

MAINE STATE LEGISLATURE

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L.D. 1741

(Filing No. H-342)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1274, L.D. 1741, Bill, "AN ACT to Better Accommodate Over-order Milk Pricing."

Amend the Bill by striking out everything after the title and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the status of any over-order premium under the milk pooling law is uncertain; and

Whereas, a producer marketing cooperative proposes to implement an over-order premium on milk throughout the northeastern states, which over-order premium may be inaugurated prior to 90 days after adjournment; and

Whereas, the implementation of an over-order premium without this legislation in effect may result in an excess amount of the over-order premium paid by Maine milk dealers on Maine milk being actually received by milk producers in other states; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §2954, sub-§1, as amended by PL

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1 1977, c. 694, §140, is repealed and the following
2 enacted in its place:

3 1. Commission empowered to establish prices;
4 public hearing. The commission is vested with the
5 power to establish and change, after investigation
6 and public hearing, the minimum wholesale and retail
7 prices to be paid to producers, dealers and stores
8 for milk received, purchased, stored, manufactured,
9 processed, distributed or otherwise handled within
10 the State. The commission shall hold a public hear-
11 ing prior to the establishing or changing of such
12 minimum prices. The commission may proceed, however,
13 under the emergency rule-making provisions of Title
14 5, section 8054 without making findings of emergency
15 when the only changes to be made in the minimum
16 prices are to conform with the orders of any federal
17 or other agency duly authorized by law to establish
18 or negotiate producer prices or are to respond to
19 other conditions affecting prevailing Class I and
20 Class II prices in southern New England. Title 5,
21 section 8054, subsection 3, the second sentence, does
22 not apply to minimum prices adopted under the previ-
23 ous sentence. Due notice of the public hearing shall
24 be given by publishing notice as provided in Title 5,
25 chapter 375. The commission shall hold such a public
26 hearing not less frequently than once every 12 months
27 to determine whether the minimum wholesale and retail
28 prices then established should be changed. In addi-
29 tion to the data received through the implementation
30 of the information gathering procedures of its rules
31 as a basis for its determinations, the commission
32 shall solicit and seek to receive oral and written
33 testimony at hearings to determine whether the mini-
34 mum wholesale and retail prices then established
35 should be changed and whether the proposed minimum
36 wholesale and retail prices are just and reasonable.

37 Sec. 2. 7 MRSA §2954-A, sub-§2, as enacted by PL
38 1985, c. 172, is amended to read:

39 2. Balance due. Each dealer shall make payment

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1 to his producers for the balance due for milk re-
2 ceived during that month as follows.

3 A. On or before the 20th day after the end of
4 that month, each dealer shall pay his producers
5 the amount calculated as the initial payment ac-
6 cording to the Maine Milk Pool statute, section
7 3153, subsection 2, paragraph A, and Milk Pool
8 rules, minus the amount of the payment made to
9 the producer under subsection 1.

10 B. On or before the 5th day after the end of the
11 month in which the payments required by section 1
12 and paragraph A are made, each dealer shall pay
13 each of his producers any sums received on behalf
14 of his producers pursuant to the Maine Milk Pool
15 statute, section 3153, subsection 4 and Milk Pool
16 rules.

17 This subsection does not apply to any over-order pre-
18 mium established by the commission as part of the
19 minimum wholesale prices to producers for any month
20 in which section 3153, subsection 2, paragraph C and
21 section 3153, subsection 5, paragraphs A and B are
22 operational.

23 **Sec. 3. 7 MRSA §3151, as enacted by PL 1983, c.**
24 **573, §4, is amended by adding at the end a new para-**
25 **graph to read:**

26 In addition to the above findings and as a result
27 of the possible implementation of an over-order pre-
28 mium to be paid to milk producers, the Legislature
29 finds that legislation is necessary to ensure that
30 such a premium is distributed in a manner which is
31 most advantageous and most equitable for all Maine
32 milk producers and intends to achieve that result by
33 enacting the provisions of this chapter relating to
34 over-order pricing. The Legislature also finds that
35 while the pooling and redistribution of such a premi-
36 um as provided in this chapter is in the best inter-
37 est of all Maine milk producers, it intends that re-

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1 distribution to be a separate and distinct purpose
2 and function of the Maine Milk Pool not essential to
3 the purpose and function of the pool as originally
4 enacted.

