

**COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF AGRICULTURE
OFFICE FOR THE REGULATION OF DAIRY INDUSTRY
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**REGULATION NUMBER 11 OF THE DAIRY INDUSTRY TO ESTABLISH
METHODS TO DISPOSE OF SURPLUS PRODUCTION, FIX PRICES FOR MILK AT
ALL LEVELS AND ESTABLISH RULES FOR THE EXPANSION OF
PRODUCTION, AND TO ABOLISH REGULATION NUMBER 7018 ON THE SAME
SUBJECT, APPROVED ON AUGUST 10, 2005**

SECTION 1. Short Title

This Regulation will be known and may be quoted as Regulation Number 11 of the Dairy Industry.

SECTION 2. Legal Grounds

This Regulation is adopted pursuant to the authority vested upon the Administrator for the Office for the Regulation of the Dairy Industry, Article 5 of Act Number 34 of June 11, 1957, as amended. It is also issued in accordance with Act Number 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.

SECTION 3. Objective

Milk is the richest in nutrients among all known foods and that is why it must figure with prominence in the Puerto Rican population's diet. The dairy industry, the source of production for this food is, in turn, not only a very important activity for the health of our people but an agricultural activity of great value for the economy of the country.

However, the endemic instability of milk production causes periods of shortage and surplus that, in turn, creates deficient commercial relations affecting processors amongst themselves, and between the latter and the producers, to the obvious detriment of the commercial structure and prices of the dairy industry.

This situation makes it necessary and convenient for the State to establish the definitive basis for the development and stability of the dairy industry on behalf of the interests of all the sectors party to this activity. Likewise, the public interest should be duly safeguarded so that sufficient production of pasteurized milk is produced by a strong industry operating in an efficient manner, and able to offer to the consumer milk and milk by-products at fair and reasonable prices.

This regulation establishes methods to effectively dispose of the milk surplus produced each year for some months as well as for the solution of the problems related to the commercial relations between the processors and the producers. It also establishes the minimum prices to be paid to the producers for the retained milk to be sold as fresh milk and for the surplus milk, and also the maximum sale price for pasteurized and homogenized milk through its different levels of distribution.

SECTION 4. Definitions

- a) Dairy Farm – means a place where one or more healthy cows are kept and milked and whose milk is sold or offered for sale to a processor for human consumption.
- b) Processors – means the owners, administrators or persons in charge of establishments where milk is pasteurized, ultra-pasteurized and homogenized.
- c) Producers – means the owners, administrators or persons in charge of dairy farms licensed by this administrative agency.
- ch) Person – means an individual, corporation, society, association, cooperative, or any other type of entity with a legal personality in its own right.
- d) Fresh Milk – means milk from dairy farms, pasteurized and homogenized by a processor, distributed for the direct consumption of the public.
- e) Raw Milk – means all of the milky secretion, excluding the colostrums, that is obtained by milking one or more healthy cows in the dairy farms of the producers and which has not been processed in any way.
- f) Milk and ultra-pasteurized milk by-products (UP-UHT) – means milk or a milk by-product subject to a heat process of 280°F (137°C) or higher for no less than two (2) seconds before or after being bottled, in order to extend its shelf life when refrigerated.
- g) Milk and milk by-products processed aseptically – means milk or milk by-products that have been subject to sufficient heat treatment and packed in air-tight containers as required by the Code of Federal Regulations, Title 21, in such a way that the product is free of revivifiable

micro-organisms capable of reproducing themselves, to include its spores, under non-refrigerated storage conditions.

