

MAINE STATE LEGISLATURE

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MAINE MILK COMMISSION
REPORT TO THE JOINT STANDING COMMITTEE ON
AGRICULTURE, CONSERVATION AND FORESTRY

November 1, 2007

Submitted by: Stanley K. Millay
Executive Director

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TABLE OF CONTENTS

Section A: Milk Commission Statutes

- (1) Chapter 603: Milk Commission
- (2) Chapter 611: Milk Pooling

Section B: Description of the program

- (1) Established priorities
- (2) Performance Budgeting

Section C: Organizational Flow Chart

Section D: Compliance with Federal and State Health and Safety Laws

Section E: Financial Summary

Section F: Regulatory Agenda

Section G: Coordination with Other Agencies

Section H: Identification of Constituencies Served

Section I: Use of Alternative Delivery Systems

Section J: Emerging Issues

Section K: Emerging Issues

Section L: Emerging Issues

Section M: Emerging Issues

Section N: Emerging Issues

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ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

April 30, 2007

Stanley Millay, Executive Director
Maine Milk Commission
28 State House Station
Augusta, ME 04333

RE: Review of the Maine Milk Commission

Dear Mr. Millay:

We are writing to notify you that the Joint Standing Committee on Agriculture, Conservation and Forestry has voted to review the Maine Milk Commission, pursuant to the Government Evaluation Act, Title 3 of the Maine Revised Statutes, chapter 35.

Pursuant to that law, the Committee respectfully requests that the commission prepare a program evaluation report and submit the report to this committee no later than November 1, 2007. Title 3, section 956 provides a list of information to be included in the evaluation report. Please review each item and advise us if any item is not applicable to the duties and responsibilities of the commission and this committee's oversight of the authority.

We will begin our review of the commission no later than February 1, 2008, as provided in law, and we anticipate submitting our findings, administrative recommendations and implementing legislation to the Legislature no later than March 15, 2008. We look forward to working with you on this review process. Please feel free to contact one of us or our committee staff if you have questions about the process. Thank you.

Sincerely,

Handwritten signature of John M. Nutting.

Sen. John M. Nutting
Senate Chair

Handwritten signature of Wendy Pieh.

Rep. Wendy Pieh
House Chair

cc: Senator Beth Edmonds, President of the Senate
Representative Glenn Cummings, Speaker of the House
Patrick T. Norton, Director, Office of Policy and Legal Analysis

§956. Program evaluation report

1. Report required. Each agency and independent agency shall prepare and submit to the Legislature, through the committee of jurisdiction, a program evaluation report by a date specified by the committee.

2. Program evaluation report; contents. Each report must include the following information in a concise but complete manner:

- A. Enabling or authorizing law or other relevant mandate, including any federal mandates;
- B. A description of each program administered by the agency or independent agency, including the following for each program:
 - (1) Established priorities, including the goals and objectives in meeting each priority;
 - (2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
 - (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives;
- C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;
- D. Compliance with federal and state health and safety laws, including the Americans with Disabilities Act, the federal Occupational Safety and Health Act, affirmative action requirements and workers' compensation;
- E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;
- F. When applicable, the regulatory agenda and the summary of rules adopted;
- G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;
- H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;
- I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;
- J. Identification of emerging issues for the agency or program in the coming years;
- K. Any other information specifically requested by the committee of jurisdiction;
- L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;
- M. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement; and
- N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:
 - (1) The statutory authority for each filing requirement;
 - (2) The date each filing requirement was adopted or last amended by the agency;
 - (3) The frequency that filing is required;
 - (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and
 - (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication.

MAINE MILK COMMISSION

OVERVIEW

NOVEMBER 1, 2007

MAINE MILK COMMISSION

The Maine Milk Commission is a five-member consumer board that is established to oversee the milk industry in Maine and to support the viability of farms and the milk industry. Part of this responsibility is setting minimum milk prices.

Minimum prices paid to processors (dairies) are established to reflect the lowest price at which milk purchased from Maine producers at Maine minimum prices can be received, processed, packaged and distributed to retailers within the state at a just and reasonable return. To arrive at the dairy processing cost, also known as the dealer margin, the Commission conducts a cost study for the operation of hypothetical model milk processing facilities. Using the models and current cost data for supplies, labor, electricity, trucking, etc., a theoretically, lowest achievable price is calculated, which is the theoretical price at which a dairy should be able to process milk from raw product to finished product and deliver it to the retailer. The Commission adjusts the theoretical price to take into account Maine conditions to arrive at a proposed processor margin. The Commission conducts a public hearing on the proposed processor margin and after considering the input of processors, any other interested parties, and the public, the Commission adopts a rule establishing the processor margin. This margin is the return that processors are guaranteed until a new study is completed. Processors may obtain a higher price for a gallon of milk from retailers, but the price paid by retailers cannot be below the minimum processor margin. By statute, a cost study is required every three years.

Retail minimum prices paid by consumers are based on the minimum processor margin and a reasonable rate of return to the retailer. To arrive at the cost of selling milk at the retail level, the Commission conducts a cost study of Maine supermarkets. The cost study identifies methods now in practice for the delivery of milk to Maine supermarkets and for in-store handling and selling of milk. It also considers changes that could be made to make this process more efficient. The Commission conducts a public hearing on the proposed retail margin, and after considering the input of retailers, any other interested parties, and the public, the Commission adopts a rule establishing the retail margin. As with the dealer margin, the retail margin does not change until a new study is completed and a public hearing held to receive comment on the margin.

The Commission sets a minimum price for Maine's producers based largely on prices established by the Federal Market Administrator for the Northeast Marketing Area. The Commission's authority to require higher farm prices is limited by constitutional stipulations of interstate commerce and supremacy. The Commission does have the authority to regulate milk produced, processed and sold in Maine.

Price surveys show that compared to other parts of the country, Maine's producer prices are in the high range while supermarket prices are in the low range, suggesting that the Commission's efforts are successful.



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Home | Contact Us | AgTODAY Newsletter

Site Map | Search Agriculture Site:

Go

DIVISIONS

Commissioner's Office

Animal Health & Industry

Market and Production Development

Plant Industry

Quality Assurance & Regulations

BOARDS AND COMMISSIONS

Harness Racing

Board of Pesticides Control

IPM Council

Maine Milk Commission

History and Background

Commission Members

Commission Meeting Dates

Commission Meeting Minutes

Monthly Minimum Milk Prices

Important Links

Statutes and Rules

IAMCA

Seed Potato Board

PROGRAMS

Animal Welfare Program

Business Development

Farmland Protection

Natural and Rural Resources

TEFAP

[Home](#) > [Maine Milk Commission Home](#)

Maine Milk Commission

History and Background

A Maine Milk Control Law was enacted in 1935 by the 87th Legislature to eliminate a number of serious problems confronting the dairy industry and the consuming public. Glaring conditions necessitating this corrective action included price wars, farmers failing to receive payment for milk deliveries, dealer bankruptcies, consumers receiving low quality milk, etc.

Under the law a Maine Milk Commission was created to arbitrate differences, establish minimum prices in designated areas after proper hearings and exercise general supervision over the milk industry. Its basic function was, and still is, to see that there will be a plentiful supply of pure, wholesome milk available at all times, in all places, at reasonable prices.

At present the Maine Milk Commission is comprised of five members, four of whom are appointed by the Governor and shall serve a term of 4 years. Within its membership shall be the Commissioner of Agriculture, ex-officio and the remaining four members shall have no official business or professional connection or relation with any segment of the dairy industry.

The Maine Milk Commission is financed by a 5¢ per hundredweight fee on milk paid by licensed dealers. The Commission receives no general fund tax monies.

Among the specified powers granted by the Legislature, the Commission has the authority to set minimum prices paid to producers as well as minimum retail and wholesale milk prices. The Milk Commission is authorized to audit dealers' books and to determine the utilization of all milk purchased.

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[Site Map](#) | [Search Agriculture Site:](#)

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- [Commissioner's Office](#)
- [Animal Health & Industry](#)
- [Market and Production Development](#)
- [Plant Industry](#)
- [Quality Assurance & Regulations](#)

BOARDS AND COMMISSIONS

- [Harness Racing](#)
- [Board of Pesticides Control](#)
- [IPM Council](#)
- [Maine Milk Commission](#)
 - [History and Background](#)
 - [Commission Members](#)
 - [Commission Meeting Dates](#)
 - [Commission Meeting Minutes](#)
 - [Monthly Minimum Milk Prices](#)
 - [Important Links](#)
 - [Statutes and Rules](#)
 - [IAMCA](#)
- [Seed Potato Board](#)

PROGRAMS

- [Animal Welfare Program](#)
- [Business Development](#)
- [Farmland Protection](#)
- [Natural and Rural Resources](#)
- [TEFAP](#)

[Home](#) > [Maine Milk Commission Home](#) > [Milk Commission Members](#)

Maine Milk Commission Members

Colon Durrell
 P. O. Box 237
 East Wilton, Maine 04234
 207-778-9999
 207-778-2222(Fax)

colon@cdurrell.com

Michael Wiers, Chair
 P. O. Box 159 Bigelow Road
 St. Albans, Maine 04971
 207-938-4697
 207-938-2752(Fax)

mwiers@mwiers.com

Commissioner (ex-officio)
 Department of Agriculture
 28 State House Station
 Augusta, Maine 04333
 207-287-3871
 207-287-7548 (Fax)

seth.bradstreet@maine.gov

Katherine O. Musgrave
 15 Old Kelly Avenue
 Orono, Maine 04473
 207-866-4240
 207-581-1636 (Fax)

musgrave@umit.maine.edu

John M. Joseph, Jr.
 14 High Street
 Hallowell, Maine 04347
 207-859-1111(Work)
 207-859-1308(Work)
 207-621-0171

Joseph@Thomas.edu

john.joseph21@verizon.net

Amy B. Mills, Esq. (legal counsel)
 Attorney General's Office
 6 State House Station
 Augusta, Maine 04333
 207-626-8800
 207-626-8812(Fax)

amy.mills@maine.gov

MILK COMMISSION AUTHORITY AND PRODUCER PREMIUMS 2007

Currently there are two different groups of dairy farmers in Maine: Maine Market Producers (those who ship to dairies not subject to the Federal Order) and Boston Market Producers (those who ship to dairies subject to the Federal Order).

In September 2007, there were 3 farmers shipping to Houlton Farms Dairy and 10 other farmers, called producer-dealers, who process some or all of their milk, who, together, comprised the group known as Maine Market Producers. All other farmers were shipping to processing plants that come under the authority of the Federal Order and are in the group called Boston Market Producers.

Since the State of Maine is not part of the Federal Order, the Maine Milk Commission has full authority over processing plants that are exempt from the Federal Order, and has partial authority over Federal Order Plants that operate in Maine. (7 MRSA. Section 2954.1 and 9).

The Commission's authority has been shaped by a number of court decisions as well as revisions to statutory language. The Commission has authority to regulate milk that is produced, processed and sold in Maine. (7 MRSA. Section 2954.8 and 9).

The producer milk price is price that the producer receives for milk sold to a dairy. Pricing to individual producers is based on 100 pounds (CWT) of milk with standards of 3.5 % butterfat, 2.99 % Protein and 5.69 % Other Solids. Milk received at dairies is tested and individual producers payments are adjusted according to component percentages derived from the testing.

Milk is classified based on its actual end use, as follows:

Class I - Fluid milk containing less than 9 % butterfat, skim, flavored milk, eggnog and buttermilk sold for human consumption.

Class II - Packaged fluid cream, sour cream, cottage cheese, and product sold to produce ice cream, ice milk, custards, and semi-solid products resembling Class II products.

Class III - Milk or cream used to manufacture hard products such as hard cheese and dry powder.

Class IV - Milk used to make butter and nonfat dry milk.

On or before the 23rd of the month, the United States Department of Agriculture (USDA) Market Administrator announces the advanced pricing factors for the following month. On or before the 5th of the month, he announces class and component producer prices for the preceding month and on or before the 13th of the month announces the federal pool prices for the preceding month. Each of the above classes is assigned a different price using formulas established by USDA rules.

The Commission establishes minimum milk prices, monthly, for milk sold in gallons (the price also applies to quarts through 20-quart containers). The price per gallon established by the Commission is based on the Market Administrator's price announcements; however, the Commission has the authority to add special premiums to the price based on market conditions in southern New England. (7 MRSA. Section 2954.1 and 2).

By rules of the Federal Order, Boston market producers are required to be paid for milk produced in a calendar month based on butterfat, protein, and other solids contents plus a Producer Price Differential (PPD). The PPD is sort of a clearinghouse method to distribute revenue left over in the federal milk pool after the producers' obligations are set aside. Maine law was changed in 1999 to allow the same method of payment for Maine market producers. (7 MRSA. Section 2956.3).

The following is a hypothetical example of how a dairy pays a producer for milk.

Farmer's current month production is 159,043 pounds (1590.43 CWT).