5 Sec. 4. 7 MRSA §3152, sub-§1, as enacted by PL
6 1983, c. 573, §4, is amended to read:

7 1. Blend price. "Blend price" means the price
8 of milk per hundredweight computed as the sum of the
9 Class I price multiplied by the percentage of milk
10 sold as Class I milk and the Class II price multi-
11 plied by the percentage sold as Class II milk. The
12 blend price shall be separately calculated for the
13 base minimum price and the over-order premium.

14 Sec. 5. 7 MRSA §3152, sub-§§1-A, 4-A and 8-A are
15 enacted to read:

16 1-A. Base minimum price. "Base minimum price"
17 means such part of the minimum Class I and Class II
18 prices established by the Maine Milk Commission pur-
19 suant to chapter 603 as corresponds to Class I and
20 Class II prices established pursuant to the New
21 England Milk Marketing Order.

22 4-A. Eligible marketing cooperative. "Eligible
23 marketing cooperative" means an association of milk
24 producers organized to negotiate producer prices
25 higher than the minimum producer prices established
26 pursuant to the New England Milk Marketing Order and
27 which the commissioner has determined will not,
28 through its operation, evade, impair or undermine the
29 purposes of this chapter. Notwithstanding Title 4,
30 section 1151, subsection 2 and Title 5, section
31 10051, subsection 1, the commissioner may revoke the
32 eligible status of a marketing cooperative upon a de-
33 termination that it has through its operation evaded,
34 impaired or undermined the purposes of this chapter.

35 8-A. Over-order premium. "Over-order premium"
36 means such part of the minimum Class I and Class II

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1 prices established by the Maine Milk Commission pur-
2 suant to chapter 603, as exceeds the applicable Class
3 I and Class II prices established pursuant to the New
4 England Milk Marketing Order.

5 **Sec. 6. 7 MRSA §3153, sub-§2, as enacted by PL**
6 **1983, c. 573, §4, is amended to read:**

7 **2. Collections from dealers. Collections from**
8 **dealers shall be made as follows.**

9 A. Effective June 1, 1984, each Maine market
10 dealer shall, on a monthly basis, calculate for
11 its Maine market producers the amount of payment
12 at the base minimum price that would be payable
13 to its Maine market producers at according to the
14 blend price calculated using that dealer's utili-
15 zation rate, and the amount of payment at the
16 base minimum price that would be due its Maine
17 market producers at according to the blend price
18 calculated using the applicable utilization rate
19 for the New England Milk Marketing Order. Each
20 Maine market dealer shall make an initial payment
21 at the base minimum price to its Maine market
22 producers according to the blend price calculated
23 using the Federal Milk Order utilization rate,
24 but shall comply in all other respects with chap-
25 ter 603. Any additional payment at the base mini-
26 um price that would be due its Maine market pro-
27 ducers pursuant to that dealer's applicable uti-
28 lization rate shall be made to the Maine Milk
29 Pool. Based on the fact that northern Maine mar-
30 ket producers presently operate at significantly
31 higher costs because of their remoteness from
32 markets and supplies, that they face greater
33 risks because they operate on a closer margin and
34 because their markets are less secure, payments
35 to the Maine Milk Pool at the base minimum price
36 attributable to northern Maine market producers
37 shall be reduced by 1/2 and those producers' ini-
38 tial payments under this section shall be in-
39 creased by the corresponding amounts. The com-

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1 missioner shall adopt by rule such procedures as
2 are necessary to implement this section.