- h) Milk Surplus – means the raw milk that the processors do not process as fresh milk and that is available for producing other dairy products.
- I Indulac – is the commercial name of the dairy industry of Puerto Rico (Industria Lechera de Puerto Rico, Inc.), a for-profit corporation whose lone shareholder is the *Fondo para el Fomento de la Industria Lechera* and whose main objective is to prepare dairy products out of the surplus milk.
- j) Milk By-Product Processor – means a business dedicated to process dairy products using the milk surplus as its raw material.
- k) Administrator – means the Administrator of the Office for the Regulation of the Dairy Industry.
- l) Agent – means the natural or legal person dedicated to sell fresh milk and ultra-pasteurized milk from a processor in the municipalities of Puerto Rico, and who has a contract subscribed with that given processor toward those ends. It is additionally ordered that an agent will not be the employee of the processor and that the milk obtained from the processor must be sold by the agent to consumers and retailers.
- m) Container – means the container adopted and approved by the Office for the Regulation of the Dairy Industry (ORIL) for all the processors distributing fresh milk, ultra-pasteurized milk; any other dairy product' which will be identical for the fresh milk.
- n) Retained Milk – means the milk retained by the processors to be processed as fresh milk.

SECTION 5. Licenses

No person shall devote itself to the business of dairy farms or to the business of elaborating, pasteurizing, ultra-pasteurizing or homogenizing milk produced in dairy farms, or to the distribution or sale of fresh or ultra-pasteurized milk, without first having obtained a license from the Administrator. These licenses will be processed in compliance with the purposes and requirements of Act 34 of June 11 of 1957, as

amended. These licenses will be issued for a term of one (1) year and will be subject to renewal once it is determined that the applicant has complied with all the laws, applicable regulations and terms of his or her license. A person that does not have a license cannot have a milk production quota assigned.

This license is personal and non-transferable. Its possessors are responsible for any violations incurred, regardless of whether the same are caused by agents or employees and without any knowledge or intent.

The license will be posted in a visible and conspicuous place in the establishment, it being the possessor's responsibility to preserve it in a good state. In case of misplacement or loss of the same, the concerned person will immediately notify the Administrator in writing and request a duplicate.

A. Denial of Licenses

The Administrator may deny the issuance of licenses, as long as he confirms that the requirements established by the Law and the Regulations have not been complied with, in which case a written notice will be served and the opportunity to prove his/her qualifications in an administrative hearing afforded.

B. Cancellation of Licenses

The licenses may be cancelled for the following reasons:

- 1) When the commercial operations for which it was issued cease.
- 2) When the business is sold or transferred to a different person.
- 3) Due to the demise of the person in whose name it was issued. In this case, the new petitioner will acquire a new license within the next ninety (90) days following the prior possessor's passing away.

C. Suspension of Licenses

The Administrator may suspend any license for the following reasons:

- 1) When a problem is discovered which nature connotes a serious threat to the public health.
- 2) When the possessor of the license has violated any of the requirements set forth in the Law, regulations, or Orders of the Office or any stipulation or covenant agreed with the Administrator as part of an administrative proceeding.

- 3) When the possessor of the license interferes with the execution of the duties and functions of the Administrator or his representative.
- 4) When the possessor of the license has made a false statement in his application for the expedition or renewal of a license.
- 5) When the possessor of the license incurs in a practice that obstructs or hinders the enforcement of all applicable regulations.

D. Revocation of Licenses

- 1) The Administrator may permanently revoke any license issued when there is a recurrence in violations to this Regulation. In such a case, this will be done after notifying in writing the possessor of the license and after affording him/her the opportunity for an administrative hearing.
- 2) When the license has remained suspended for a period of ninety (90) days and the possessor of the same has not complied with the requirements set forth by the Administrator, the license will be revoked permanently.

SECTION 6. Price of milk and the commercial relations between processors and between processors and producers and agents

- a. The processors will only accept for pasteurization, ultra-pasteurization and homogenization milk produced in dairy farms that comply with the applicable regulation.
- b. The price to be paid by the processor to the producer or to another processor for non-surplus milk will be set through public hearings pursuant to Act 34 of June 11, 1957, as amended (5L.P.R.A 1107(e)). Said price will be enacted through a resolution issued by the Administrator after the public hearings required by law.
- c. The producers will pay a transportation charge, to be deducted from each quart of milk taken from their dairy farms to the processing plant. That charge will be established by the Administrator in accordance with the costs determined by the audits carried out by the Office. Any needed changes to this item shall be enacted through an Administrative Order.
- Ch. The Administrator will establish a system of liquidation for the dairy farmer and may make those changes he deems necessary to the same, which will be enacted through an Administrative Order.

