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STATE OF NEW YORK  
Department of  
AGRICULTURE AND MARKETS  
Albany, NY 12235

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**CIRCULAR 929**  
1 NYCRR PART 6  
(As Amended, Effective February 17, 2000)

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Rules and Regulations for Sampling and Testing  
Milk for Component Content

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Part 6 of 1 NYCRR is repealed, and a new Part 6 is added thereto to read as follows:

Part 6

Sampling and Testing Milk for Component Content

6.1 Definition. The following definitions shall apply to the terms used in this Part, unless the context unambiguously indicates otherwise.

(a) Bulk milk pick-up truck means a vehicle used by a milk receiver to pick up milk from dairy farms.

(b) Commissioner means the Commissioner of Agriculture and Markets of the State of New York.

(c) Component means the milk fat, protein, lactose, nonfat solids and/or total solids in milk. Depending upon the context, the term component may include more than one component of milk

(d) Dairy farmer means a person who operates a dairy farm and produces milk, and such term, when used in the plural, shall also encompass a cooperative of dairy farmers.

(e) He means he or she, him means him or her and his means his or hers.

(f) Milk means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy animals.

(g) Milk dealer means a person who purchases milk directly from dairy farmers and who is required or has agreed to pay for such milk based upon the amount of a component or components therein.

(h) Preservative means a substance that, when added to a sample of milk, maintains the sample's integrity, has no affect upon the amount of milk components therein and has no affect upon the proper

functioning of electronic equipment used to determine the amount of a milk component or of milk components.

(i) Standard Methods means Standard Methods for the Examination of Dairy Products, 16th edition, 1992, published by the American Public Health Association, Washington, D.C. 20005. A copy of Standard Methods is available for public inspection at the Division of Milk Control, Department of Agriculture and Markets, 1 Winners Circle, Albany, NY 12235 and at the Department of State, 41 State Street, Albany, New York 12231.

(j) Temperature control sample means a sample of milk taken from the bulk tank of the first dairy farm from which milk is picked up on each day when milk is picked up and which is taken in compliance with the applicable provisions of Standard Methods.

(k) Test, when used as a verb, means to analyze a sample of milk to determine the amount of a milk component or milk components therein.

(l) Test in question means the test of a universal sample that varies 0.5 percent or more from the last unquestioned test.

(m) Universal sample means a sample of milk taken from a bulk tank on a dairy farm, in compliance with the applicable provisions of Standard Methods.

(n) Unquestioned test means a test of a universal sample the results of which are, based upon the facts and circumstances, accurate.

6.2 Milk receiver's license. Pursuant to Agriculture and Markets Law section 57, no person shall measure, weigh or otherwise determine the volume or weight of milk, or shall sample milk when such samples are to be tested to determine the amount of component or components therein,

where the result of such test is used as a basis for payment for such milk or for the purpose of official inspection or for public record, unless licensed by the commissioner.

6.3 Tester's license. Pursuant to Agriculture and Markets Law section 57, no person shall prepare or test milk samples to determine the amount of a component or components contained therein, where the result of such test is used as a basis for payment for such milk or for the purpose of official inspection or for public record or is used to calibrate electronic instruments, unless licensed by the commissioner. A person who holds a tester's license shall have the authority to conduct the activities for which a milk receiver's license is required.

6.4 Granting, denying the renewal of, revoking and suspending licenses. An applicant for a milk receiver's license or for a tester's license shall file an application upon a form prescribed by the commissioner. The Commissioner may decline to grant a license if the applicant has not furnished satisfactory evidence of good moral character, or if he has not furnished satisfactory evidence that he is capable of conducting the activities for which a license is required by satisfactorily answering written and oral questions prepared by the commissioner and by demonstrating the ability to conduct such activities.

The Commissioner may decline to renew a license or may revoke a license, after a hearing upon due notice to the licensee, when he is satisfied by substantial evidence that the licensee

a) has made a false statement in his application, or

- b) is dishonest, incompetent or inaccurate, or
- c) has violated the provisions of Article 4 of the Agriculture and Markets Law.

6.5 License fee, tenure. No license shall be granted unless the applicant pays a fee of five dollars to the commissioner for remittance to the state treasury, and no license shall be renewed unless the licensee pays a fee of two dollars to the Commissioner for remittance to the state treasury. A license shall be for a period not to exceed five years and shall be renewed for successive periods not exceeding five years each, consistent with the provisions of this section and of section 6.4 of this Part.

6.6 Posting license. A licensee shall keep his license or a copy thereof at his place of employment and such license shall be posted conspicuously, except a person who holds a milk receiver's license and who picks up milk from dairy farms shall carry his milk receiver's license with him or in his bulk milk pick-up truck.