Butterfat test average = 3.90%; Protein test average = 3.15%; Other Solids test average = 5.66%

The Market Administrator announces a Butterfat Price of \$1.6457 per pound, A Protein Price of \$3.7059 per pound, an Other Solids price of \$0.5831 per pound and a PPD at Suffolk County MA of \$0.63 CWT. The Maine Milk Commission requires processors that are not federally regulated to pay the full PPD to their producers. Federal Order processors based in Maine are required by the Maine Milk Commission to pay their producers the full PPD, but only on milk produced, processed and sold in Maine. Thus, the minimum obligation is something less than \$0.63 for producers selling to federal order plants.

3.90% butterfat times	Butterfat price \$1.6457 times	159,043 pounds =	\$10,207.75
3.15% protein times	Protein price \$3.7059 times	159,043 pounds =	\$18,566.02
5.66% Other Solids times	Other Solids price \$0.5831 times	159,043 pounds =	\$5,248.96
		Component Value =	\$34,022.73
Federal Order PPD	PPD amount of \$0.63 times	1590.43 CWT =	\$1,001.97
Total minimum obligation	at Suffolk County, MA =		\$35,024.70

In the above example, the farmer receives a minimum of approximately \$22.02 for each one hundred pounds of milk (\$35,024.70 divided by 1590.43 CWT = \$22.02). This amounts to about \$1.89 per gallon. To this base income, are added distributions from the Maine Milk Pool and from any prevailing premiums adopted by the Commission.

In the above example, a federal order plant's minimum obligation to each of its producers would be something less than the full amount depending on the percentage of milk going into the Federal Order. (Milk outside of Maine is beyond the Maine Milk Commission's authority).

The Market Administrator in the Federal Order calculates the value of each Federal Order plant's milk using the value of the components mentioned above. The plant is required to pay the difference between this value of their plant's milk and their minimum producer obligation into the Federal Order Pool.

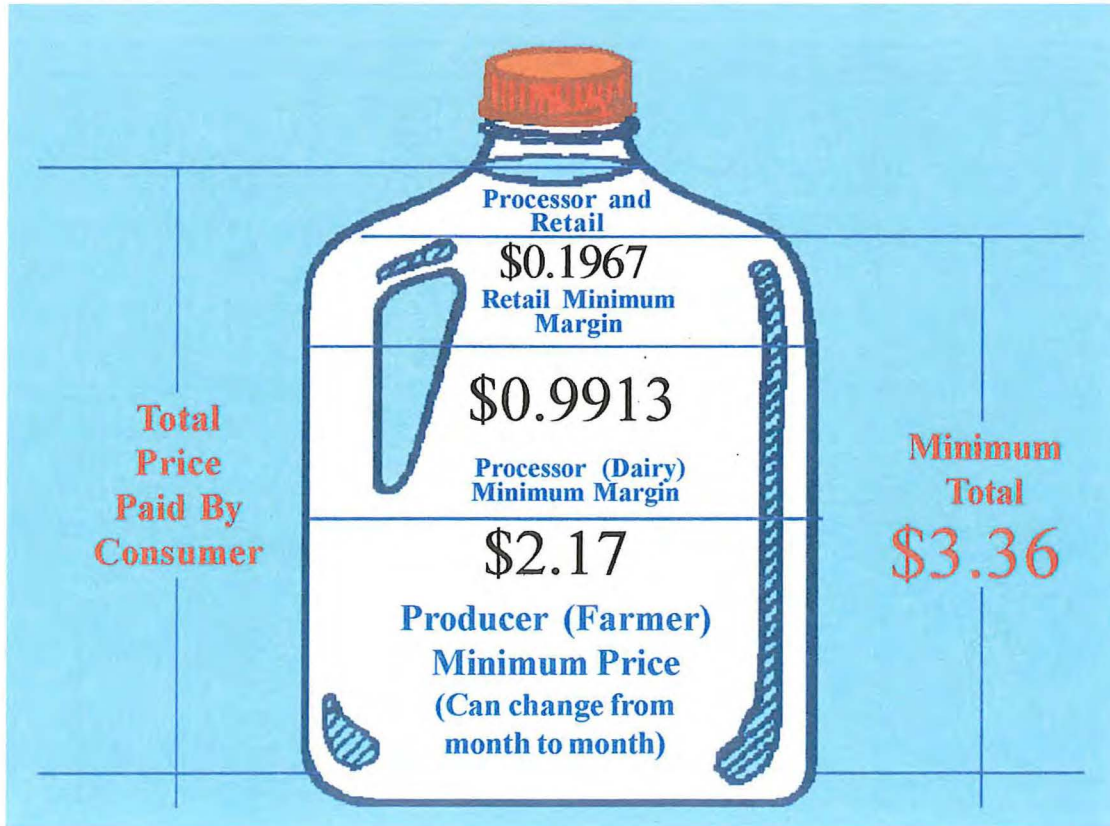
The Maine Milk Pool requires Non-Federal Order plants in Maine to calculate the value of their milk and to pay a minimum payment to their farmers as outlined in the example above and pay the difference into the Maine Milk Pool where it is distributed proportionately to Maine producers.

When the Maine Milk Commission adopts a premium on Class I milk for any month, it increases the minimum prices established for wholesale and retail for that month, consequently increasing the dealer margin at wholesale. This action provides more money for processors to use to pay for Maine milk. The theory being that prevailing premiums in Southern New England need be passed through in Maine in order to ensure a supply of fresh milk for Maine consumers.

How are Minimum Retail Prices Established by the Maine Milk Commission?

Retail milk prices paid by consumers are based on a processor minimum price set by the Commission, a reasonable rate of return to the retailer (retail minimum price) plus retailer and processor markup. To arrive at the cost of selling milk at the retail level, the Milk Commission conducts a cost study of Maine Supermarkets. The cost study identifies methods now in practice for the delivery of milk to Maine supermarkets and for in-store handling and selling of milk. It also considers changes that could be made to make this process more efficient. The Milk Commission conducts a public hearing on the proposed retail minimum, and after considering the input of retailers, any other interested parties, and the public, the Commission adopts a rule establishing a retail margin. As with the processor minimum, the retail minimum does not change until a new study is completed and a public hearing held to receive comment.

How is the Price the Consumer Pays for a Gallon of Whole Milk (3.25% butterfat) Distributed Among Producer, Processor, and Retailer? (Note: The Producer (Farmer) minimum price can change from month to month.)



Title 7, Chapter 603, MILK COMMISSION

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Chapter 603: MILK COMMISSION

§2951. Definitions

As used in this chapter, unless the context otherwise requires, the following words shall have the following meaning:

1. **Books and records.** "Books and records" means books, records, accounts, memoranda or other data pertaining to the purchase and distribution of milk.
2. **Commission.** "Commission" means the Maine Milk Commission.
3. **Consumer.** "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.
4. **Dealer.** "Dealer" means any person who purchases or receives milk for sale as the consignee or agent of a producer, or handles for sale, shipment, storage or processing within the State and shall include a producer-dealer and a sub-dealer, but shall not include a store other than an integrated operation.

[1985, c. 717, §1 (amd).]

4-A. **Integrated operation.** "Integrated operation" means a person who is a dealer and who also sells at retail the milk which he handles for sale, shipment, storage or processing within the State.

[1985, c. 717, §2 (new).]

5. **Market.** "Market" means any city, town or parts thereof of the State, or 2 or more of the same or parts thereof designated by the commission as a natural marketing area.

6. **Milk.** "Milk" means any of the following, regardless of the presence of any flavoring:

- A. Whole milk or cream, whether fresh, sour or storage; [2005, c. 382, Pt. F, §2 (new).]
- B. Skimmed milk; or [2005, c. 382, Pt. F, §2 (new).]
- C. Buttermilk. [2005, c. 382, Pt. F, §2 (new).]

[2005, c. 382, Pt. F, §2 (amd).]

7. **Person.** "Person" means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except state owned and operated institutions.

8. **Producer.** "Producer" means any person who produces milk and sells his said milk only to dealers.

9. **Producer-dealer.** "Producer-dealer" means a dealer who himself produces a part or all of his milk or a person who produces milk and sells to a grocery store or dairy products store or similar commercial establishment.

10. **Retail sale.** "Retail sale" means a doorstep delivery and over-the-counter sales by stores.

11. **Store.** "Store" means a grocery store, dairy product store, canteen, milk vending machine operator, milk dispensing operator or any similar commercial establishment or outlet or any other sale where milk is sold to consumers for consumption off the premises where sold.

Title 7, Chapter 603, MILK COMMISSION

12. Sub-dealer. "Sub-dealer" means any person who does not process milk and who purchases milk from a dealer and sells such milk in the same containers in which he purchased it, but shall not include a store.

13. Wholesale sale. "Wholesale sale" means sale to any other person not included in retail.

14. Retail store. "Retail store" means a grocery store, dairy product store or any similar commercial establishment where milk is sold to consumers for consumption off the premises.

[1973, c. 758, §1 (new) .]

PL 1973, Ch. 758, §1 (AMD) .

PL 1985, Ch. 717, §1,2 (AMD) .

PL 2005, Ch. 382, §F2 (AMD) .

§2952. Organization

1. Members. The Maine Milk Commission, as established by Title 5, section 12004-E, subsection 2, consists of the following 5 members:

A. The commissioner or the commissioner's designee, ex officio; and [2005, c. 382, Pt. F, §3 (new) .]

B. Four members, who must be residents of the State, appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over agriculture matters and subject to confirmation by the Legislature. [2005, c. 382, Pt. F, §3 (new) .]

[2005, c. 382, Pt. F, §3 (new) .]

2. Conflict of interest. In addition to the limitations imposed under Title 5, section 18, the following conflict of interest restrictions apply.

A. A member of the commission appointed under subsection 1, paragraph B may not, at the time of appointment or while serving as a member of the commission, have a business or professional relationship or connection with or a financial interest in any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission. The retail purchase of milk for consumption is not a violation of this paragraph. [2005, c. 382, Pt. F, §3 (new) .]

B. An employee of the commission may not have a business or professional relationship or connection with or a financial interest in any producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission. The retail purchase of milk for consumption is not a violation of this paragraph. [2005, c. 382, Pt. F, §3 (new) .]

C. A member or employee of the commission may not render, or be a member of a firm that renders, any professional or other service for or against a producer, dealer, store or other person whose activities are subject to the jurisdiction of the commission. [2005, c. 382, Pt. F, §3 (new) .]

[2005, c. 382, Pt. F, §3 (new) .]

3. Terms; vacancies. Members of the commission appointed under subsection 1, paragraph B serve for a term of 4 years or until their successors are duly appointed and qualified, except that the initial terms of these members are for one, 2, 3 and 4 years so that the terms of the members of the commission are staggered.

A vacancy in the membership of the commission must be filled by appointment by the Governor.

[2005, c. 382, Pt. F, §3 (new) .]

4. Chair; employees and resources. The members of the commission shall elect a chair. With the approval of the commission, the commissioner may employ, subject to the Civil Service Law, a secretary and such officers, clerks, assistants and other employees as the commission determines necessary. To the extent possible, the commission shall make use of professional, expert or other resources available within the various departments of State Government, including, but not limited to, the department, the Department of Health and Human Services and the Department of the Attorney General, and such departments shall, as resources allow, provide necessary and appropriate services at the request of the commission. To the extent these services are not available or otherwise adequate, the commission may employ appropriate experts, professionals or others to assist it in carrying out its duties.

[2005, c. 382, Pt. F, §3 (new) .]

Title 7, Chapter 603, MILK COMMISSION

5. Compensation; office; supplies. Members of the commission are compensated as provided in Title 5, chapter 379, as determined by the Governor. The administrative costs of the commission, including expenses and compensation of members, may not exceed the amount of fees collected under this chapter. The commission must be furnished a suitable office at the seat of government, together with all necessary equipment and supplies.

[2005, c. 382, Pt. F, §3 (new).]

6. Special meetings. The chair shall call special meetings of the commission whenever requested in writing by 2 or more members of the commission.

[2005, c. 382, Pt. F, §3 (new).]

PL 1969, Ch. 362, § (AMD) .
PL 1971, Ch. 594, §12 (AMD) .
PL 1973, Ch. 758, §2 (AMD) .
PL 1975, Ch. 293, §4 (AMD) .
PL 1975, Ch. 517, §1 (RPR) .
PL 1975, Ch. 771, §100,101 (AMD) .
PL 1977, Ch. 78, §31 (AMD) .
PL 1979, Ch. 731, §19 (AMD) .
PL 1979, Ch. 734, §6 (AMD) .
PL 1983, Ch. 484, §1 (AMD) .
PL 1983, Ch. 812, §52,53 (AMD) .
PL 1985, Ch. 517, § (AMD) .
PL 1985, Ch. 785, §B48 (AMD) .
PL 1989, Ch. 410, §21 (AMD) .
PL 1989, Ch. 503, §B46 (AMD) .
PL 1999, Ch. 679, §B1 (AMD) .
PL 1999, Ch. 679, §B14 (AFF) .
PL 2003, Ch. 689, §B6 (REV) .
PL 2005, Ch. 382, §F3 (RPR) .