- d. For the surplus milk, the processor will pay the producer or to another processor that amount determined by the Administrator. It is established that the Administrator may change the price in accordance with the use given to the milk and the market circumstances or whenever it is deemed pertinent. Said price will be enacted through an Administrative Order.
- e. The processor will pay the producer ten (10) cents per quart of milk produced over his or her assigned quota. This price may be changed by the Administrator after consulting with the Board of the Dairy Industry Development Fund and will be enacted through an Administrative Order.
- f. Every two weeks, the processors will settle with the producers the price of the milk retained by the processors for the processing and sale of fresh milk and for the resulting surplus of raw milk. It is additionally ordered that the processors will advance their producers, at the end of the first week of each payment period, a sum of money at least equal to 50% of the total of the previous settlement.
- g. No producer will fail to deliver the milk produced by his or her dairy farm to the processor with whom he or she has agreed the sale unless there is a prior authorization by the Administrator.
- h. No processor will fail to collect the milk produced by the dairy farm of the producer with whom it has agreed the purchase unless there is a prior authorization by the Administrator.
- i. The processors will be allowed to hire agents to sell and distribute their products, subject to the following terms and conditions:
1. No person will become an agent without having first obtained the corresponding license pursuant to Section 5 of this Regulation.
 2. No agent will be allowed to sell milk or milk by-products from more than one processor.
 3. Agents will sell their milk in all levels of distribution at the same price it is sold by their respective processors in the same levels of distribution in their own zones of operation.

4. Agents will notify their processors in writing with at least two (2) months in advance of their intentions of subscribing a contract with another processor or of substantially reducing the amount of milk and milk by-products they market. This provision will also apply to processors whenever they decide to change agents or to substantially reduce the amount of milk or milk by-products they ordinarily sell through an agent. It is additionally ordered that the period of two (2) months could be reduced by the Administrator whenever he or she considers it worthy of the circumstances.

5. When an agent wishes to negotiate a contract with another processor, or when a processor is interested in exchanging an agent with another processor, a written notice must be sent to the Office for the Regulation of the Dairy Industry, along with an account statement of the agent with his/her current processing plant. If the statement reflects that the agent owes money to the processor, then a payment plan agreed to by the processor must also be included. That plan must contain an assignment of payment accepted by the newly contracted processor under which the latter binds itself to withhold the agreed installment from each account settlement of the agent and remit it to the creditor processor. The Administrator will supervise the transaction and will approve its terms.

SECTION 7. Channeling of the milk surplus

- a) Producers must deliver to the processor with which they have contracted the total milk production of their dairy farms.
- b) The milk surplus may be retained by the processors or may be transferred to another processor or to a manufacturer of dairy by-products. All these transactions require the Administrator's approval. The Administrator's approval will require, but will not be limited to, a determination that said milk surplus cannot be processed as fresh milk.
- c) The processor or the manufacturer of dairy by-products receiving milk surplus from another processor in a transaction authorized by the

Administrator, will pay the processor transporting the raw milk the rate determined by the Administrator for the transportation of that milk, as set forth in Section 6, paragraph b of this Regulation, unless these processors pay for their own transportation.

Ch) The milk processor or processor of dairy by-products that receives milk-surplus in a transaction authorized by the Administrator will pay the processor of milk the amount due for that surplus at the end of the corresponding liquidation period.

- d) The Administrator's decisions in regards to the channeling or disposition of milk surplus will be based in the particular circumstances of the Industry at the time they are made.

