

**CHAPTER 50**

**PRODUCERS**

**Authority**

N.J.S.A. 4:1-24; 4:12-2, 14 and 15; and 4:12A-1 et seq., specifically 4:12A-7, 20, 21, 22, 23 and 27.

**Source and Effective Date**

R.2002 d.161, effective April 30, 2002.  
See: 34 N.J.R. 5(a), 34 N.J.R. 1858(a).

**Chapter Expiration Date**

Chapter 50, Producers, expires on April 30, 2007.

**Chapter Historical Note**

Chapter 50, Producers, was adopted and became effective prior to September 1, 1969, with Subchapter 1, Terminating Purchases from Producers, and Subchapter 2, Producer Sponsored Sales Promotions.

Subchapter 1, Terminating Purchases from Producers was renamed Notice to Dealers by Dairy Farmers; Subchapter 2, Producer Sponsored Sales Promotions, was repealed and a new Subchapter 2, Notice to Dairy Farmers by Dealers, was adopted; and Subchapter 3, Measuring and Sampling of Milk from Farm Bulk Tanks, was recodified from N.J.A.C. 2:48-5 by R.1976 d.359, effective January 1, 1977. See: 8 N.J.R. 450(b), 8 N.J.R. 542(c).

Pursuant to Executive Order No. 66(1978), Chapter 50, Producers, was readopted as R.1987 d.232, effective May 1, 1987. See: 19 N.J.R. 433(a), 19 N.J.R. 927(a).

Pursuant to Executive Order No. 66(1978), Chapter 50, Producers, was readopted as R.1992 d.229, effective May 1, 1992. See: 24 N.J.R. 893(a), 24 N.J.R. 2048(a).

Pursuant to Executive Order No. 66(1978), Chapter 50, Producers, was readopted as R.1997 d.213, effective April 25, 1997. See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

Chapter 50, Producers, was readopted as R.2002 d.161, effective April 30, 2002. See: Source and Effective Date.

Administrative change: Pursuant to Reorganization Plan No. 003-2002, the Division of Dairy and Commodity Regulation was renamed Division of Marketing and Development, effective February 27, 2003. See: 35 N.J.R. 3(a), 35 N.J.R. 1539(b).

Subchapter 4, Premiums and Other Payments to Producers, was adopted as emergency new rules by R.2007 d.69, effective January 29, 2007 (operative February 1, 2007, to expire March 30, 2007). See: 39 N.J.R. 673(a).

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**SUBCHAPTER 1. NOTICE TO DEALERS BY DAIRY FARMERS**

**2:50-1.1 Dairy farmers notice to dealers of intent to discontinue sales of milk**

(a) Before a dairy farmer selling milk to New Jersey dealers may discontinue selling milk to such dealer, he shall give the dealer at least 28 days written notice of his intent to discontinue such sale.

(b) The notice of discontinuance shall be sent to the dealer by letter or on forms supplied by the Division of Marketing and Development. A copy of such letter or form shall be filed with the Division of Marketing and Development and the 28-day period shall begin on the date such notice is received by the Division.

(c) The notice shall not be required from dairy farmers shipping to a cooperative association of which they are a member or when the termination is mutually agreeable to the dealer and the dairy farmer, provided that the Division of Marketing and Development is notified by both parties in advance of the change.

(d) The notice shall not be required for dairy farmers shipping to dealers who fail to make full payment in time and manner required by joint orders of the Division of Marketing and Development and the United States Department of Agriculture.

(e) Upon written request by a dairy farmer or cooperative association, the notice provisions of this subchapter may be waived by the Secretary of Agriculture upon a finding of the following:

1. Compliance with the notice provision in (a) above would adversely impact the dairy industry in New Jersey;
2. Reasonable belief that dealer will fail to make payment to dairy farmers or cooperative associations based on

dealer's failure to make timely payments to other dairy farmers or cooperative associations in New Jersey or other jurisdictions;

3. Filing of notice of bankruptcy by the New Jersey dealer; or

4. A reasonable belief that there is a risk of interruption in the availability of an adequate supply of fresh wholesome milk to consumers, as required by the Milk Control Act of 1941, N.J.S.A. 4A:12-1 et seq.