§2952-A. Powers and duties

1. Powers; general. The commission may:

- A. Establish and change the minimum wholesale and retail prices for the sale of milk within the State; [2005, c. 382, Pt. F, §4 (new).]
- B. Adopt and enforce all rules and orders necessary to carry out this chapter; and [2005, c. 382, Pt. F, §4 (new).]
- C. In administering this chapter:
 - (1) Conduct hearings;
 - (2) Subpoena and examine under oath persons whose activities are subject to the jurisdiction of the commission, including producers, dealers and stores and their officers, agents and representatives; and
 - (3) Subpoena and examine the business records, books and accounts of persons whose activities are subject to the jurisdiction of the commission, including producers, dealers and stores and their officers, agents and representatives.

Any member of the commission and any employee designated by the commission may sign subpoenas and administer oaths to witnesses. [2005, c. 382, Pt. F, §4 (new).]

[2005, c. 382, Pt. F, §4 (new).]

2. Limitations. The commission may not modify, add to or annul any sanitary regulations imposed by any state or municipal authority or compel pasteurization in any market area.

[2005, c. 382, Pt. F, §4 (new).]

3. Duties. The commission shall:

Title 7, Chapter 603, MILK COMMISSION

A. Not less than once every 3 years, conduct independent studies of the economics and practices of the milk industry in order to assist the commission in establishing minimum prices. The studies must include the compilation of cost data for farms at 3 different levels of production; and [2005, c. 382, Pt. F, §4 (new).]

B. Ensure that distributors give 30 days' notice before terminating delivery to any customer in their delivery area or in the traditional delivery area of a distributor they have purchased. The 30-day notice does not apply to cancellations resulting from a failure to pay bills. [2005, c. 382, Pt. F, §4 (new).]

[2005, c. 382, Pt. F, §4 (new).]

4. Authority; accounts and records. To enable the commission to perform its duties, the commission may inquire into the management of the businesses of the producers, dealers and stores to obtain from them all necessary information. Every producer, dealer and store shall keep and render to the commission, at such times and in such manner and form as may be prescribed by the rules of the commission, accounts of all business transacted that is related to the production, purchasing, processing, sale or distribution of milk. Such accounts must reasonably reflect, in such detail as the commission considers appropriate, income, expense, assets, liabilities and such other accounting entries as the commission considers necessary, to assist the commission in making its determinations as to:

A. Minimum prices generally; [2005, c. 382, Pt. F, §4 (new).]

B. Separate minimum price categories to be established to reflect different container costs; [2005, c. 382, Pt. F, §4 (new).]

C. Separate minimum price categories to be established for different quantities of milk packaged and sold in separate containers; [2005, c. 382, Pt. F, §4 (new).]

D. Separate minimum price categories to reflect identifiable distribution costs; and [2005, c. 382, Pt. F, §4 (new).]

E. All matters pertinent to the proper performance of its duties. [2005, c. 382, Pt. F, §4 (new).]

The commission shall adopt routine technical rules that establish procedures to enable the commission to inspect the records, books and accounts of dealers, producers and stores at their various offices and places of business at reasonable times. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 382, Pt. F, §4 (new).]

PL 2005, Ch. 382, §F4 (NEW).

§2953. Powers and duties (REPEALED)

PL 1975, Ch. 517, §2 (RPR).

PL 1989, Ch. 123, § (AMD).

PL 2003, Ch. 648, §1 (AMD).

PL 2005, Ch. 382, §F5 (RP).

§2953-A. Interstate conferences and compacts

The commissions shall have power to enter into compacts, subject to congressional approval, with legally constituted milk commissions or similar authorities of other states or of the United States of America to effect a uniformity in regulating and insuring an adequate supply of pure and wholesome milk to the inhabitants of this State, to provide uniform control of milk produced in this State and handled in interstate commerce and to exercise all the powers hereunder for such purpose as well as the following powers: [1965, c. 463 (new).]

1. Hearings. To conduct joint investigations and hearings and to issue joint or concurrent orders.

[1965, c. 463 (new).]

2. Enforcement. To employ or designate a joint agent or agencies to enforce such orders or compacts.

[1965, c. 463 (new).]

3. Classification. To provide for classifications of milk in accordance with the form in which it is used or moved with uniform minimum prices or methods of fixing such prices for each class.

Title 7, Chapter 603, MILK COMMISSION

[1965, c. 463 (new).]

4. Payments. To provide for payment to all producers and associations of producers delivering milk to dealers of uniform prices, subject to adjustments with the joint agent for location and butterfat content.

[1965, c. 463 (new).]

4-A. Northeast Interstate Dairy Compact. To enter into the Northeast Interstate Dairy Compact.

A. Maine's representatives to the Northeast Interstate Dairy Compact are as follows:

- (1) The commissioner or designee;
- (2) The chair of the Maine Milk Commission or designee; and
- (4) A dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, to be appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over agricultural matters and confirmation by the Legislature.

[2005, c. 382, Pt. F, §6 (amd).]

B. [2005, c. 382, Pt. F, §7 (rp).]

C. The Northeast Interstate Dairy Compact may establish rules using the procedures outlined in the Federal Administrative Procedure Act and may proceed under emergency rule-making provisions without making findings of emergency. [1989, c. 437 (new).]

D. This subsection shall not take effect until the Northeast Interstate Dairy Compact is enacted by 3 other states and approved by the Congress of the United States. [1989, c. 437 (new).]

[2005, c. 382, Pt. F, §§6, 7 (amd).]

5. Regulations. To make such joint regulations as may be incidental to the foregoing and not inconsistent thereto and as may be necessary to effectuate the above mentioned powers.

[1965, c. 463 (new).]

6. Compensation. Members serving pursuant to subsection 4-A, paragraph A, subparagraphs (2) and (4) are compensated for attendance at Northeast Interstate Dairy Compact meetings in amounts not to exceed those set forth in Title 3, section 2, except that employees of the State who are compensated as part of their employment do not receive additional compensation under this subsection.

[1999, c. 679, Pt. B, §2 (new); §14 (aff).]

PL 1965, Ch. 463, § (NEW).
PL 1989, Ch. 437, § (AMD).
PL 1993, Ch. 274, §1 (AMD).
PL 1999, Ch. 679, §B14 (AFF).
PL 1999, Ch. 679, §B2 (AMD).
PL 2005, Ch. 382, §F6,7 (AMD).

§2953-B. Hearings in a new or expanded market area

At least 14 days and not more than 21 days prior to designating a new or expanded natural market area, the commission shall hold a public hearing in the proposed area to determine whether to designate that area as a market. As a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony in addition to the data received through the implementation of the information gathering procedures of its rules and regulations. Due notice of the public hearing shall be given by publishing the notice as provided in the Maine Administrative Procedure Act, Title 5, chapter 375. [1979, c. 672, Pt. A, § 39 (new).]

PL 1979, Ch. 672, §A39 (NEW).

§2954. Establishment of minimum prices

1. Commission empowered to establish prices; public hearing. The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State. The commission shall hold a

Title 7, Chapter 603, MILK COMMISSION

public hearing prior to the establishing or changing of such minimum prices. The commission may proceed, however, under the emergency rule-making provisions of Title 5, section 8054 without making findings of emergency when the only changes to be made in the minimum prices are to conform with the orders of any federal or other agency duly authorized by law to establish or negotiate producer prices, are to respond to other conditions affecting prevailing Class I, Class II and Class III prices in southern New England or are to reflect the milk handling fee levied and imposed by Title 36, chapter 721. Title 5, section 8054, subsection 3, the 2nd sentence, does not apply to minimum prices adopted under this subsection. Due notice of the public hearing must be given by publishing notice as provided in Title 5, chapter 375. The commission shall hold such a public hearing not less frequently than once every 12 months to determine whether the minimum wholesale and retail prices then established should be changed. In addition to the data received through the implementation of the information gathering procedures of its rules as a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony at hearings to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable.

[2005, c. 683, Pt. A, §13 (amd).]

2. Considerations in establishing prices. The minimum wholesale and retail prices established by the commission must be just and reasonable taking into due consideration the public health and welfare and the insuring of an adequate supply of pure and wholesome milk to the inhabitants of this State under varying conditions in various marketing areas; prevailing prices in neighboring states; seasonal production and other conditions affecting the costs of production, transportation and marketing in the milk industry, including a reasonable return to producer, dealer and store; and the public need for the establishment of retail milk prices at the lowest practicable levels.

A. The minimum wholesale prices paid to producers are based on the prevailing Class I, Class II and Class III prices in southern New England except that, after investigation, the Maine Milk Commission may set different minimum wholesale prices paid to producers to reflect the costs of producing milk in this State. [2005, c. 382, Pt. F, §8 (amd).]

B. The minimum wholesale prices paid to dealers must be established to reflect the lowest prices at which milk purchased from producers in this State at minimum prices in the State can be received, processed, packaged and distributed within the State at a just and reasonable return, and in addition must include the amount of any fee levied and imposed by Title 36, chapter 721. [2005, c. 396, §2 (amd).]

C. The minimum retail prices established for payment by consumers must be based on the minimum wholesale price paid to dealers and a rate of return determined to be just and reasonable by the Maine Milk Commission. [2005, c. 382, Pt. F, §8 (amd).]

D. In establishing and changing minimum wholesale and retail prices, the commission shall consider the effect of possible pricing decisions on the ability of the Maine dairy industry to compete in supplying milk to Maine consumers and, in such a consideration, shall include the following factors:

- (1) The strength and viability of the Maine dairy industry as a whole;
- (2) The extent of any social or economic benefits of maintaining dairy processing plants in different geographic regions or natural marketing areas of the State; and
- (3) The encouragement of consumption by Maine consumers of milk produced and processed within the State, consistent with the Constitution of Maine and the United States Constitution.

[2005, c. 382, Pt. F, §8 (new).]

E. The commission may not set different minimum wholesale prices for different retail delivery volumes of milk. [2005, c. 382, Pt. F, §8 (new).]

[2005, c. 382, Pt. F, §8 (amd); c. 396, Pt. F, §8 (amd).]

3. Exemption for on-premise sales of raw milk. The minimum price provisions of this chapter shall not apply to sales by producers of raw milk produced and sold to consumers on the premises of the producers.

[1975, c. 517, §3 (rpr).]

4. Commission empowered to establish classifications of milk. The commission may establish and change, after investigation and public hearing, classifications of milk according to its various usages and shall specify to what classification the prices established under this chapter apply.

[2005, c. 382, Pt. F, §9 (amd).]

5. Minimum price schedule. Minimum prices set by the commission may vary in the several market areas of the State. The

Title 7, Chapter 603, MILK COMMISSION

commission shall furnish all dealers registered in each market with a schedule of applicable prices and shall publish the schedule in appropriate newspapers in that market. Once minimum prices for a market take effect, no dealer, store or other person handling milk in that market may buy or offer to buy, sell or offer to sell milk for prices less than the scheduled minimum prices established for that market.

[2005, c. 382, Pt. F, §10 (amd).]

6. Schedule of maximum transportation allowances; adjustments. The commission may annually establish a schedule of maximum transportation allowances that may be charged by any Maine dealer for hauling milk from a producer's farm to the dealer's dairy plant. The commission shall base its schedule on the recommendations of the commissioner pursuant to section 3156 and shall conduct hearings prior to establishing that schedule. Any dealer may petition the commission at any time to approve a proposed adjustment in that schedule of transportation charges for that dealer. The burden is on the dealer to substantiate the need and reasonableness of such a proposed adjustment, and in the absence of evidence, the proposed adjustments must be denied.

[2005, c. 382, Pt. F, §11 (amd).]

7. Prohibition. A person may not engage in any practice destructive of the scheduled minimum prices for milk established under this chapter for any market, including but not limited to offering any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. A purchaser of milk at retail may tender a coupon or any item of value if the coupon or item of value is not brand specific and is redeemable for cash by the retailer and if the total value tendered by the purchaser is not less than the minimum retail price established by the commission.

[2005, c. 382, Pt. F, §12 (amd).]

8. Milk produced outside the State. Whenever milk produced outside the State becomes a subject of regulation by the State in the exercise of its police powers, this chapter applies and the powers of the commission attach. After any such milk so produced comes within the jurisdiction of this State, no sale or purchase by dealers of such milk within this State may occur at a price less than the scheduled minimum price established according to usage in any given market.

[2005, c. 382, Pt. F, §12 (amd).]

9. Minimum wholesale prices paid to producers for their milk. Notwithstanding any other provisions of this chapter or chapter 611, minimum wholesale prices paid by dealers to producers for their milk that is sold in this State are subject to the minimum producer prices established by the Maine Milk Commission, regardless of whether the dealer is subject to federal milk pricing regulation in addition to state milk pricing regulation.

[1999, c. 56, §1 (amd).]

10. Additional considerations in establishing prices.

[2005, c. 382, Pt. F, §13 (rp).]