3 B. For any month in which the amount of money
4 payable to producers at the base minimum price at
5 a dealer's utilization rate would be less than
6 the amount of money payable to that dealer's pro-
7 ducers at the base minimum price based upon the
8 Boston market utilization rate, the dealer may
9 deduct the difference from his next month's ini-
10 tial payment to producers at the base minimum
11 price. Upon the termination of their business
12 relationship, producers shall be liable to deal-
13 ers for all sums advanced under this paragraph
14 which have not been recouped by way of deduction.

15 C. For any month in which the Maine Milk Commis-
16 sion has established minimum prices payable to
17 producers that include an over-order premium
18 which the commission has determined is attributa-
19 ble to the activity of an eligible marketing co-
20 operative, this paragraph shall apply. Each Maine
21 market dealer shall, on a monthly basis, calcu-
22 late for its Maine market producers the amount of
23 payment from the over-order premium that would be
24 payable to its Maine market producers according
25 to the blend price calculated using that dealer's
26 utilization rate. With respect to those producers
27 who have designated an eligible marketing cooper-
28 ative to receive the over-order premium, the
29 dealer shall make the payment to the eligible
30 marketing cooperative. With respect to those pro-
31 ducers who have not designated an eligible mar-
32 keting cooperative to receive the over-order pre-
33 mium, the dealer shall make the payment into the
34 Maine Milk Pool. In making the payments required
35 by this paragraph, Maine market dealers shall
36 comply in all other respects with chapter 603.

37 D. For any month in which the Maine Milk Commis-
38 sion has established minimum prices payable to
39 producers that include an over-order premium

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1 which the commission has determined is not at-
2 tributable to the activity of an eligible market-
3 ing cooperative, the over-order premium shall not
4 be pooled.

5 **Sec. 7. 7 MRSA §3153, sub-§4, as enacted by PL**
6 **1983, c. 573, §4, is repealed and the following en-**
7 **acted in its place:**

8 4. Redistribution of pool; base minimum
9 price. The commissioner shall, by rule, adopt such
10 procedures as are necessary to redistribute payments
11 into the Maine Milk Pool at the base minimum price on
12 an equal basis to eligible Maine market producers and
13 eligible Boston market producers, except that:

14 A. If any Boston market producer receives a
15 plant price, excluding deductions or additions
16 imposed by the so-called Louisville Plan as de-
17 finied by Part 1001, Federal Milk Order No. 1,
18 Section 1001.61, Subsections c and d, or any
19 amendment thereto, or imposed by any other sea-
20 sonal balancing plan subsequently adopted by Fed-
21 eral Order No. 1, which is an amount greater than
22 the amount initially payable to Maine market pro-
23 ducers under subsection 2, paragraph A, the com-
24 missioner shall credit that additional amount
25 against the redistribution from the Maine Milk
26 Pool to which that producer would otherwise be
27 entitled in order to avoid potential inequities
28 arising from equal redistribution;

29 B. If the credit for any producer calculated un-
30 der paragraph A exceeds the pool payment due that
31 producer, that producer shall pay an amount equal
32 to the difference into the Maine Milk Pool not to
33 exceed that producer's share of the cost of pro-
34 motion. The commissioner may provide by rule that
35 these amounts shall be deducted from future base
36 minimum price pool payments to that producer or
37 from over-order premium pool payments to that
38 producer, or that these amounts shall be deducted

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1 by that producer's dealer from future payments
2 for that producer's milk and paid over to the
3 Maine Milk Pool by the dealer; and

4 C. If the commissioner determines that payments
5 from the pool will be made to dairies, coopera-
6 tives or some other entity as a representative of
7 producers, then the dairy, cooperative or other
8 representative shall pay to the producer the
9 amount owed to that producer within such time pe-
10 riod as shall be determined by the procedures es-
11 tablished by rule under this subsection.

12 **Sec. 8. 7 MRSA §3153, sub-§5 is enacted to read:**

13 5. Redistribution of pool; over-order premium.
14 Redistribution of the pool and the following
15 over-order premiums apply.