(f) This rule shall not affect or interfere with any private contractual obligations between dairy farmers, cooperative associations and milk dealers.

Amended by R.1976 d.359, effective January 1, 1977.

See: 8 N.J.R. 450(b), 8 N.J. 542(c).

Amended by R.1982 d.238, effective August 2, 1982.

See: 14 N.J.R. 489(b), 14 N.J.R. 833(d).

(d) added.

Amended by R.1991 d.323, effective July 1, 1991.

See: 23 N.J.R. 929(a), 23 N.J.R. 2010(b).

Notice of intent to discontinue changed from 60 days to 28 days.

Amended by R.1997 d.213, effective May 19, 1997.

See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

Substituted "Division of Dairy and Commodity Regulation" for "Division of Dairy Industry" throughout the section.

Emergency amendment, R.2004 d.85, effective January 26, 2004 (to expire March 26, 2004).

See: 36 N.J.R. 1120(a).

Added (e) and (f).

Emergency amendment, R.2004 d.85, expired March 26, 2004.

Deleted (e) and (f).

Amended by R.2004 d.200, effective June 7, 2004.

See: 36 N.J.R. 1120(a), 36 N.J.R. 2715(a).

Added (e) and (f).

## SUBCHAPTER 2. NOTICE TO DAIRY FARMERS BY DEALERS

### 2:50-2.1 Dealer notice to dairy farmers of intent to discontinue purchase of milk

(a) Before a dealer purchasing milk from New Jersey dairy farmers may discontinue such purchase, he shall give the dairy farmer(s) at least 28 days written notice of his intent to discontinue such purchase.

(b) The notice of discontinuance shall be sent to the dairy farmer and a copy filed with the Division of Marketing and Development on forms supplied by the Division for this purpose. The 28-day notice period shall begin on the day that such notice is received by the Division of Marketing and Development.

(c) The notice shall not be required for a dealer to temporarily discontinue purchasing milk from a dairy farmer whose milk does not meet the quality standards of the appropriate health authority or when the termination is mutually agreeable to the dealer and the dairy farmer, providing that the Division of Marketing and Development is notified by both parties in advance of the change.

Amended by R.1991 d.323, effective July 1, 1991.

See: 23 N.J.R. 929(a), 23 N.J.R. 2010(b).

Notice of intent to discontinue changed from 60 days to 28 days.

Amended by R.1997 d.213, effective May 19, 1997.

See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

Substituted "Division of Dairy and Commodity Regulation" for "Division of Dairy Industry" throughout the section.

### 2:50-2.2 Dealer to report names of new or discontinued dairy farmers

A milk dealer purchasing milk from New Jersey dairy farmers shall send a notice to the Division of Marketing and Development of any new dairy farmer(s) and of any dairy farmer(s) discontinuing to sell milk to the dealer. Such information shall be filed monthly on or before the tenth day of each month.

Amended by R.1997 d.213, effective May 19, 1997.

See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

Substituted "Division of Dairy and Commodity Regulation" for "Division of Dairy Industry".

## SUBCHAPTER 3. MEASURING AND SAMPLING OF MILK FROM FARM BULK TANKS

### 2:50-3.1 Applicant for weigher and sampler certificate to pass examination

(a) Before a person shall be approved by the Secretary of Agriculture or his authorized representative to be competent to weigh, measure and sample milk and cream pursuant to the provisions of N.J.S.A. 4:12-41.5, said person shall satisfactorily complete an examination to be conducted by the secretary or his authorized representative. The examination shall consist of both a written test and satisfactory demonstration of proper performance of the actual weighing or measuring and sampling techniques herein required.

(b) Failure to satisfactorily complete the written test shall make the applicant ineligible for the performance test, but failure to satisfactorily complete the performance test shall not require the applicant to be reexamined for the written test. Reexamination for either the written test or the performance test shall be made at the request of the applicant to the secretary or his authorized representative, orally or in writing, and will be given as soon as practicable at a time and place mutually agreeable to the secretary or his authorized representative and the applicant.

(c) Upon the satisfactory completion of the examination, a certificate shall be issued to the applicant. Certificates shall be issued for the fiscal year ending June 30. Certificates, when renewed, shall be renewed for a period of two years. As a condition to renewal of the certificate, the secretary may require attendance at a refresher course designed to train milk samplers in proper procedures and techniques of weighing, measuring and sampling milk.