11. Adjustments for over-order premiums. If following the establishment of minimum prices under subsection 1, which include an over-order premium as defined by section 3152, subsection 8-A, the commission receives new evidence showing that the actual over-order premium in effect in the period during which the minimum prices apply, or any portion thereof, are different from the over-order premium included in the prices, the commission may adjust minimum prices in a subsequent period to offset that difference. Any such adjustment shall be made equally applicable to wholesale and retail minimum prices.

[1987, c. 857 (new).]

12. Adjustments for changes in costs of production. Notwithstanding any other provisions of this section, the commission may only adjust minimum prices to reflect changes in costs of production after posting notice of rulemaking in accordance with Title 5, section 8053. The commission may not adjust any minimum price to reflect changes in costs of production under the emergency rule-making provisions of Title 5, section 8054.

[1989, c. 436, §1 (new).]

13. Report to State Tax Assessor.

[2005, c. 382, Pt. F, §14 (amd); c. 396, §3 (rp).]

Title 7, Chapter 603, MILK COMMISSION

14. Effective date of certain prices. Any new minimum wholesale prices paid to dealers and new minimum retail prices established pursuant to this section are effective on the Sunday closest to the first day of the month.

[1993, c. 274, §2 (amd).]

15. Exception.

[2005, c. 382, Pt. F, §15 (rp).]

16. Initial notification and subsequent reports to State Tax Assessor. The Maine Milk Commission shall notify the State Tax Assessor the first time after May 1, 2005 that the basic price of milk as defined in Title 36, section 4901, subsection 1 is below \$18 for 2 consecutive months. After initial notification, the Maine Milk Commission shall report before the first of each month to the State Tax Assessor the basic price of milk established for that month in Title 36, chapter 721.

[2005, c. 396, §4 (new).]

PL 1965, Ch. 245, § (AMD).
PL 1965, Ch. 425, §5-B (AMD).
PL 1971, Ch. 129, § (AMD).
PL 1973, Ch. 758, §3-7 (AMD).
PL 1975, Ch. 517, §3 (RPR).
PL 1977, Ch. 694, §140 (AMD).
PL 1983, Ch. 573, §1,2 (AMD).
PL 1985, Ch. 42, §1 (AMD).
PL 1987, Ch. 402, §A80 (AMD).
PL 1987, Ch. 447, §1 (AMD).
PL 1987, Ch. 857, § (AMD).
PL 1989, Ch. 436, §1 (AMD).
PL 1991, Ch. 266, §1,2 (AMD).
PL 1991, Ch. 376, §27 (AMD).
PL 1991, Ch. 526, §1-3 (AMD).
PL 1991, Ch. 824, §A8 (AMD).
RR 1991, Ch. 1, §17 (COR).
PL 1993, Ch. 104, §1 (AMD).
PL 1993, Ch. 274, §2 (AMD).
PL 1993, Ch. 663, §3 (AMD).
PL 1995, Ch. 2, §1-3 (AMD).
PL 1999, Ch. 56, §1 (AMD).
PL 1999, Ch. 679, §B14 (AFF).
PL 1999, Ch. 679, §B3 (AMD).
PL 2005, Ch. 382, §F8-15 (AMD).
PL 2005, Ch. 396, §1-4 (AMD).
PL 2005, Ch. 683, §A13 (AMD).

§2954-A. Payment by dealers to producers

Payment by dealers to producers is governed by this section. For purposes of this section, the term "delivery month" means the calendar month in which milk is delivered to a dealer from the producer. [2005, c. 382, Pt. F, §16 (new).]

1. First 15 days. On or before the 5th day after the end of a delivery month, a dealer shall pay the producer for milk received from that producer during the first 15 days of the delivery month at a rate that is not less than the most recently published northeast marketing area milk marketing order statistical uniform price for Penobscot County.

[2005, c. 382, Pt. F, §16 (amd).]

2. Balance due. A dealer shall pay the producer for the balance due for milk received during that delivery month as follows.

A. On or before the 20th day after the end of the delivery month, the dealer shall pay the producer for milk received from that producer during the delivery month an initial payment calculated using the minimum prices set by the commission pursuant to

Title 7, Chapter 603, MILK COMMISSION

section 2954, subsection 2, paragraph A minus:

- (1) Any portion of that amount deposited in the Maine Milk Pool or deducted pursuant to section 3153, subsection 2; and
- (2) The amount of the payment made to the producer under subsection 1.

[2005, c. 382, Pt. F, §16 (amd) .]

B. On or before the 5th day after the end of the month in which the payments required by subsection 1 and paragraph A are made, each dealer shall pay each of the dealer's producers any sums received on behalf of the producers pursuant to section 3153, subsection 4 and Maine Milk Pool rules. [2005, c. 382, Pt. F, §16 (amd) .]

[2005, c. 382, Pt. F, §16 (amd) .]

3. Penalties. The license of any dealer who violates this section may be suspended or revoked in accordance with Title 5, chapter 375.

[1985, c. 172 (new) .]

PL 1965, Ch. 449, § (NEW) .

PL 1985, Ch. 172, § (RPR) .

PL 1987, Ch. 447, §2 (AMD) .

PL 1999, Ch. 679, §B14 (AFF) .

PL 1999, Ch. 679, §B4 (AMD) .

PL 2005, Ch. 382, §F16 (AMD) .

§2954-B. Study of milk price regulatory options

1. Study commission. The Legislature directs that a study be undertaken as outlined in this section for the purpose of analyzing the situation of the Maine dairy industry under current milk pricing legislation and of analyzing the options for ensuring the long-term stability of the industry. The Commissioner of Agriculture, Food and Rural Resources shall provide for a study of the intent, regulatory approach and economic consequences of various milk pricing programs in Maine, including the Maine Milk Commission, Maine Milk Pool and the destructive competition laws, and of other potential mechanisms for pricing regulation, including, without limitation, minimum pricing at the producer level only, minimum wholesale pricing that reflects various costs of distribution, prohibiting below-cost pricing, establishing presumptive pricing and elimination of state pricing regulations.

[1985, c. 42, § 2 (new) .]

2. Basis for evaluation. The study shall, at a minimum, evaluate existing and alternative pricing mechanisms in terms of their ability to:

A. Stabilize dairy farmer incomes and assure that Maine farmers benefit to the greatest extent possible from the higher proportion of fluid milk processed and sold in Maine; [1985, c. 42, § 2 (new) .]

B. Maintain dairies in Maine which process fluid milk for Maine consumption; and [1985, c. 42, § 2 (new) .]

C. Encourage efficient farm and processor operations which provide consumers high quality, low-cost milk and milk products. [1985, c. 42, § 2 (new) .]

[1985, c. 42, § 2 (new) .]

3. Report content. The study's findings and conclusions shall be expressed in a final report which shall discuss the merits of each of the existing and alternative pricing mechanisms reviewed in terms of each of the objectives established in subsection 2, and shall outline the long-term changes in the dairy industry which might reasonably be expected to occur as a result of continuance or establishment of each of these alternatives.

[1985, c. 42, § 2 (new) .]

4. Study panel. The study shall be carried out by a panel of recognized experts in the economics of regulation and pricing. This panel shall be named by the Commissioner of Agriculture, Food and Rural Resources after consultation with the joint standing committee of the Legislature having jurisdiction over agriculture and shall be convened no later than May 1, 1985.

[1985, c. 42, § 2 (new) .]

Title 7, Chapter 603, MILK COMMISSION

5. Select Committee on Milk Pricing. There shall be a Select Committee on Milk Pricing consisting of 10 members to advise the study panel on the design of the study and on the options and policies to be evaluated. The committee shall be composed of 3 members of the House of Representatives, appointed by the Speaker of the House of Representatives, one of whom shall represent each political party; 2 members of the Senate, appointed by the President of the Senate, one of whom shall be chosen to represent each political party; and 3 members named by the Governor, one of whom shall be knowledgeable of the dairy processing industry, one of whom shall be knowledgeable of milk retailing and one milk producer who is knowledgeable of marketing systems. The Public Advocate or his designee shall also serve on the committee, representing consumer interests. The Commissioner of Agriculture, Food and Rural Resources shall serve ex officio as chairman of the committee.

[1985, c. 42, § 2 (new).]

6. Panel to meet with select committee. The panel shall meet with the Select Committee on Milk Pricing no later than July 1, 1985, to present to the committee its preliminary study design, including the alternative pricing mechanisms to be evaluated and at other times at the request of the Select Committee on Milk Pricing. The panel shall issue its final report to the Select Committee on Milk Pricing no later than November 1, 1985.

[1985, c. 42, § 2 (new).]

7. Preparation of legislation. After consultation with the Select Committee on Milk Pricing, the commissioner shall prepare legislation based on the report of the panel. The proposed legislation shall be provided to the members of the joint standing committee of the Legislature having jurisdiction over agriculture by December 15, 1985, for their review prior to its submission to the Legislature.

[1985, c. 42, § 2 (new).]

PL 1985, Ch. 42, §2 (NEW).

§2954-C. Applicability to integrated operation

The provisions of this chapter which apply to dealers, including, but not limited to, the provisions of section 2956, shall apply to the dealer phase of the business of an integrated operation and those which apply to retail stores shall apply to the retail phase of the business of an integrated operation. [1985, c. 717, § 3 (new).]

PL 1985, Ch. 717, §3 (NEW).

§2955. Licenses

No dealer shall buy milk from producers or others for sale or shall process, distribute, sell or offer to sell milk in any market in the State designated by the commission unless duly licensed by the commission. No license shall be required of any person who produces or sells milk for consumption only on the premises of the producer or seller. Each person, before engaging in the business of a dealer in any market designated by the commission, shall make application to the commission for a license, which the commission is authorized to grant. No retailer shall sell or offer to sell milk in any market in the State which he has purchased in Maine from an unlicensed dealer. [1975, c. 517, §4 (amd).]

The license year shall commence on January 1st and end December 31st following. Application for a license shall be made on a form prescribed by the commission.

Licenses required by this chapter shall be in addition to any other license required by law.

The District Court as designated by Title 4, chapter 5 may, upon proper evidence, decline to grant a license or may suspend or revoke a license already granted upon due notice and after hearing. Violation of this chapter or of any order, rule or regulation made, or conviction of violating any other law or regulation of the State relating to the production, distribution and sale of milk, is sufficient cause to suspend, revoke or withhold such license. [1999, c. 547, Pt. B, §21 (amd); §80 (aff).]

Upon revocation or suspension of a license it shall not be reissued until the commission shall determine upon application and hearing that the cause for such revocation or suspension no longer exists, and that the applicant is otherwise qualified.

PL 1973, Ch. 303, §3 (AMD).

PL 1975, Ch. 517, §4 (AMD).

PL 1977, Ch. 694, §141 (AMD).

PL 1999, Ch. 547, §B21 (AMD).

PL 1999, Ch. 547, §B80 (AFF).

§2956. Records and fees

Title 7, Chapter 603, MILK COMMISSION

All dealers in any market designated by the commission shall keep the following records: [1975, c. 517, §5 (rpr).]

1. Names and addresses of producers or milk dealers. A record of the quantity of all milk received or produced, detailed as to location and as to names and addresses of producers or milk dealers from whom received, or of importer of such milk into the State;

[1975, c. 517, §5 (rpr).]

2. Use, location and market outlet. A record of the quantity of all milk sold, detailed as to use, location and market outlet; and
[2005, c. 382, Pt. F, §17 (amd).]

3. Other records and information. Such other records and information in such form and at such times as the commission may deem necessary for the proper enforcement of this chapter.

[1975, c. 517, §5 (rpr).]

Each dealer shall furnish to that dealer's producers a statement of the amount of milk purchased, the price per hundredweight or pound, the total amount paid for each pay period, the itemized deductions for transportation and other services, the percentages of milk in each classification and the butterfat test, protein test and other solids test when weight and test method of payment is used, and shall pay Maine producers in accordance with section 2954-A. [2005, c. 382, Pt. F, §18 (amd).]

Each licensed dealer shall pay to the commission an annual license fee of \$1 and the sum of 5¢ per hundredweight as monthly payments, based on quantity of milk purchased or produced in any market area, or purchased or produced in an uncontrolled area and sold in any market area. Two and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk, except that the milk farm-processed into cream for the manufacture of butter is not subject to such sums of 5¢ per hundredweight. [1999, c. 161, §1 (amd).]

Dealers shall file reports together with the prescribed hundredweight fees with the commission at its office in Augusta not later than the 20th of the following month, on forms provided for this purpose, of all matters on account of which a record is required to be kept and such other information or facts as may be pertinent and material within the scope of this chapter; except that dealers who sell less than 100 quarts of milk per day may file reports and pay the prescribed hundredweight fees every 3 months. [1975, c. 517, §5 (rpr).]

In case the same milk is handled by more than one dealer, the first dealer within the State dealing in or handling said milk shall be deemed to be the milk dealer within the meaning of this section. For the purpose of computing fees as provided, 1/2 pint of cream shall be considered the equivalent of one quart of milk. [1975, c. 517, §5 (rpr).]