16 A. Subject to paragraph C, for any month in
17 which subsection 2, paragraph C is in effect, the
18 commissioner shall pay those Maine market produc-
19 ers whose over-order premium was paid into the
20 Maine Milk Pool a redistribution on their milk.
21 In calculating the rate of this redistribution
22 and the timing of its payment, the commissioner
23 shall attempt to achieve, insofar as practicable,
24 an initial redistribution of the over-order pre-
25 mium which ensures that Maine producers who are
26 not members of eligible marketing cooperatives
27 receive an initial redistribution equivalent to
28 that received by Maine producers who are members
29 of eligible marketing cooperatives. The commis-
30 sioner shall consider the following factors:

31 (1) The gross rate of redistribution used
32 by eligible marketing cooperatives to calcu-
33 late payment to their members;

34 (2) Reasonable administrative and other
35 charges deducted by eligible marketing coop-
36 eratives from the redistributions made to

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1 their members;

2 (3) The timing of the redistributions made
3 by an eligible marketing cooperative to its
4 members; and

5 (4) Such other factors as may be relevant
6 to the goal of achieving, insofar as practi-
7 cable, price equity among producers.

8 B. The commissioner shall redistribute the re-
9 mainder of the over-order premium paid into the
10 Maine Milk Pool on an equal basis to eligible
11 Maine market producers and eligible Boston market
12 producers; except that if any Maine market pro-
13 ducer or Boston market producer receives an addi-
14 tional premium other than one attributable to the
15 activity of an eligible marketing cooperative,
16 the commissioner shall credit that additional
17 premium against the redistribution to which that
18 producer would otherwise be entitled under this
19 paragraph in order to avoid potential inequities
20 arising from equal redistribution.

21 C. If the commissioner determines that the basis
22 for redistribution adopted by an eligible market-
23 ing cooperative is disadvantageous to Maine pro-
24 ducers belonging to that cooperative, that the
25 cooperative has not made redistributions to its
26 Maine members in a timely manner or that the ad-
27 ministrative or other fees deducted by the coop-
28 erative from redistributions to its member are
29 excessive, unjust or unreasonable, he may com-
30 mence proceedings to revoke the eligible status
31 of the cooperative pursuant to section 3152, sub-
32 section 6.

33 D. The commissioner shall, by rule, adopt such
34 procedures as are necessary to implement this
35 subsection. If the commissioner determines that
36 payments from the pool will be made to dairies,
37 cooperatives or some other entity as a represen-

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1 tative of producers, then the dairy, cooperative
2 or other representative shall pay to the producer
3 the amount owed to that producer within such time
4 period as is determined by the procedures estab-
5 lished by rule under this subsection.

6 **Sec. 9. 7 MRSA §3154, sub-§4 is enacted to read:**

7 4. Interest on over-order premiums. Interest
8 earned on over-order premiums paid into the Maine
9 Milk Pool pursuant to section 3153, subsection 2,
10 paragraph C, shall be credited to the pool. At least
11 annually, the commissioner shall pay accrued interest
12 on an equal basis to eligible Maine market and Boston
13 market producers.

14 **Sec. 10. 7 MRSA §3154, as enacted by PL 1983, c.**
15 **573, §4, is amended by adding before the last para-**
16 **graph a new paragraph to read:**

17 An eligible marketing cooperative, or an organi-
18 zation applying for recognition as an eligible mar-
19 keting cooperative, shall furnish the commissioner
20 all information, records and reports necessary for
21 the commissioner to determine and monitor the cooper-
22 ative's initial eligibility and its ongoing compli-
23 ance with this chapter. In addition to any other
24 available remedies, the commissioner may commence
25 proceedings pursuant to section 3152, subsection 6,
26 to revoke the eligible status of a cooperative which
27 willfully fails to provide information, records or
28 reports requested by the commissioner.