#### REQUIREMENTS FOR MILK DEALERS

6.7 Duties. A milk dealer shall

(a) ensure that a temperature control sample is properly taken as required in section 6.17(b) of this Part.

(b) ensure that a universal sample is properly taken from each dairy farm from which milk is picked up and such sample is properly maintained in accord with the provisions of this Part and with Standard Methods.

(c) promptly notify the commissioner of all locations where universal samples are maintained, stored (other than a bulk milk pick-up truck) and tested, and ensure that all universal samples are maintained and tested in compliance with the applicable provisions of Standard Methods.

(d) ensure that all universal samples are tested only by a person who holds a tester's license pursuant to the provisions of this Part.

(e) ensure that universal samples are tested at the frequency required in section 6.10 of this Part.

(f) determine when a universal sample taken from a dairy farm varies 0.5 percent or more milkfat from the last previous unquestioned test, and ensure that the procedures set forth in section 6.15 of this Part are complied with.

(g) consistent with the provisions of subdivision (g) of this section, calculate or ensure that a calculation is made, with regard to each dairy farm from which milk was received, of the average milk component content in the universal samples which were taken during the month and which were analyzed. Such calculation shall be made by determining the milk component content of each sample taken during each seven or ten day period of the month (as appropriate) and tested, determining the average milk component content for each such period, adding such averages and dividing by three or four, as appropriate. When the last digit to the right of the decimal point is a five, the preceding digit shall remain the same if it is an even number, and shall be rounded up if it is an odd number. If such digit is less than

five, the preceding digit shall remain the same. If such digit is more than five, the preceding digit shall be rounded up.

(h) in the event that milk is picked up from a dairy farm more than once a day ("multiple pick-ups"), ensure that a universal sample is properly taken on each occasion when milk is picked up, and that such samples are tested and that the weighted average of the milk component content of all such samples is calculated. Such weighted average shall constitute the milk component content of all of the milk picked up on a particular day.

(i) maintain all weigh slips required to be furnished to him, pursuant to section 6.19 of this Part, for a period of not less than one year, and furnish such weigh slips to the Commissioner upon request.

#### REQUIREMENTS FOR TESTERS

6.8 Equipment. A tester shall test only with equipment that accurately determines or aids in the accurate determination of the amount of a component. Equipment shall meet the specifications and be in compliance with the applicable provisions of Standard Methods and/or approved by the Commissioner.

6.9 Surroundings. A tester shall test only in an environment which is free of undue dust, noise and vibrations, which has adequate lighting, ventilation and work space, and which is otherwise in compliance with the applicable provisions of Standard Methods.

6.10 Frequency of testing of universal samples.

(a) Testing of universal samples taken from a dairy farm from which milk is picked up on an every-other day basis. A tester shall

test not less than three universal samples taken during a month, and shall test at least one universal sample taken during each ten day period of the month. In lieu of the foregoing, a tester shall test not less than four universal samples taken during a month, and shall test at least one universal sample taken during each seven day period of the month commencing at the beginning of the month.

(b) Testing of universal samples taken from a dairy farm from which milk is picked up on a daily basis. A tester shall test not less than six universal samples taken during a month, and shall test at least two universal samples taken during each ten day period of the month. In lieu of the foregoing, a tester shall test not less than eight universal samples taken during a month and shall test at least two universal samples taken during each seven day period of the month commencing at the beginning of the month.

(c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, a tester shall test additional universal samples, when required to do so by the provisions of section 6.15 of this Part and when a particular test indicates that the amount of milk component in the universal sample tested cannot be accurately determined, as set forth in subdivision (c) of section 6.11 of this Part.

#### 6.11 Procedures for testing of universal samples.

(a) A universal sample shall be tested by a method, and in compliance with the provisions, set forth in Standard Methods. The result of each test upon a universal sample shall be expressed as a percentage, to the nearest 0.05 percent when the Babcock or Gerber method is used and to .01 percent when electronic or ether extraction

method is used, with the percentage representing the amount of the milk component tested for in the universal sample.

(b) No universal sample shall be tested more than 72 hours after having been taken from a dairy farm unless a preservative has been properly added to such universal sample prior to the expiration of such 72 hour period, in accordance with the provisions set forth in Standard Methods.

(c) No universal sample shall be tested if it is in a condition where the amount of a component or components therein being tested for cannot be accurately determined. With regard to tests done by the Babcock or Gerber method, a universal sample which has been tested to determine the amount of milk fat therein shall be re-tested if the fat column contains charred, foreign matter, curd particles; is milky, foggy, cloudy or indistinct; or if the meniscus is inverted. No result of testing shall be recorded or reported if the fat column is in such a condition.