PL 1969, Ch. 214, §1 (AMD).
PL 1971, Ch. 128, §1,2 (AMD).
PL 1975, Ch. 444, §3 (AMD).
PL 1975, Ch. 514, § (AMD).
PL 1975, Ch. 517, §5 (RPR).
PL 1975, Ch. 770, §45 (AMD).
PL 1981, Ch. 481, §1 (AMD).
PL 1983, Ch. 573, §3 (AMD).
RR 1993, Ch. 1, §17 (COR).
PL 1995, Ch. 693, §25 (AFF).
PL 1995, Ch. 693, §5 (AMD).
PL 1999, Ch. 161, §1 (AMD).
PL 1999, Ch. 679, §B14 (AFF).
PL 1999, Ch. 679, §B5 (AMD).
PL 2005, Ch. 382, §F17,18 (AMD).

§2956-A. Dairy Industry Fund

1. Fund established; source. The Dairy Industry Fund, referred to in this section as the "fund," is established. In addition to payments to the commission pursuant to section 2956, a dealer shall deduct 1¢ per hundredweight from amounts paid by the dealer to each Maine milk producer and pay that amount into the fund as a monthly payment.

[2001, c. 8, §1 (new).]

2. Distributions from fund. Notwithstanding section 2957, the commission shall make distributions from the fund to a statewide

Title 7, Chapter 603, MILK COMMISSION

association that has been approved by the majority of dairy farmers in the State in amounts allocated from the fund for that purpose.

[2001, c. 8, §1 (new).]

PL 2001, Ch. 8, §1 (NEW).

§2957. Expenditure of funds

Moneys received through this chapter shall be paid forthwith to the Treasurer of State and shall be appropriated and used for the following purposes:

1. **Collection.** For the collection of all fees and assessments provided for by this chapter;
2. **Administration.** For the cost of administering this chapter.

Moneys received through this chapter shall remain a continuing carrying account and shall not lapse.

PL 1969, Ch. 214, §2 (AMD).

PL 1971, Ch. 594, §13 (AMD).

PL 1975, Ch. 444, §4 (AMD).

§2958. Dairy Council Committee (REPEALED)

PL 1975, Ch. 444, §5 (RP).

§2959. Injunctions and civil penalties

1. **Injunction.** In addition to any other remedy set forth in this chapter for the enforcement of this chapter or any rule, order or decision of the commission, the Superior Court has jurisdiction upon complaint filed by the commission, or any person duly authorized to act for the commission, including, but not limited to, its executive secretary, to restrain or enjoin any person from committing any act prohibited by this chapter or prohibited by any rule, order or decision of the commission. If it is established upon hearing that the person charged has been or is committing any unlawful act under this chapter or is in violation of any rule, order or decision of the commission, the court shall enter a decree enjoining that person from committing further such violations. In case of violation of any injunction issued under this section, the court shall summarily try and punish the person for contempt of court. The existence of other civil or criminal remedies is no defense to this proceeding. The commission or its authorized agent may not be required to give or post a bond when making an application for an injunction under this section.

[2005, c. 382, Pt. F, §19 (amd).]

2. **Civil penalties.** Any person who violates any provision of this chapter or of any rule, order or decision of the commission shall be subject to the following civil penalties, to be collected by the commission in a civil action:

- A. For the first violation, a civil penalty not to exceed \$1,000; and [1985, c. 717, §4 (new).]
- B. For each subsequent violation, a civil penalty not to exceed \$2,000. [1985, c. 717, §4 (new).]

All penalties collected by the commission shall be paid to the Treasurer of State for deposit to the General Fund.

[1985, c. 717, §4 (new).]

PL 1985, Ch. 717, §4 (RPR).

PL 2005, Ch. 382, §F19 (AMD).

§2960. Penalties (REPEALED)

PL 1977, Ch. 696, §100 (RPR).

PL 1985, Ch. 717, §5 (RP).

§2961. Temporary minimum prices to be paid to dealers and retailers for the sale of milk (REPEALED)

Title 7, Chapter 603, MILK COMMISSION

PL 1981, Ch. 481, §2 (NEW).
RR 1997, Ch. 2, §29 (COR).
PL 2005, Ch. 382, §F20 (RP).

§2962. Administrative enforcement

When the commission, after such investigation as it considers appropriate, believes that a violation of this chapter or of any rule, order or decision of the commission has occurred, it may order any person to cease that violation. Before issuing such an order, the commission shall afford any person who would be aggrieved by the order an opportunity for a hearing. In any such investigation or hearing, the commission may exercise all of the powers given to it by section 2952-A. Any person aggrieved by a final order issued under this section may obtain judicial review of the order in Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C. In responding to such a petition, the commission may seek enforcement of its order, including civil penalties for any violation found, and the court, if it upholds the order, may order its enforcement, including civil penalties. [2005, c. 382, Pt. F, §21 (amd).]

Nothing in this section is intended to require that the commission take administrative enforcement action prior to seeking judicial relief for any violation of this chapter or of any rule, order or decision of the commission, nor intended to limit the commission's ability to bring an independent action to enforce any decision or order issued by it, including civil penalties for any violation found by it. [1985, c. 717, §6 (new).]

PL 1985, Ch. 717, §6 (NEW).
PL 2005, Ch. 382, §F21 (AMD).

§2963. Transportation allowance study

The Legislature finds that historically the commission has allowed a deduction in the price paid to producers for Class II milk sold by Maine dealers to federally regulated plants. This transportation allowance has remained constant while the ability to transport milk and the shipping and sales practices of dealers have changed. In order to further understanding of the transportation allowance the commission shall: [1989, c. 438 (new).]

1. Original intent. Examine the original intent of the transportation allowance;

[1989, c. 438 (new).]

2. Current practice. Determine whether the transportation allowance is being applied in situations other than those originally intended;

[1989, c. 438 (new).]

3. Finding. Determine whether the transportation allowance should be applied to transfers of milk that are ordinary business practice or are recurring transactions;

[1989, c. 438 (new).]

4. Adopt rules. In accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt any necessary rules which the commission determines, after hearing, are not inconsistent with the original intent, and current use of the transportation allowance; and

[1989, c. 438 (new).]

5. Report. Report its findings, any actions taken by the commission and any recommendations for legislation by March 1, 1990, to the joint standing committee of the Legislature having jurisdiction over agricultural matters. The committee may introduce any legislation necessary to address the findings or actions of the commission.

[1989, c. 438 (new).]

PL 1989, Ch. 438, § (NEW).

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

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Chapter 611: MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

§3151. Legislative Findings and Intent

The Legislature finds that among Maine's dairy farmers, prices received for milk differ substantially, and that these differences arise in part from a dual marketing system whereby approximately 1/2 the milk produced in Maine is marketed in Maine subject to the price control authority of the Maine Milk Commission, Maine market, while the other 1/2 is marketed to handlers selling in southern New England, commonly known as the Boston market, subject to the price regulations of the northeast marketing area milk marketing order. [1999, c. 679, Pt. B, §6 (amd); §14 (aff).]

The Legislature finds that under this dual system, producers selling on the Maine market receive a significantly higher price for their milk than do their Boston market counterparts; that, in terms of net income after operating costs, producers on the Maine market receive, on the average, 50% more than their Boston market counterparts of equal size; that the lower net returns received by producers selling on the Boston market seriously limits their ability to withstand cost fluctuations caused by unpredictable increases in costs of fuel, credit, feed and other input costs or price fluctuations resulting from changing milk price support policies, all of which are largely controlled by national and international policies and other events beyond their control; that this relative vulnerability engenders an instability in the present marketing system resulting in a destructive competition for higher priced markets; that this instability has recently been aggravated by the introduction of store-brand milk in Maine markets; that the result is a serious threat not only to the viability of these Boston market farms but also to the Maine dairy industry as a whole; and that the loss of these dairy farms would seriously erode Maine's agricultural base. [1983, c. 573, § 4 (new).]

The Legislature finds that the higher prices paid to Maine milk producers selling on the Maine market result from the state and federal regulatory framework of the milk industry, as well as from actual cost differences which would exist independent of any regulatory framework. Specifically, higher prices on the Maine market are found to derive from cost savings realized by the Maine market producers in transporting milk to local markets, and from a comparatively higher fluid milk, Class I, utilization rate. Whereas, this favorable utilization rate is made possible by the presence of 2 independently regulated markets which allow the sale of excess Maine production on the Boston market, with the result that such excess is excluded from the calculation of utilization rates on the Maine market, the Legislature finds that the resulting price difference is in the nature of an economic benefit which has arbitrarily accrued to Maine market producers over Boston market producers. [1983, c. 573, § 4 (new).]

The Legislature finds that it is in the best interest of the Maine dairy industry and the well-being of the State as a whole to adjust prices paid to Maine milk producers to redistribute this benefit among Maine milk producers in both markets. In so doing, it is the intention of the Legislature to eliminate those differences attributable to the higher utilization rates which are a product of the 2 regulated markets. [1983, c. 573, §4 (new).]

The Legislature finds that dairy farms in Aroostook, Washington and northern Penobscot Counties presently operate at significantly higher costs because of their remoteness from markets and supplies; that they face greater risks because they operate on a closer margin; that their markets are less secure; and that negative changes in the overall economy have a magnified effect in the northern Maine region. [1999, c. 679, Pt. B, §6 (amd); §14 (aff).]

It is the intent of the Legislature that the reblending of Class I premiums under the Maine Milk Pool created by this chapter be deemed to be the reapportionment of an economic benefit created by regulation in order to smooth out differences in milk prices between different markets and not as a tax on the income of Maine market producers. It is also the interest of the Legislature that deductions from the Maine Milk Pool for promotion be deemed to be deductions from the amounts otherwise payable from the pool to Maine and Boston market producers. [1983, c. 573, § 4 (new).]

In addition to the above findings and as a result of the possible implementation of an over-order premium to be paid to milk producers, the Legislature finds that legislation is necessary to ensure that such a premium is distributed in a manner which is most advantageous and most equitable for all Maine milk producers and intends to achieve that result by enacting the provisions of this chapter relating to over-order pricing. The Legislature also finds that while the pooling and redistribution of such a premium as provided in this

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

chapter is in the best interest of all Maine milk producers, it intends that redistribution to be a separate and distinct purpose and function of the Maine Milk Pool not essential to the purpose and function of the pool as originally enacted. [1987, c. 447, § 3 (new).]

PL 1983, Ch. 573, §4 (NEW).

PL 1987, Ch. 447, §3 (AMD).

PL 1999, Ch. 679, §B14 (AFF).

PL 1999, Ch. 679, §B6 (AMD).

§3152. Definitions

As used in this chapter, unless the context indicates otherwise, the following words have the following meanings. [1983, c. 573, §4 (new).]

1. Blend price. "Blend price" means the price of milk per hundredweight computed as the sum of the Class I price multiplied by the percentage of milk sold as Class I milk, the Class II price multiplied by the percentage sold as Class II milk and the Class III price multiplied by the percentage sold as Class III milk. The blend price must be separately calculated for the base minimum price and the over-order premium.

[1991, c. 266, §3 (amd).]

1-A. Base minimum price. "Base minimum price" means Class I, Class II and Class III prices established pursuant to the northeast marketing area milk marketing order.

[2005, c. 382, Pt. F, §25 (amd).]

1-B. Adjusted base minimum price. "Adjusted base minimum price" means the base minimum price plus any amounts established by the Maine Milk Commission to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A.

[2005, c. 382, Pt. F, §26 (amd).]

2. Boston market dealer. "Boston market dealer" means any dealer as defined in subsection 4 who purchases milk from producers subject to the price regulations of the northeast marketing area milk marketing order.

[1999, c. 679, Pt. B, §9 (amd); §14 (aff).]

3. Boston market producer. "Boston market producer" means any Maine milk producer selling to a dealer marketing milk subject to the northeast marketing area milk marketing order, or any agricultural cooperative that buys milk from or handles milk for such a producer and sells it to such a dealer.

[1999, c. 679, Pt. B, §9 (amd); §14 (aff).]

4. Dealer. "Dealer" means any person or entity who purchases or receives milk from a producer within the State for processing and sale within or outside the State.

A. A producer-dealer which is not an agricultural cooperative shall be deemed a dealer only with respect to milk purchased or received from other producers. [1985, c. 646, §1 (new).]

B. A producer-dealer which is an agricultural cooperative shall be deemed a dealer:

(1) With respect to all milk purchased or received from other producers; and

(2) With respect to all milk purchased or received from its members except to the extent that it is exempt from the Maine Milk Pool under section 3152-A.

[1985, c. 646, §1 (new).]

C. An agricultural cooperative which is not a producer-dealer shall be deemed a dealer with respect to all milk subject to the producer price control authority of the Maine Milk Commission which it purchases or receives and which is not sold to a dealer.

[1985, c. 646, §1 (new).]

[1985, c. 646, §1 (rpr).]