29 **Sec. 11. 7 MRSA §3155, last ¶, as enacted by PL**
30 **1983, c. 573, §4, is amended to read:**

31 Persons who violate any other rules promulgated
32 under this chapter shall be subject to a civil penal-
33 ty not to exceed \$100 to be collected by the commis-
34 sioner in a civil action. All penalties collected by
35 the commissioner shall be paid to the Treasurer of
36 State for deposit to the General Fund. In addition

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1 to other available remedies, the commissioner may
2 bring a civil action to collect any amounts owed to
3 the Maine Milk Pool under this chapter.

4 **Sec. 12. 7 MRSA §3155-A is enacted to read:**

5 §3155-A. Predatory behavior of eligible marketing
6 cooperative prohibited

7 1. Violations. No eligible marketing cooperative
8 may:

9 A. Collect or attempt to collect from a Maine
10 market dealer, directly or indirectly, all or any
11 part of an over-order premium with respect to the
12 milk of a Maine market producer who has not des-
13 ignated that cooperative to receive the
14 over-order premium pursuant to section 3153, sub-
15 section 2, paragraph C;

16 B. Collect or attempt to collect from a Maine
17 market dealer, directly or indirectly, any han-
18 dling charge, fee or other payment in lieu of an
19 over-order premium which the cooperative is
20 barred from collecting under paragraph A;

21 C. Discriminate against any Maine market dealer
22 making payments in accordance with section 3153,
23 subsection 2, paragraph C, in the marketing of
24 its members' milk based in whole or in part on
25 the extent to which the dealer's producers have
26 joined or refused to join the cooperative; or

27 D. Collect or attempt to collect all or any part
28 of an over-order premium from a Maine market
29 dealer prior to determination of its eligibility
30 or during any period for which its eligible sta-
31 tus has been revoked by the commissioner.

32 2. Civil penalties. Each violation of this sec-
33 tion is punishable by a civil penalty not to exceed
34 \$2,000 for a first violation and \$5,000 for each sub-

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1 sequent violation, which penalties may be collected
2 by the commissioner in a civil action. All penalties
3 collected by the commissioner shall be paid to the
4 Treasurer of State for deposit into the General Fund.

5 3. Injunctive relief. The Superior Court shall
6 have jurisdiction upon complaint filed by the commis-
7 sioner to restrain or enjoin any person from commit-
8 ting any act prohibited by subsection 1 or from vio-
9 lating any order or decision issued by the commis-
10 sioner pursuant to subsection 4. The commissioner
11 shall not be required to post a bond when applying
12 for an injunction under this subsection.

13 4. Administrative enforcement. When the commis-
14 sioner, after such investigation as he deems appro-
15 priate, believes that a violation of this section has
16 occurred, he may order the eligible marketing cooper-
17 ative to cease that violation. In lieu of, or in ad-
18 dition to, such an order and notwithstanding Title 4,
19 section 1151, subsection 2 and Title 5, section
20 10051, subsection 1, the commissioner may also revoke
21 the eligible status of the cooperative for purposes
22 of this chapter for a period not to exceed one year
23 for a first violation, 2 years for a 2nd violation
24 and permanently for a 3rd or subsequent violation.
25 Before issuing such an order or revoking a cooper-
26 ative's eligibility, the commissioner shall afford the
27 cooperative an opportunity for a hearing. Any person
28 aggrieved by a final order or decision issued under
29 this subsection may obtain judicial review in Superi-
30 or Court by filing a petition in accordance with Ti-
31 tle 5, section 11001 and the Maine Rules of Civil
32 Procedure, Rule 80C. In responding to such a peti-
33 tion, the commissioner may seek enforcement of his
34 order or decision, including civil penalties for any
35 violation found and the court, if it upholds the or-
36 der or decision, may order its enforcement, including
37 civil penalties.

38 Nothing in this section is intended to require
39 that the commissioner take administrative enforcement

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1 action prior to seeking judicial relief for any vio-
2 lation of this section or is intended to limit the
3 commissioner's ability to bring an independent action
4 to enforce any decision or order issued by him, in-
5 cluding civil penalties for any violation found by
6 him.