6.12 Bottles for testing by the Babcock or Gerber method. All universal samples shall be tested in bottles that are graduated in one-tenth of one percent intervals, with each whole percent interval having significantly greater prominence than the one-tenth of one percent intervals. All bottles shall be graduated from zero to eight percent and shall hold a sufficient amount of milk so that the test to be done on such milk may be accurately performed. No bottle shall be used unless examined by the commissioner and approved and branded by him.

6.13 Storage of universal samples. A tester shall maintain universal samples under conditions designed to and which ensure their integrity.

A tester shall maintain the portion of each universal sample left over after testing for twenty four hours, under conditions set forth in the applicable provisions of Standard Methods.

6.14 Records. Subsequent to testing a universal sample to determine the amount of a component therein, the tester shall ensure that a record is made reflecting the result of the test, the identification number of the dairy farmer from whose farm the universal sample tested was taken, the date the universal sample was taken, the date of the test, information that reflects the name of the tester and any other information required by the Commissioner. Such record shall be immediately furnished to the milk dealer who receives the milk of such dairy farmer and a copy thereof shall be maintained for one year from the date the universal sample was tested, at the tester's place of employment.

6.15 Variances.

(a) When the result of the test on a universal sample varies 0.5 percent or more milk fat from the last unquestioned test, the milk dealer shall notify the appropriate milk receiver to submit the next sample taken after such notification ("such sample") to a licensed tester. Such licensed tester shall properly test such sample and, if the result of the test upon such sample is within 0.5 percent of the test in question, the result of the analysis upon the test in question and upon such sample shall each be used in the calculation of the average milk component content in a dairy farmer's milk for the appropriate seven or ten day period. If the result of the test upon

such sample varies more than 0.5 percent from the test in question, only the results of the test closest to the result of the last previous unquestioned test shall be used when calculating the average milk component content in a dairy farmer's milk for the appropriate seven or ten day period.

(b) Notwithstanding the provisions of subdivision (a) herein, the tester shall not use the result of any test which is, based upon all the facts and circumstances, erroneous.

6.16 Other duties. A tester shall comply with the requirements set forth in section 2.7 of this Title, when performing biological, chemical and or physical tests upon the milk and milk products defined in Part 2.

#### REQUIREMENTS FOR MILK RECEIVERS

6.17 Sampling. (a) A milk receiver shall obtain a universal sample(s) of the total production from each dairy farm, on each occasion on which milk is picked up. Each universal sample taken shall be promptly delivered to a safe and secure location. A milk receiver shall also obtain a universal sample, or a sample of milk other than a universal sample, from a dairy farm when requested by the commissioner, which sample shall be submitted to the commissioner if and as required by him.

(b) A milk receiver shall properly obtain a temperature control sample which shall be held in a manner such that the milk held therein is the same temperature as the milk held in the universal sample(s) obtained from the dairy farm(s) from which milk was picked up. The temperature of the milk in such temperature control sample shall be

determined at approximately the same time that such universal sample(s) is (are) delivered to a safe and secure location. Such temperature shall be recorded along with the name of the milk receiver who took such temperature control sample, the date on which such temperature control sample was taken, the bulk milk pick-up truck identification, and other information required by the Commissioner. All such information shall be recorded in a manner approved by the Commissioner and shall be maintained for a period of not less than one year.

(c) In the event that milk picked up from a dairy farm is frozen, partially frozen, lumpy, curdled, churned or otherwise abnormal, the milk receiver shall identify the sample vial so that the condition of such milk may be readily discerned.

6.18 Equipment and procedures. A milk receiver shall

(a) use the equipment and the procedures for taking and maintaining universal samples as provided for in Standard Methods and Appendix 6 to Part 3 of this Title, except as provided for in this Part.

(b) possess equipment and materials to determine the strength of the sanitizer used, to be used or which can reasonably be expected to be used. A milk receiver shall determine the strength of the sanitizer as often as is necessary to ensure that its concentration meets the requirements set forth in Standard Methods.

6.19 Records availability. A milk receiver shall prepare a weigh slip while or immediately after sampling and picking up milk from a dairy farm. The weigh slip shall set forth the name of the dairy farmer from

whose dairy farm milk was picked up and/or his identification number, the date and time such milk was picked up, the temperature of such milk, the amount of milk in the dairy farmer's bulk tank, expressed in pounds or in a number that can be readily converted to pounds and the milk receiver's full name. A copy of such weigh slip shall be left at the dairy farm and the original thereof shall be promptly furnished to the appropriate milk dealer.