4-A. Eligible marketing cooperative. "Eligible marketing cooperative" means an association of milk producers organized to negotiate producer prices higher than the minimum producer prices established pursuant to the northeast marketing area milk marketing

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

order and that the commissioner has determined will not, through its operation, evade, impair or undermine the purposes of this chapter.

[2005, c. 382, Pt. F, §27 (amd) .]

5. Maine market dealer. "Maine market dealer" means any dealer as defined in subsection 4 who sells milk subject to the price control authority of the Maine Milk Commission.

[1983, c. 573, §4 (new) .]

6. Maine market producer. "Maine market producer" means any Maine milk producer selling to a dealer marketing milk on the Maine market, or any agricultural cooperative that buys milk or handles milk for such a producer and sells it to such a dealer.

[1983, c. 573, §4 (new) .]

7. Maine Milk Pool. "Maine Milk Pool" means the sum of collections as prescribed in section 3153, from Maine market producers.

[1983, c. 573, §4 (new) .]

8. Northern Maine market producer. "Northern Maine market producer" means any Maine milk producer located in Aroostook County or Washington County or that portion of Penobscot County north of and including the minor civil divisions of Medway, T.A.R. 7 and Long A T.W.P. who sells to a dealer determined by the commissioner to be marketing milk on the Maine market or any agricultural cooperative that buys milk or handles milk for such a producer and sells it to such a dealer.

[2005, c. 382, Pt. F, §28 (amd) .]

8-A. Over-order premium. "Over-order premium" means that part of the minimum Class I, Class II and Class III prices established by the Maine Milk Commission pursuant to chapter 603, that exceeds the applicable Class I, Class II and Class III prices established pursuant to the northeast marketing area milk marketing order as adjusted to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A.

[1999, c. 679, Pt. B, §11 (amd); §14 (aff) .]

9. Plant price. "Plant price" means the F.O.B. price paid for milk at a milk processing plant, unless milk received at that plant is first collected at a federal order bulk reload station as defined by Part 1001 Federal Milk Order No. 1 in which case the plant price shall mean the price paid for milk at the reload station after deductions for subsequent transportation.

[1983, c. 573, §4 (new) .]

10. Producer-dealer. "Producer-dealer" means a dealer who himself produces a part or all of his milk or a person who produces milk and sells to a grocery store or dairy products store or similar commercial establishment, and shall include an agricultural cooperative comprised solely of dairy farmers that wholly owns and operates its processing facilities, and whose individual members hold a share of that ownership which is in direct proportion to that individual's share of all milk produced by cooperative members for the cooperative, provided that such an agricultural cooperative shall be a "producer-dealer" under this chapter only if it was in existence on January 1, 1986, and had been recognized on or before that date by the commissioner as meeting the criteria established in this subsection.

[1985, c. 646, §2 (amd) .]

11. Utilization rate. "Utilization rate" means the percentage of milk produced that is used as Class I or fluid milk, the percentage of milk produced that is used as Class II milk and the percentage of milk that is used as Class III milk.

[1991, c. 266, §7 (amd) .]

PL 1983, Ch. 573, §4 (NEW) .
PL 1985, Ch. 646, §1,2 (AMD) .
PL 1987, Ch. 447, §4,5 (AMD) .
PL 1989, Ch. 436, §2-4 (AMD) .
PL 1991, Ch. 266, §3-7 (AMD) .
PL 1999, Ch. 547, §B22 (AMD) .
PL 1999, Ch. 547, §B80 (AFF) .
PL 1999, Ch. 679, §B14 (AFF) .
PL 1999, Ch. 679, §B7-11 (AMD) .

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

PL 2001, Ch. 471, §A10 (AMD).

PL 2001, Ch. 471, §A11 (AFF).

PL 2005, Ch. 382, §F25-28 (AMD).

§3152-A. Agricultural cooperatives which are producer-dealers

1. Exemption; pool payments. An agricultural cooperative that is a producer-dealer under section 3152, subsection 10 is exempt from payment into and redistributions out of the Maine Milk Pool to the extent that the milk sold or otherwise distributed by the agricultural cooperative does not exceed 5,000,000 pounds a month. Nothing in this subsection exempts an agricultural cooperative that is a producer-dealer from any other requirements of this chapter. In any month in which the milk sold or otherwise distributed by the agricultural cooperative that is a producer-dealer exceeds 5,000,000 pounds, the agricultural cooperative shall make payment into and redistributions out of the Maine Milk Pool in accordance with this chapter with respect to that milk that is in excess of 5,000,000 pounds.

[2005, c. 382, Pt. F, §29 (amd).]

2. Promotion; administration.

[1999, c. 161, §4 (rp).]

PL 1985, Ch. 646, §3 (NEW).

PL 1999, Ch. 161, §4 (AMD).

PL 2005, Ch. 382, §F29 (AMD).

§3153. Maine Milk Pool

1. Establishment. Within 180 days after September 23, 1983, the commissioner shall adopt rules establishing a fund to be known as the "Maine Milk Pool," to which all money collected from Maine dealers pursuant to subsection 2 must be credited. These funds must be redistributed to eligible Maine market producers, eligible northern Maine market producers and eligible Boston market producers according to procedures established under subsection 4.

[1999, c. 161, §5 (amd).]

2. Collections from dealers. Collections from dealers must be made as follows.

A. Effective January 1, 2000, each Maine market dealer shall, on a monthly basis, calculate for its Maine market producers the amount of payment at the adjusted base minimum price that would be payable to its Maine market producers according to the price calculated using that dealer's utilization rate, referred to in this subsection as "the Maine sample payment amount," and the amount of payment that would be due its Maine market producers according to the price calculated using the applicable component prices and producer price differential for Suffolk County, Massachusetts for the northeast marketing area milk marketing order, referred to in this subsection as "the comparable Boston payment amount." Except as otherwise provided in this paragraph, in any month in which the Maine sample payment amount is more than the comparable Boston payment amount, the Maine market dealer shall pay to the Maine Milk Pool the amount of the difference. Based on the fact that northern Maine market producers presently operate at significantly higher costs because of their remoteness from markets and supplies, that they face greater risks because they operate on a closer margin and because their markets are less secure, payments to the Maine Milk Pool at the adjusted base minimum price attributable to northern Maine market producers must be reduced by 1/2 and those producers' initial payments under this section must be increased by the corresponding amounts.

(1) For any month in which there is only one Maine market dealer subject to this paragraph and the milk sold or otherwise distributed by that dealer during that month does not exceed 1,000,000 pounds, the additional payment due to the Maine Milk Pool must instead be made by that dealer to its Maine market producers.

[2005, c. 382, Pt. F, §30 (amd).]

B. For any month in which the Maine sample payment amount is less than the comparable Boston payment amount, the Maine market dealer may deduct the difference from the next month's initial payment to producers under section 2954-A, subsection 2, paragraph A. Upon the termination of their business relationship, producers are liable to dealers for all sums advanced under this paragraph that have not been recouped by way of deduction. [2005, c. 382, Pt. F, §30 (amd).]

C. For any month in which the Maine Milk Commission has established minimum prices payable to producers that include an over-order premium that the commission has determined is attributable to the activity of an eligible marketing cooperative, this paragraph applies. Each Maine market dealer shall, on a monthly basis, calculate for its Maine market producers the amount of payment from the over-order premium that would be payable to its Maine market producers according to the blend price calculated using that

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

dealer's utilization rate. With respect to those producers who have designated an eligible marketing cooperative to receive the over-order premium, the dealer shall make the payment to the eligible marketing cooperative. With respect to those producers who have not designated an eligible marketing cooperative to receive the over-order premium, the dealer shall make the payment into the Maine Milk Pool. [2005, c. 382, Pt. F, §30 (amd).]

D. For any month in which the Maine Milk Commission has established minimum prices payable to producers that include an over-order premium that the commission has determined is not attributable to the activity of an eligible marketing cooperative, the over-order premium is not pooled. [2005, c. 382, Pt. F, §30 (amd).]

E. [1987, c. 874, §2, 4 (rp).]

E. [1989, c. 436, §6 (new); c. 878, Pt. B, §8 (rp).]

F. For any month in which the Maine Milk Commission has included in Class I, Class II or Class III prices any amounts to reflect the increased costs of production pursuant to section 2954, subsection 2, paragraph A, those amounts must be paid into the Maine Milk Pool for redistribution in accordance with subsection 4. [2005, c. 382, Pt. F, §30 (amd).]

G. [2005, c. 382, Pt. F, §30 (rp).]

[2005, c. 382, Pt. F, §30 (amd).]

3. Additional collections for promotion.

[1999, c. 161, §6 (rp).]

4. Redistribution of pool; base minimum price. The commissioner shall, by rule, adopt procedures to redistribute payments into the Maine Milk Pool under subsection 2, paragraphs A and F on an equal basis to eligible Maine market producers and eligible Boston market producers, except that:

A. If any Boston market producer whose farm is located within 140 miles of Boston receives a plant price, excluding deductions or additions imposed by the northeast marketing area milk marketing order that is greater than the amount of the initial payment to Maine market producers under section 2954-A, subsection 2, paragraph A, the commissioner shall credit that additional amount against the redistribution from the Maine Milk Pool to which that producer would otherwise be entitled in order to avoid potential inequities arising from equal redistribution; [2005, c. 382, Pt. F, §31 (amd).]

B. If the credit against redistribution exceeds the pool payment due the producer, that producer shall pay into the Maine Milk Pool an amount equal to the excess or that producer's share of the cost of promotion, whichever is less. The commissioner may provide by rule that these amounts must be deducted from future pool payments made under this subsection to that producer or from pool payments due to that producer under subsection 5, or from future payments due to that producer for milk; and [2005, c. 382, Pt. F, §31 (amd).]

C. If the commissioner determines that payments from the pool will be made to dairies, cooperatives or some other entity as a representative of producers, then the dairy, cooperative or other representative shall pay to the producer the amount owed to that producer within such time period as is determined by the procedures established by rule under this subsection. [2005, c. 382, Pt. F, §31 (amd).]

D. [1987, c. 447, §7 (rp).]

[2005, c. 382, Pt. F, §31 (amd).]

5. Redistribution of pool; over-order premium. Redistribution of payments into the pool under subsection 2, paragraph C is governed by this subsection.

A. For any month in which subsection 2, paragraph C is in effect, the commissioner shall pay those Maine market producers whose over-order premium was paid into the Maine Milk Pool an initial redistribution under this paragraph. In calculating the rate of this redistribution and the timing of its payment, the commissioner shall attempt to achieve, insofar as practicable, an initial redistribution that ensures that Maine producers who are not members of eligible marketing cooperatives receive an initial redistribution equivalent to that received by Maine producers who are members of eligible marketing cooperatives. The commissioner shall consider the following factors:

- (1) The gross rate of redistribution used by eligible marketing cooperatives to calculate payment to their members;
- (2) Reasonable administrative and other charges deducted by eligible marketing cooperatives from the redistributions made to their members;
- (3) The timing of the redistributions made by an eligible marketing cooperative to its members; and

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

(4) Such other factors as may be relevant to the goal of achieving, insofar as practicable, price equity among producers.

[2005, c. 382, Pt. F, §32 (amd).]

B. The commissioner shall redistribute the remainder of the amount paid into the Maine Milk Pool under subsection 2, paragraph C on an equal basis to eligible Maine market producers and eligible Boston market producers; except that if any Maine market producer or Boston market producer receives an additional premium other than one attributable to the activity of an eligible marketing cooperative, the commissioner shall credit that additional premium against the redistribution to which that producer would otherwise be entitled under this paragraph in order to avoid potential inequities arising from equal redistribution. [2005, c. 382, Pt. F, §32 (amd).]

C. If the commissioner determines that the basis for redistribution adopted by an eligible marketing cooperative is disadvantageous to Maine producers belonging to that cooperative, that the cooperative has not made redistributions to its Maine members in a timely manner or that the administrative or other fees deducted by the cooperative from redistributions to its members are excessive, unjust or unreasonable, the commissioner may commence proceedings to revoke the eligible status of the cooperative pursuant to section 3155-B. [2005, c. 382, Pt. F, §32 (amd).]

C-1. [1987, c. 874, §§3, 4 (rp).]

D. The commissioner shall, by rule, adopt such procedures as are necessary to implement this subsection. If the commissioner determines that payments from the pool will be made to dairies, cooperatives or some other entity as a representative of producers, then the dairy, cooperative or other representative shall pay to the producer the amount owed to that producer within such time period as is determined by the procedures established by rule under this subsection. [1987, c. 447, §8 (new).]

[2005, c. 382, Pt. F, §32 (amd).]

§HN6. Rules. §HN The commissioner shall adopt by routine technical rule such procedures as are necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 382, Pt. F, §33 (new).]