7 STATEMENT OF FACT

8 This committee amendment replaces the original
9 bill, but addresses the same problem in a more pre-
10 cise way.

11 Present law prevented the commission from quickly
12 reacting to the appearance of a 25¢ producer price
13 premium in southern New England during the fall of
14 1986 and its disappearance several months later. Sec-
15 tion 1 of this amendment allows the commission to es-
16 tablish minimum producer prices under the emergency
17 rule-making provisions of the Maine Administrative
18 Procedure Act, Title 5, chapter 375, and to pass
19 through changes made to the minimum dealer and retail
20 prices.

21 Under current law, the commission can employ
22 expedited procedures in setting producer prices only
23 to conform with the orders of any federal or other
24 agency duly authorized by law to establish or negoti-
25 ate producer prices. This existing authorization cov-
26 ers over-order premiums negotiated by an organized
27 cooperative, but does not include recognition of
28 over-order premiums that arise more or less spontane-
29 ously in the market place, as was the case last fall.
30 Section 1 of this amendment remedies this deficiency.

31 Sections 2 to 12 of this amendment deal with the
32 impact of an over-order premium on the Maine Milk
33 Pool.

34 When the milk pooling law was enacted in 1983,

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1 prevailing producer prices in both the Boston and
2 Maine markets had, for the past 8 years, remained at
3 the Class I and Class II levels established monthly
4 by the federal market administrator for the Boston
5 market and by the Maine Milk Commission for the Maine
6 market. No prospect of an over-order premium, last
7 seen during 1973 to 1975, appeared to exist. Conse-
8 quently, the milk pooling law did not explicitly ad-
9 dress whether or not an over-order premium should be
10 pooled or how pooling of such a premium would be ac-
11 complished.

12 A related development not anticipated in the milk
13 pooling law is the reemergence of regional coopera-
14 tives organized solely for the purpose of collective-
15 ly bargaining with milk dealers for over-order
16 prices. Operating as an overlay on the existing net-
17 work of traditional producer cooperatives and inde-
18 pendent farmers, cooperatives formed to negotiate
19 over-order prices can only flourish if they acquire
20 control over nearly all milk supplies available to
21 handlers over a wide geographic area. Although the
22 monopolization of milk supplies by an over-order co-
23 operative is protected by federal law, the use of
24 predatory means to acquire or maintain that monopoly
25 power is not.

26 The over-order cooperative responsible for the
27 1973 to 1975 collection of an over-order premium is
28 currently reorganizing in the northeastern states. If
29 this group is successful, the return of over-order
30 pricing to Maine is likely.

31 Sections 2 to 12 of the amendment integrate these
32 new developments into the existing framework of the
33 Maine milk pool. Producers who have joined an
34 over-order cooperative, defined as an "eligible mar-
35 keting cooperative," are free to direct handlers to
36 pay the entire over-order premium on their milk to
37 that cooperative for redistribution among cooperative
38 members. For producers who decline to join the coop-
39 erative, the over-order premium would be pooled in a

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1 manner similar to the pooling of the Maine market
2 premium under the current law: That is, a portion
3 based on the amount of the premium paid by the coop-
4 erative to its members would be paid to the producer
5 and the balance would be redistributed among all
6 Maine dairy farmers. An eligible marketing coopera-
7 tive would be prohibited from committing predatory
8 practices, such as attempting to collect the
9 over-order premium on the milk of nonmembers.

10 Under this amendment a market-generated
11 over-order premium, such as that which arose last
12 fall, would not be pooled. No need for pooling exists
13 in this situation in that the net amount of an
14 over-order premium received by Maine's Boston market
15 producers would not be determined by the Boston mar-
16 ket utilization rate.

17 This amendment recognizes the role of eligible
18 marketing cooperatives in bringing about the exis-
19 tence of an over-order premium, provides for the
20 pooling of an over-order premium negotiated by such a
21 cooperative, permits a greater net amount of an
22 over-order premium to remain in the State than would
23 be the case in the absence of legislation and main-
24 tains the equity among all Maine producers that is
25 currently achieved by the Maine milk pool.

26

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