Amended by R.1997 d.213, effective May 19, 1997.

See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

In (c), inserted the third sentence relating to the 2-year renewal period for renewed certificates.

### 2:50-3.2 Milk weighing, measuring and sampling procedures

(a) Weighing, measuring and sampling milk should be performed pursuant to the procedures as set forth in the current "Standard Methods for Examination of Dairy Products," published by the American Public Health Association, Inc., and as a minimum shall include the following:

1. Before starting the agitator, carefully insert clean, dry measuring stick, seating fully; withdraw and read to the nearest 1/32 inch. Record the measurement, weight, temperature, time of pickup, date and producer's name and number. One copy of the weight ticket shall be left with the producer;

2. Agitate for not less than five minutes and longer if necessary to disperse the butterfat uniformly throughout the tank:

i. The person holding the weigher and sampler certificate issued by the Division of Marketing and Development shall be responsible for ascertaining that the milk is agitated for not less than five minutes and should periodically check the tank timer to determine whether it may be used as a guide; and

ii. It is suggested that each truck carry a timing device which may be used for timing the agitation;

3. After milk has been agitated for at least five minutes with agitator running and before the outlet is open, take a universal sample. The sample shall be taken with a properly cleaned and sanitized stainless steel dipper which is first dipped two or three times into the milk. This sample shall be at least one ounce (30 cubic centimeters). If composite samples are taken, on every day pickup, a ten cubic centimeter dipper of milk shall be added to the composite daily. On every other day pickup, a 20 cubic centimeter sample shall be added to the composite at each pickup.

(b) When taking bacteria samples, special care shall be taken to prevent contamination of sample containers and/or equipment. The sampler's clothes and hands must be clean and dry when sampling. Sterile sample containers and sampling equipment shall be kept protected at all times and properly identified. After milk has been agitated as for taking butterfat samples, remove at least a ten cubic centimeter portion with a properly sterilized device into the sterile sample container. This container shall be immediately placed in an insulated, properly iced or refrigerated case being sure that the water level is no higher than the milk in the sample container.

Amended by R.1987 d.232, effective June 1, 1987.

See: 19 N.J.R. 433(a), 19 N.J.R. 927(a).

Deleted text in (a)3 "For composite samples ... centimeters or larger" and substituted "This sample shall ...".

Amended by R.1992 d.229, effective June 1, 1992.

See: 24 N.J.R. 893(a), 24 N.J.R. 2048(a).

Stylistic revision.

Amended by R.1997 d.213, effective May 19, 1997.

See: 29 N.J.R. 721(a), 29 N.J.R. 2266(a).

In (a)2i, substituted "Division of Dairy and Commodity Regulation" for "Division of Dairy Industry".

### 2:50-3.3 Maintenance of milk samples

(a) Each bulk tank truck used for farm pickup must be equipped with a sanitary compartment to hold the insulated sample case. This compartment must have a lock or the sample case itself must have a lock.

(b) The butterfat sample case must be kept locked at all times unless under the direct supervision of the certified sampler.

(c) The insulated case shall have a rack which holds the sample container upright and when bottles are used a cover that rests on the sample bottle stoppers.

(d) The bottle stoppers shall be of the hooded plug type or of a type which gives equivalent protection from moisture entering the bottle.

(e) Each sample case shall contain one bottle filled with water for use in temperature checks.

(f) The temperature of butterfat samples shall be maintained at between 33 and 55 degrees Fahrenheit.

(g) The temperature of the bacteriological samples should be maintained at between 32 and 40 degrees Fahrenheit.

### 2:50-3.4 Additional methods for the determination of butterfat of milk or cream

The secretary shall approve the use of the automated light scattering method as set forth in "Official Methods of Analysis of the Association of Official Analytical Chemist", the 11th edition, 1970, page 252.

## SUBCHAPTER 4. PREMIUMS AND OTHER PAYMENTS TO PRODUCERS

### 2:50-4.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Department" means the New Jersey Department of Agriculture.

"Director" shall mean the Director of the Division of Marketing and Development for the New Jersey Department of Agriculture.