PL 1983, Ch. 573, §4 (NEW).
PL 1985, Ch. 506, §B5 (AMD).
PL 1987, Ch. 447, §6-8 (AMD).
PL 1987, Ch. 874, §2-4 (AMD).
PL 1989, Ch. 436, §5,6 (AMD).
PL 1989, Ch. 878, §B8,9 (AMD).
PL 1991, Ch. 12, § (AMD).
PL 1991, Ch. 266, §8 (AMD).
PL 1995, Ch. 693, §17,18 (AMD).
PL 1995, Ch. 693, §25 (AFF).
RR 1997, Ch. 2, §32 (COR).
PL 1999, Ch. 161, §5,6 (AMD).
PL 1999, Ch. 210, §1 (AMD).
PL 1999, Ch. 679, §B12,13 (AMD).
PL 1999, Ch. 679, §B14 (AFF).
PL 2001, Ch. 433, §1 (AMD).
PL 2005, Ch. 382, §F30-33 (AMD).

§3153-A. Dairy stabilization subsidy

If the base price of milk falls below \$16.94 per hundredweight in any month beginning September 1, 2003 and ending May 31, 2004, the administrator of the Maine Milk Pool shall distribute to Maine milk producers on a per hundredweight basis 40% for the months of January to May 2004 of the difference between \$16.94 per hundredweight and the base price of milk per hundredweight. The amount distributed for milk produced during the period between January 1, 2004 and May 31, 2004 may not exceed \$2,100,000. The Governor shall provide these funds to the Maine milk pool administrator for distribution to Maine milk producers, as provided for in this section, during the months of October 2003 to June 2004. The base price of milk is the Suffolk County, Massachusetts Class I price of milk as determined for each month by the Northeast Market Administrator of the United States Department of Agriculture. [2003, c. 522, §1 (amd).]

PL 2003, Ch. 120, §2 (NEW).

PL 2003, Ch. 522, §1 (AMD).

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

§3153-B. Dairy stabilization

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Annual production" means the total quantity of milk produced in a 12-month period beginning June 1st and ending May 31st of the next calendar year. Total quantity is expressed in hundredweight. [2003, c. 648, §2 (new).]

B. "Base price" means the price of milk calculated each month in accordance with subsection 2. [2003, c. 648, §2 (new).]

C. "Suffolk County price" means the Suffolk County, Massachusetts statistical uniform price of milk as determined for each month by the Northeast Market Administrator of the United States Department of Agriculture and expressed per hundredweight of milk. [2003, c. 648, §2 (new).]

D. "Target price" means the short-run break-even point for each of 3 categories of annual production. Target prices are determined in accordance with subsection 3. [2003, c. 648, §2 (new).]

[2003, c. 648, §2 (new).]

2. Calculation of base price. Base price is calculated each month by adding to the Suffolk County price:

A. The amount per hundredweight paid to milk producers in the State as monthly premiums established by the Maine Milk Commission under section 2954, subsection 1; and [2003, c. 648, §2 (new).]

B. The amount per hundredweight received by milk producers as a monthly payment from the Federal Government due to low milk prices. [2003, c. 648, §2 (new).]

Cost-of-production adjustments established under section 2954, subsection 2, paragraph A are not considered premiums for the purpose of calculating base price.

[2003, c. 648, §2 (new).]

3. Determination of target prices. The Maine Milk Commission shall establish 3 tiers of production, each representing a range of annual production. The commission shall use the most recent studies conducted in accordance with section 2952-A, subsection 3, paragraph A to estimate the short-run break-even point within each tier.

[2005, c. 382, Pt. F, §34 (amd).]

4. Distribution of dairy stabilization support. Beginning July 1, 2004 for each month that the base price is below the target price, the administrator of the Maine Milk Pool shall distribute to each milk producer in the State an amount of money equal to the previous month's production in hundredweight multiplied by the difference between the applicable target price and the base price in the previous month.

[2003, c. 648, §2 (new).]

PL 2003, Ch. 648, §2 (NEW).

PL 2005, Ch. 382, §F34 (AMD).

§3153-C. Milk Income Loss Contract

1. Milk Income Loss Contract. For months in which payments are made under the federal Milk Income Loss Contract authorized by Section 1502 of the federal Farm Security and Rural Investment Act of 2002, the administrator of the Maine Milk Pool shall make payments to those milk producers in the State whose annual production exceeds the cap under the federal Milk Income Loss Contract. The administrator shall distribute an amount per hundredweight equal to the federal Milk Income Loss Contract payment for that month for production in excess of the federal limit until that producer's annual production reaches 5,000,000 pounds. No payment is made under this section for annual production in excess of 5,000,000 pounds. For purposes of this section, "annual production" has the same meaning as in section 3153-B, subsection 1, paragraph A.

[2003, c. 648, §2 (new).]

2. Optional delay of payments. A milk producer eligible for payments under this section may choose to delay the month of the initial payment by notifying the administrator of the Maine Milk Pool on or before the 15th day of the month following the month in which production exceeded the annual production cap under the federal Milk Income Loss Contract. The producer must state the month requested for the initial payment. A producer may change the month selected for the initial payment by notifying the administrator on or

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

before the 15th day of the month preceding the selected month. After an initial payment under this section, the administrator of the Maine Milk Pool shall make subsequent payments each month in which payments are made under the federal Milk Income Loss Contract until that producer's annual production reaches 5,000,000 pounds. When a producer chooses to delay payments under this section, production for each month that payments are delayed is not counted towards the annual production cap of 5,000,000 pounds.

[2005, c. 230, §1 (new).]

PL 2003, Ch. 648, §2 (NEW).

PL 2005, Ch. 230, §1 (AMD).

§3153-D. Transfer of revenues

On or before the 15th day of each month, the administrator of the Maine Milk Pool shall certify the amounts to be distributed for the previous month pursuant to sections 3153-B and 3153-C to the State Controller, who shall transfer the certified monthly amount when certified from General Fund undedicated revenue to the Maine Milk Pool Other Special Revenue Funds account. [2005, c. 418, §1 (new).]

PL 2005, Ch. 418, §1 (NEW).

§3154. Administration

1. Authority of commissioner. The commissioner may enter into agreement with the Maine Milk Commission or other state agency for administering the provisions of this chapter, and may employ such staff and services as may be necessary.

[1983, c. 573, §4 (new).]

2. Deductions. Prior to the redistribution of the pool as provided in section 3153, the commissioner shall deduct the following:

A. Amounts sufficient to cover the costs of administering this chapter. Those amounts must be determined annually and must be adopted by rule by the commissioner; and [1995, c. 693, §19 (amd); §25 (aff).]

B. [1999, c. 161, §7 (rp).]

[1999, c. 161, §7 (amd).]

3. Records and information. The commissioner may receive and utilize such reports and other information from any dealer as furnished to the Maine Milk Commission pursuant to section 2956 for the purpose of administering this chapter. The commissioner may also require any dealer purchasing milk from producers who may be eligible for participation in the milk pool to furnish directly such reports and other information as may be necessary to determine the eligibility of those producers and the extent of their participation.

[1983, c. 573, §4 (new).]

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

[1987, c. 447, §9 (new).]

In the event that information requested is not adequately provided by any dealer, the commissioner may require producers who may be eligible for participation in the Maine Milk Pool to furnish such reports and other information as may be necessary to determine their eligibility and the extent of their participation. [2005, c. 382, Pt. F, §35 (amd).]

The cost of obtaining information required to determine eligibility and extent of participation shall be shared by all producers as provided in subsection 2, except that added costs incurred in obtaining information directly from a producer whose dealer does not furnish that information shall be assessed to that producer. [1983, c. 573, §4 (new).]

An eligible marketing cooperative, or an organization applying for recognition as an eligible marketing cooperative, shall furnish the commissioner all information, records and reports necessary for the commissioner to determine and monitor the cooperative's initial eligibility and its ongoing compliance with this chapter. In addition to any other available remedies, the commissioner may commence proceedings pursuant to section 3155-B, to revoke the eligible status of a cooperative that willfully fails to provide information, records or reports requested by the commissioner. [2005, c. 382, Pt. F, §36 (amd).]

The commissioner shall prescribe by rule the form, content and time for filing of any reports which may be required under this section. All reports shall be subject to audit. [1983, c. 573, §4 (new).]

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

PL 1983, Ch. 573, §4 (NEW) .
PL 1985, Ch. 506, §B6 (AMD) .
PL 1987, Ch. 447, §9,10 (AMD) .
PL 1995, Ch. 693, §19 (AMD) .
PL 1995, Ch. 693, §25 (AFF) .
PL 1999, Ch. 161, §7 (AMD) .
PL 2005, Ch. 382, §F35,36 (AMD) .

§3155. Penalties

Any person who fails to furnish reports required by the commissioner pursuant to section 3154 in a timely fashion shall be subject to the following civil penalties, to be collected by the commissioner in a civil action: [1983, c. 816, Pt. A, § 1 (amd) .]

1. First violation. For the first violation, a civil penalty not to exceed \$100; and

[1983, c. 573, § 4 (new) .]

2. Subsequent violation. For each subsequent violation within one year of the first violation, a civil penalty not to exceed \$500.

[1983, c. 573, § 4 (new) .]

Persons who violate any other rules promulgated under this chapter shall be subject to a civil penalty not to exceed \$100 to be collected by the commissioner in a civil action. All penalties collected by the commissioner shall be paid to the Treasurer of State for deposit to the General Fund. In addition to other available remedies, the commissioner may bring a civil action to collect any amounts owed to the Maine Milk Pool under this chapter. [1987, c. 447, § 11 (amd) .]

PL 1983, Ch. 573, §4 (NEW) .
PL 1983, Ch. 816, §A1 (AMD) .
PL 1987, Ch. 447, §11 (AMD) .

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

1. Violations. No eligible marketing cooperative may:

A. Collect or attempt to collect from a Maine market dealer, directly or indirectly, all or any part of an over-order premium with respect to the milk of a Maine market producer who has not designated that cooperative to receive the over-order premium pursuant to section 3153, subsection 2, paragraph C; [1987, c. 447, §12 (new) .]

B. Collect or attempt to collect from a Maine market dealer, directly or indirectly, any handling charge, fee or other payment in lieu of an over-order premium which the cooperative is barred from collecting under paragraph A; [1987, c. 447, §12 (new) .]

C. Discriminate against any Maine market dealer making payments in accordance with section 3153, subsection 2, paragraph C, in the marketing of its members' milk based in whole or in part on the extent to which the dealer's producers have joined or refused to join the cooperative; or [1987, c. 447, §12 (new) .]

D. Collect or attempt to collect all or any part of an over-order premium from a Maine market dealer prior to determination of its eligibility or during any period for which its eligible status has been revoked by the commissioner. [1987, c. 447, §12 (new) .]

[1987, c. 447, §12 (new) .]

2. Civil penalties. Each violation of this section is punishable by a civil penalty not to exceed \$2,000 for a first violation and \$5,000 for each subsequent violation, which penalties may be collected by the commissioner in a civil action. All penalties collected by the commissioner shall be paid to the Treasurer of State for deposit into the General Fund.

[1987, c. 447, §12 (new) .]

3. Injunctive relief. The Superior Court shall have jurisdiction upon complaint filed by the commissioner to restrain or enjoin any person from committing any act prohibited by subsection 1 or from violating any order or decision issued by the commissioner pursuant to subsection 4. The commissioner shall not be required to post a bond when applying for an injunction under this subsection.

Title 7, Chapter 611, MILK POOLING (HEADING: PL 1983, c. 573, §4 (new))

[1987, c. 447, §12 (new).]

4. Administrative enforcement. When the commissioner, after such investigation as the commissioner determines appropriate, believes that a violation of this section has occurred, the commissioner may order the eligible marketing cooperative to cease that violation. In lieu of, or in addition to, such an order and notwithstanding Title 4, section 152, subsection 9 and Title 5, section 10051, subsection 1, the commissioner may also revoke the eligible status of the cooperative for purposes of this chapter for a period not to exceed one year for a first violation, 2 years for a 2nd violation and permanently for a 3rd or subsequent violation. Before issuing such an order or revoking a cooperative's eligibility, the commissioner shall afford the cooperative an opportunity for a hearing. Any person aggrieved by a final order or decision issued under this subsection may obtain judicial review in Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C. In responding to such a petition, the commissioner may seek enforcement of the order or decision, including civil penalties for any violation found, and the court, if it upholds the order or decision, may order its enforcement, including civil penalties.

[1999, c. 547, Pt. B, §23 (amd); §80 (aff).]

Nothing in this section is intended to require that the commissioner take administrative enforcement action prior to seeking judicial relief for any violation of this section or is intended to limit the commissioner's ability to bring an independent action to enforce any decision or order issued by him, including civil penalties for any violation found by him. [1987, c. 447, §12 (new).]

PL 1987, Ch. 447, §12 (NEW).

PL 1999, Ch. 547, §B23 (AMD).

PL 1999, Ch. 547, §B80 (AFF).

§3155-B. Eligible marketing cooperative; revocation of status

Notwithstanding section 3155-A, Title 4, section 152, subsection 9 and Title 5, section 10051, subsection 1, the commissioner may revoke the eligible status of a marketing cooperative upon a determination that it has through its operation evaded, impaired or undermined the purposes of this chapter. [2005, c. 382, Pt. F, §37 (new).]