SECTION 8. Maximum prices, conditions of sale and containers

- a) The maximum prices for fresh milk at all levels of the Dairy Industry of Puerto Rico will be those assessed by the Administrator of the Office for the Regulation of the Dairy Industry, pursuant to the provisions of Article 16 of Act 34 of June 11, 1957, as amended (5 L.P.R.A. 1107). These prices will be enacted through an Administrative Order that will be published in a newspaper of general circulation in Puerto Rico.
- b. No methods or recourses will be allowed that result in a variation of the prices established by this Regulation.
- c. The use of a container common to all fresh milk processors is hereby established. It is additionally ordered that each new dairy product container that any processor wishes to use must first be notified to and approved by the Administrator, who will evaluate it taking into consideration the best interests of the industry and of the public in general.

SECTION 9. Price Stabilization Fund

The Price Stabilization Fund, as an entity created through an ORIL regulation, will no longer be in effect. The producers are free to organize themselves in any entity they choose that is permitted under the laws of the Commonwealth of Puerto Rico. Those functions executed by the above fund

worth preserving will be adopted and implemented by the Dairy Industry Development Fund.

SECTION 10. Rules for the Orderly Expansion of Production

- a. When the needs of the Industry so require it, the Board of Directors of the Dairy Industry Development Fund may recommend a specific increase in the assigned quotas. That recommendation must be approved by the Administrator of the Office for the Regulation of the Dairy Industry, who may reduce the quota recommended by the Board but not increase it. This type of action must always be initiated by the Board of the Dairy Industry Development Fund, not by the Administrator himself.
- a. Guarantee of dairy supply – When a cattle farmer does not produce at least 80% of his or her quota over a period of two (2) years, the part not produced will be reduced from his or her assigned quota. He or she will be given two (2) months to transfer or somehow dispose of that part of his or her quota. In case he or she is not able to do it in that term, he or she will lose that part of the quota, unless justified cause for the reduction in production is shown.

SECTION 11. Reports

- a. Every two weeks each processor will submit a report to the Office of the Administrator incorporating the settlements of the producers. This settlement report will include a detail of their respective producers and all the arithmetic calculations made to determine the participation of the producers in the fresh milk market, the amount paid for non-surplus milk, the amount paid for surplus milk, and the withholdings made for transportation charges as authorized by this Regulation and for the contributions to the Dairy Industry Development Fund.
- b. The processors will send to the Office of the Administrator a biweekly report informing the purchases and sale of milk during the corresponding period.

- c. The individuals subject to this Regulation will promptly submit to the Office of the Administrator all the information requested by the Administrator or his representative.

SECTION 12. Records

- a. All the records related to the operation of the Dairy Industry must be kept for two years for inspection by the Office of the Administrator.

SECTION 13. Penalties

- a. Any violation of the provisions of this Regulation or other Regulations of the Office, or any order issued by the Administrator, or the Act that created the Office for the Regulation of the Dairy Industry, will carry a suspension, cancellation or revocation of the license issued by the Administrator. It is additionally ordered that when a license is revoked the producer automatically loses every right to participate in the milk-production quota system. In those cases the quota will be retained by the Office for the Regulation of the Milk Industry and disposed in accordance with the needs of the market.
- b. The cancellation of the Department of Health license will automatically result in the cancellation of the license issued by the Administrator.
- c. Every action or omission violating this Regulation will be punishable under the terms of Act 34 of June 11, 1957, as amended..

SECTION 14. Rules of Interpretation

This Regulation will be interpreted liberally in favor of the authority of the Administrator to regulate the dairy industry and its by-products, towards the ends of enforcing the policy and the objectives of Act Number 34 of June 11, 1957, as amended.

Toward those ends and in order to safeguard the general interest and the public policy, the Administrator may issue and adopt the plans and measures needed to deal with the variations and changing conditions of the industry, all with the view of protecting the common good and the public policy established in Act Number 34 of June 11, 1957, as amended.