"Licensee" means any New Jersey processor required to be licensed pursuant to N.J.S.A. 4:12-2 and 4:12A-28.

“New Jersey produced milk” means milk produced by a New Jersey producer.

“New Jersey processor” means any person, firm, partnership, association, or corporation who cans, freezes, dries, or otherwise preserves or processes, handles, hauls, carries, transports, or distributes New Jersey produced milk and who is licensed pursuant to N.J.S.A. 4:12-2.

“New Jersey producer” means any person or entity meeting the definition of producer in N.J.S.A. 4:12-1.

#### 2:50-4.2 Payments for a fuel adjustment add-on

(a) All licensees shall pay to a New Jersey producer a fuel adjustment add-on for all New Jersey produced milk, which shall be calculated monthly by the Director in accordance with (b) below. The new fuel adjustment add-on for Class I milk will be officially announced on the Department’s website at [www.state.nj.us/agriculture](http://www.state.nj.us/agriculture) the Friday before the 23rd of each month and will also be published in New Jersey Register for the month in which the fuel adjustment add-on is effective. Should the 23rd of the month fall on a Friday, it will be announced on that day.

(b) The fuel adjustment add-on shall be calculated as follows:

1. Begin with the preceding month’s diesel fuel price. The preceding month’s diesel fuel price will be the price for the Central-Atlantic region as posted by the website of the Energy Information Administration of the US Department of Energy, [http://tonto.eia.doe.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_nus\\_w.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm), for the last full month prior to the month of calculation;

2. Subtract the a base price of \$1.403, which is the 2002 diesel fuel price for the Central-Atlantic region as posted on the website of the Energy Information Administration of the U.S. Department of Energy, [http://tonto.eia.doe.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_nus\\_w.htm](http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm);

3. Calculate the premium by adding three cents for each 10 cents the fuel price increases over the base price or subtracting three cents for each 10 cents the fuel price decreases. To do this, take the difference between the preceding month’s price and the base price and divide by 10. Round to the nearest whole number and multiply by three; and

4. Adjust the premium calculation to reflect the existing average Class I utilization, which shall be calculated monthly. The actual average Class I utilization calculation will be announced on the Department’s website at [www.state.nj.us/agriculture](http://www.state.nj.us/agriculture) on the 14th of the month for the preceding month using the preceding month’s production and processing figures. If the 14th of the month falls on a weekend or holiday, it will, be announced on the next business day. The fuel adjustment add-on amount actually payable to the New Jersey producer per hundredweight for

the preceding month will also be announced on the 14th of the month.

(c) An example calculation of how the fuel adjustment add-on will be calculated for February 2007 is as follows:

1. Begin with the December 2006 Diesel Price of \$2.72 per gallon, which is the last full month prior to calculation;

2. Subtract preceding month’s diesel price from the base diesel price as follows:

\$2.72 (December Diesel price) - \$1.403 (base diesel price) = \$1.317;

3. Divide the price difference by 10 cent intervals and round to the nearest whole number as follows:

\$1.317 / 10 cent intervals = 13.17 intervals (rounded to 13);

4. Multiply the number of intervals by three cents to arrive at the fuel adjustment add-on as follows:

13 x \$.03 per interval = \$0.39;

5. Adjust the fuel adjustment add-on to reflect the current month’s Class I utilization for New Jersey as follows:

\$0.39 x 0.76 (sample average Class I utilization) = \$0.2964 (rounded to \$0.30). For purposes of this example, it was assumed that the Class I utilization was 76 percent; however, the actual Class I utilization for February may be different than that used in this example;

6. Thus, the fuel adjustment add-on for February 2007 is \$0.30 per hundredweight. Please note that as of the February 1, 2007 operative date of this subchapter, February’s actual Class I Utilization has not yet been calculated and as a result, the actual fuel adjustment add-on amount payable to the New Jersey Producer may differ from that listed in this subsection.

(d) This premium shall be payable directly to the New Jersey producer by the licensee in the final payment to the New Jersey producer in accordance with the final payment requirements in 7 CFR 1001.73. Adjustments shall be made for those licensees who overpay or underpay based on Class utilization in accordance with N.J.A.C. 2:50-4.5(e). This premium will be in addition to and shall not replace any premiums paid to the New Jersey producer or those acting on behalf of the producer as of October 1, 2006.

