

20. (1) Registered processors shall, immediately on receipt of a demand by notice in writing from the DFNL, deduct the amounts of fees, charges and levies from amounts otherwise payable, or after receipt of the demand becoming payable, by the registered processor to a registered producer upon whom a fee, charge or levy has been imposed and remit it immediately to the DFNL upon making those deductions.

(2) The receipt by a registered processor of a demand from the DFNL under subsection (1) shall be sufficient and continuing authority to the registered processor to make deductions and to remit the payments as set out in that subsection.

PART III
PRICE OF MILK
Back to Top

Minimum price for milk
22. The minimum price at which milk shall be bought, sold or offered for sale FOB registered processors premises in the province shall be $116.91 per hectolitre of standard milk containing 3.6 kilograms of butterfat, and for every kilogram in excess of that butterfat content, the minimum price shall be adjusted by the amount of $5.20 per hectolitre.
2/16 s1
Back to Top

Exportation of milk
23. Milk may only be exported by a registered processor with the approval of the DFNL.
69/98 s23
Back to Top

Export price
24. (1) With respect to an export shipment of milk from the province, the DFNL shall calculate the net selling price of the milk by deducting from the gross selling price
(a) the costs of transportation; and
(b) any other charges and levies incurred and imposed in connection to the export.
(2) A processor shall, at the direction of the DFNL, deduct the difference between net selling price calculated in subsection (1) from the price already paid to the registered producer for that exported milk.
69/98 s24
Back to Top

Allocation
25. (1) The monetary deficiency under section 24 shall be allocated by the DFNL proportionally
(a) firstly among those registered producers who exceeded their fluid milk quotas by more than 110% for the pay period in which the export shipment and sale occurred;
(b) secondly to those registered producers who exceeded their quotas between 100% and 110% in the pay period in which the export shipment and sale occurred; and
(c) finally among all daily quota production.
69/98 s25

PART IV
SERVICE CHARGE
Back to Top

Service charge
26. A service charge shall be imposed as follows:
(a) $0.028 per litre on all milk originally produced by the registered producers, payable by the registered producers, for use by DFNL as follows:
   (i) for DFNL administration,
   (ii) for the Newfoundland and Labrador School Milk Program,
   (iii) for the Newfoundland and Labrador Federation of Agriculture, and
   (iv) for DFNL promotional activities; and
(b) $0.01 per litre on all milk originally produced on dairy farms situated outside the province and marketed under the Milk Scheme, 1998 , payable by the owner at the time of its entry in the province.
69/98 s26; 33/02 s1; 90/02 s1; 20/05 s1; 23/07 s1
Back to Top

Collection of service charge
27. All service charges shall be collected by registered processors and remitted to the DFNL no later than the fifteenth day of the month following all deliveries and sales of milk made to registered processors in the preceding month.
69/98 s27
PART V
IMPORTATION OF MILK
Back to Top

Licence required
28. (1) A person shall not bring any milk into the province unless he or she holds a valid licence for the importation of milk issued by the DFNL.
(2) Unless an exemption is made by the DFNL, separate permit numbers shall be obtained for each shipment of milk outside the province.
69/98 s28
Back to Top

Pre-packaged milk
29. (1) A person shall not bring any pre-packaged milk into the province.
(2) Subsection (1) shall not apply to
(a) ultra high temperature (UHT) milk;
(b) buttermilk; or
(c) lactose-free milk.
(3) Notwithstanding subsection (1), the DFNL may issue to a processor for a limited period of time
(a) a permit to import; and
(b) a licence to process, distribute and market within the province milk in any form for the purpose of test marketing milk for sale to consumers or institutions in the province.
69/98 s29; 9/05 s1
Back to Top

Availability of milk
30. A processor shall not be issued a permit to bring bulk milk into the province unless he or she can provide satisfactory proof to the DFNL that the milk is not available from a producer or processor within the province.
69/98 s30
Back to Top

UHT milk, buttermilk and lactose-free milk
31. A person shall not process, package, distribute or offer for sale ultra high temperature (UHT) milk, buttermilk or lactose-free milk except with the approval of the DFNL.
9/05 s2
PART VI
GENERAL
Back to Top

School milk
32. All milk marketed in the province under the school milk program administered by the Newfoundland and Labrador School Milk Foundation Inc. shall be cow’s fluid milk.
69/98 s32
PART VII
REPEAL
Back to Top

Repeal
33. The following regulations are repealed:
(a) Consolidated Newfoundland Milk Marketing Board Orders, Consolidated Newfoundland Regulation 1187/96;
(b) Fluid Milk Penalty Order, Consolidated Newfoundland Regulation 1188/96;
(c) Fluid Milk Quota Allocation Order, Consolidated Newfoundland Regulation 1189/96;
(d) Importation of Milk Regulations, Consolidated Newfoundland Regulation 1176/96;
(e) Newfoundland Milk Marketing Board Exportation of Milk Regulations, Consolidated Newfoundland Regulation 1016/96;

(f) Newfoundland Milk Marketing Board Licensing Regulations , Consolidated Newfoundland Regulation 1177/96;

(g) Newfoundland Milk Marketing Board Regulations , Consolidated Newfoundland Regulations 1190/96; and

(h) Transportation of Milk Regulations , Consolidated Newfoundland Regulation 1178/96.
69/98 s33
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