(e) It shall be a violation of this subchapter for any licensee to change its premium program or divert milk to a different location for the purposes of circumventing this section or reducing the amount payable to a New Jersey producer under this section.

(f) The impact of the fuel adjustment add-on shall be reassessed by the Department beginning August 1, 2007.

### 2:50-4.3 Adjustment of the fuel adjustment add-on for Class utilization

(a) Within 10 days from the end of each month, all licensees or their designees shall report, on forms provided by the Department for such purposes, the following information:

1. The total volume of New Jersey milk purchased for the preceding month;
2. The total amount paid to New Jersey producers under N.J.A.C. 2:50-4.2;
3. The percent of Class I utilization of the plant for the preceding month; and
4. Such other information as the Director may deem necessary for the proper calculation of the amount of the fuel adjustment add-on required to be paid by a licensee.

(b) The Department will calculate the amount of fuel adjustment add-on required to be paid by the licensee based on its Class I utilization of all New Jersey produced milk received, in accordance with the following:

1. The volume of milk actually used as Class I milk will be multiplied by the fuel adjustment add-on required to be paid on Class I milk; and
2. The figure derived in (b)1 above will be subtracted from the amount of the fuel adjustment add-on actually paid to producers.

(c) If the license has underpaid, it will be required to pay the difference to the Department or its designee. If the amount the licensee paid was an overpayment, it will receive a reimbursement from the Department or its designee for the amount overpaid.

(d) The Department or its designee must receive reimbursements from licensees who have underpaid based on the prior month's calculations no later than the 15th of each month. Licensees who have overpaid will receive reimbursements from the Department or its designee by the 20th of each month.

### 2:50-4.4 Reporting and requests for assistance

(a) All licensees must report, on forms provided by the Department for such purposes, the following information by March 1, 2007 regarding their existing premium programs for New Jersey producers:

1. A list of all premiums paid to producers under current premium programs in effect as of October 1, 2006;
2. A description of the purpose for each premium listed;
3. A description of how each premium is calculated to arrive at the amount payable to a New Jersey producer;
4. A description of any changes made to each premium program, if any, since October 1, 2006 and the reason for such change; and

5. Such other information as may be required by the Director in the administration and enforcement of N.J.A.C. 2:50-4.2 and 4.3.

(b) All licensees shall report any changes to their premium programs for New Jersey producers on forms provided by the Department for such purposes, at least 15 days prior to the effective date of the proposed change and shall set forth the basis for the proposed change.

(c) Any New Jersey producer who believes that a licensee has changed its premium program or has diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2 or reducing the amount the payable to a New Jersey producer under N.J.A.C. 2:50-4.2 may submit a request for assistance to the Department, on forms supplied by the Department for such purposes. The Department shall investigate said complaint in accordance with N.J.S.A. 4:12-14 and 4:12-15.

### 2:50-4.5 Penalties

(a) When the Department receives evidence that any licensee has changed its premium program or diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2 or reducing the amount the payable to a New Jersey producer under N.J.A.C. 2:50-4.2, the Director shall hold a hearing pursuant to N.J.S.A. 4:12A-35.

(b) Any licensee who has been found to have changed its premium program or diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2 or reducing the amount the payable to a New Jersey producer under N.J.A.C. 2:50-4.2, in violation of any of the provisions of N.J.S.A. 4:12A-35, the licensee shall be subject to the following penalties:

1. First offense: suspension of the license required under N.J.S.A. 4:12A-28 until such time as the licensee fully corrects the violation as determined by the Director.

2. Each subsequent offense: suspension of the license required under N.J.S.A. 4:12A-28 until such time as the licensee fully corrects the violation as determined by the Director, except that after the second violation of N.J.S.A. 4:12A-35 by the same licensee within a three-year period, the Director shall permanently revoke the license required pursuant to N.J.S.A. 4:12A-28.

(c) The Director shall make the initial determination as to whether to suspend or revoke a license pursuant to N.J.S.A. 4:12A-35, as provided in (b)2 above.

(d) Any licensee who is aggrieved by the determination of the Director pursuant to this section shall, upon written request transmitted to the Department within 20 days of the decision to suspend or revoke the license, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.