PL 2005, Ch. 382, §F37 (NEW).

§3156. Transportation allowances

The commissioner shall annually conduct a study investigating the costs of transporting milk from producers' farms to dairy processing plants and shall examine existing and practicably achievable cost efficiencies by market areas as defined by the Maine Milk Commission pursuant to section 2951, subsection 5. Based upon that study, the commissioner shall annually recommend a schedule of maximum allowable transportation charges to the Maine Milk Commission. [1983, c. 573, § 4 (new).]

PL 1983, Ch. 573, §4 (NEW).

United States Court of Appeals

For the First Circuit

No. 00-1040

GRANT'S DAIRY -- MAINE, LLC,

Plaintiff, Appellant,

v.

COMMISSIONER OF MAINE DEPARTMENT OF AGRICULTURE, FOOD

& RURAL RESOURCES, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MAINE

[Hon. Morton A. Brody, U.S. District Judge]

Before

Selya, Circuit Judge,

Coffin, Senior Circuit Judge,

and Stahl, Circuit Judge.

John H. Vetne, with whom Judith H. Mizner was on brief, for appellant.

Lucinda E. White, Assistant Attorney General, with whom Andrew Ketterer, Maine Attorney General, and William R. Stokes, Assistant Attorney General, were on brief, for appellees.

SELYA, Circuit Judge. Federally regulated milk dealers ("handlers") are required by federal law to pay a minimum price for all the raw milk that they purchase from dairy farmers ("producers").⁽¹⁾ In

addition, the State of Maine sets a minimum price that in-state handlers must pay to in-state producers with respect to milk produced, processed, and sold in Maine ("Maine milk"). Plaintiff-appellant Grant's Dairy -- Maine, LLC ("Grant"), a fully federally regulated handler based in northern Maine, brought suit against several state plenipotentiaries, including the Commissioner of the Maine Department of Agriculture, Food, and Rural Resources and the members of the Maine Milk Commission ("the Commission"), arguing that, as applied, Maine's additional level of price regulation violated the United States Constitution. In an unpublished opinion, the district court rejected Grant's constitutional claims. Grant pursues its Supremacy Clause and Commerce Clause challenges in this venue. Discerning no constitutional infirmity, we affirm the lower court's entry of summary judgment.

I. BACKGROUND

To place Grant's antipathy to Maine's imposition of a minimum milk price in context, we provide a brief overview of applicable federal and state regulation and then trace the interaction of the two schemes.

A. Federal Regulation.

More than six decades ago, the Agricultural Marketing Agreement Act of 1937 ("AMAA"), now codified, as amended, at 7 U.S.C. §§ 601-626, authorized the Secretary of Agriculture (the Secretary) to set minimum prices for milk. Id. § 608c(1) & (2). To this end, the Secretary divided the country into regions, each of which is known as a federal order milk marketing area. ⁽²⁾ 7 C.F.R. §§ 1001-1135. In each area, a milk marketing order sets minimum prices that handlers must pay producers. The Northeast Marketing Area includes five New England states (Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont), Delaware, New Jersey, the District of Columbia, and portions of Maryland, New York, Pennsylvania, and Virginia. 7 C.F.R. § 1001.2. Maine is not part of this, or any other, federal order milk marketing area. See 64 Fed. Reg. 16,056 (1999).

Although Maine is not within a federal order area, certain aspects of the federal paradigm are pertinent to an understanding of the present problem. First, the federal system takes account of the fact that the value of milk varies according to use. See West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 189 n.1 (1994). Before federal regulation came upon the scene, producers vied to sell their milk for processing as fluid milk (the use that fetched the highest price). Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1343 (6th Cir. 1994). The federal order system obviated the need for such cutthroat competition. Under it, raw milk is classified into four use categories: Class I (fluid milk); Class II (soft dairy products, e.g., yogurt and cottage cheese); Class III (spreadable and hard cheese); and Class IV (butter and powdered milk). 7 C.F.R. § 1000.40. Each class of milk commands a different price. Id. § 1000.50. Though handlers pay for raw milk based on the uses to

which they put it, id. §§ 1001.60, 1001.71, producers ultimately receive a uniform "blend" price based on the percentage of milk used in each class throughout the marketing area, id. §§ 1001.72-1001.73. The purpose of this pooling mechanism is to ensure that all producers selling milk into a particular federal order area receive a uniform minimum price for their milk regardless of the milk's end use. See 7 U.S.C. § 608c(5)(B)(ii); see also West Lynn, 512 U.S. at 189 n.1 (discussing computation of blend price).

Another important aspect of the federal order system relates to geography. The minimum price is subject to an adjustment based on the location of the handler's plant. See 7 C.F.R. § 1000.52 (table of price differentials arranged by county). These location adjustments recognize the fact that handlers holding milk near areas of high consumption have a more valuable commodity than handlers holding milk out in the boondocks (who must underwrite the cost of transporting their milk to population centers). Lansing Dairy, 39 F.3d at 1344-45. Thus, for example, in the Northeast Marketing Area, handlers near Boston pay more for raw milk than handlers in outlying rural communities.

B. Maine Regulation.

Under the Maine Milk Commission Act, Me. Rev. Stat. Ann. tit. 7, §§ 2951-2963, the Commission is authorized to set minimum prices anent Maine milk. Id. § 2954(1). The minimum price that Maine handlers⁽³⁾ must pay to Maine producers for milk sold within Maine usually is comparable to the prevailing federal price in southern New England, plus any premium the Commission decides is appropriate to reflect the added cost of producing Maine milk. Id. § 2954(2)(A). The minimum price that the Commission sets is uniform throughout the state, without any location adjustments. Maine handlers make payments at (or above) the Maine minimum directly to the producers with whom they deal. Id. § 2954-A(1).

Maine producers sell milk not only into the Maine market, but also into the federal order area. Because an inordinately high percentage of milk that stays in Maine is used as Class I drinking milk, Maine producers selling into the Maine market historically received higher prices for their milk than Maine producers selling into the federal order area. To counteract this phenomenon, the Maine legislature in 1983 passed the Maine Milk Pool Act, Me. Rev. Stat. Ann. tit. 7, §§ 3151-3156. This law requires that all Maine producers ultimately receive the same blend price (based on overall usage in the federal market). Id. § 3151. Maine handlers who have a higher Class I utilization than the federal average pay that difference into the Maine Milk Pool. Id. § 3153(2). The funds in the Maine Milk Pool are distributed among all Maine producers, thus equalizing the prices received for Maine milk. Id. § 3153(4).

C. The Federal/State Interface.

The case at bar arises from the interaction of these two regulatory systems. A handler that sells a stipulated percentage of its milk

into the Northeast Marketing Area -- the figure, once ten percent, is now twenty-five percent -- becomes a fully federally regulated handler, even if it is located outside the area. 7 C.F.R. § 1001.7 (a). Being fully federally regulated means that a handler must pay no less than the federal minimum price on all the milk that it receives at its plant and must contribute to the federal pool that equalizes the price paid to producers for milk put to divergent uses. Id. §§ 1001.71, 1001.73.

In 1990, H.P. Hood, one of the first Maine handlers to become fully federally regulated, simultaneously stopped making payments into the Maine Milk Pool and started making payments into the federal pool. Maine brought suit in a state court to compel Hood to continue paying into the Maine Milk Pool. In an unpublished rescript dated September 16, 1991, a state superior court judge ruled that the Maine Milk Pool Act did not apply to fully federally regulated Maine handlers. From then on, federally regulated handlers in Maine turned a cold shoulder to the Maine Milk Pool. Hood, however, continued to comply with Maine's minimum price requirement.

Grant is a Maine corporation that owns and operates a fluid milk bottling plant in Bangor, Maine. In 1997, Grant for the first time began selling enough milk into the Northeast Marketing Area to become fully federally regulated. When that occurred, Grant informed the Commission that it did not consider itself bound to pay its Maine producers the Maine minimum price, but would pay them instead the federal minimum (location adjusted to Bangor). The Commission disagreed, maintaining that Grant, notwithstanding its federally regulated status, was obligated to pay the Maine minimum. In a preemptive strike, Grant brought suit in Maine's federal district court challenging the authority of state officials to enforce the Maine minimum in these circumstances.

The district court, in an interlocutory order, found it "reasonably clear" that Maine's statute did not authorize the Commission to require a fully federally regulated handler to honor Maine's minimum pricing. Grant's Dairy, Inc. v. McLaughlin, 20 F. Supp. 2d 112, 116-18 (D. Me. 1998). Within months, however, the Maine legislature passed "An Act to Clarify the Authority of the Maine Milk Commission," Me. Rev. Stat. Ann. tit. 7, § 2954(9) ("the Clarification Act"). This legislation cleared away the mist and made it plain that Maine intended to require its fully federally regulated handlers to pay the Maine minimum price to Maine producers for milk destined to be sold within the state.⁽⁴⁾ With the meaning of the Maine Milk Commission Act clarified, the district court, ruling on cross-motions for summary judgment, determined that Maine's system passed constitutional muster. This appeal ensued.

II. ANALYSIS

In simplified form, Grant's principal contentions are that Maine's statutory scheme (1) contravenes the Supremacy Clause because its state-wide uniform milk price neutralizes the effect of the federal

location adjustments, and (2) offends the dormant Commerce Clause because it discriminates against interstate commerce. As a subset of the latter argument, Grant says that, at the very least, there are genuine issues of material fact relating to whether the benefits of the legislation justify its burdens. After delineating the standard of review, we turn to these points.

A. Standard of Review.

A district court may order summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The inner workings of the summary judgment model are familiar:

Once a properly documented motion has engaged the gears of Rule 56, the party to whom the motion is directed can shut down the machinery only by showing that a trialworthy issue exists. As to issues on which the summary judgment target bears the ultimate burden of proof, she cannot rely on an absence of competent evidence, but must affirmatively point to specific facts that demonstrate the existence of an authentic dispute. Not every factual dispute is sufficient to thwart summary judgment; the contested fact must be "material" and the dispute over it must be "genuine." In this regard, "material" means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, "genuine" means that the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party

McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995) (citations and some internal quotation marks omitted). Where, as here, summary judgment has been granted, the court of appeals reviews the matter de novo, regarding the record and all reasonable inferences therefrom in the light most hospitable to the party who lost below. Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178, 184 (1st Cir. 1999); Garside v. Osco Drug, Inc., 895 F.2d 46, 48 (1st Cir. 1990).

B. The Supremacy Clause.

Grant maintains that, as applied to it, Maine's statutory scheme is preempted under the Supremacy Clause. See U.S. Const. art. VI, cl. 2 (declaring that federal law "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). Congressional intent is the touchstone of preemption analysis. Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992); English v. General Elec. Co., 496 U.S. 72, 78-79 (1990). Moreover, in undertaking such analyses courts "start with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

Federal law may preempt state law either expressly or by implication. Express preemption occurs only when a federal statute explicitly confirms Congress's intention to preempt state law and defines the extent of that preclusion. English, 496 U.S. at 78-79. Implied preemption can occur in one of two ways: field preemption or conflict preemption. Massachusetts Ass'n of HMOs v. Ruthardt, 194 F.3d 176, 179 (1st Cir. 1999). Field preemption occurs when a federal regulatory scheme is so pervasive as to warrant an inference that Congress did not intend the states to supplement it. Gade v. National Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992). Conflict preemption takes place either when compliance with both state and federal regulations is impossible or when state law interposes an obstacle to the achievement of Congress's discernible objectives. Id.

In this appeal, Grant does not maintain that Congress preempted the field of milk pricing regulations or that simultaneous compliance with both the federal and state milk pricing schemes is infeasible. Instead Grant argues that, while the AMAA allows complementary state regulation of milk prices, the Maine Milk Commission Act, as clarified, frustrates Congress's core objectives. This frustration occurs, Grant tells us, because Maine's uniform state-wide price neutralizes the carefully calibrated federal system of location adjustments. After all, the federal scheme recognizes that raw milk has different values at different locations and strives to equalize producer revenue and promote handler equity by means of location adjustments. In Grant's view, when Maine forces a federally regulated handler to pay a flat, state-wide minimum price in excess of the location-adjusted federal price, it impairs the accomplishment of these federal objectives.

The theoretical underpinnings of this argument are impeccable. The "obstacle to accomplishment" branch of implied preemption doctrine came into clear focus in Hines v. Davidowitz, 312 U.S. 52 (1941), in which the Court stated that inquiries into preemption are designed, inter alia, to determine whether "under the circumstances of [the] particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. at 67. The Hines Court emphasized the contextual nature of such questions. See id. at 68. We take that cue and, recognizing the salience of context, undertake a search for the objectives that underlie the federal location adjustment system.

We start by considering the generic objectives of federal milk price regulation. The AMAA makes clear that achieving price parity for producers, 7 U.S.C. § 602(1), and ensuring the orderly supply of agricultural commodities (thereby promoting the mutual interests of producers and consumers), id. § 602(4), are among the relevant goals of the legislation. The statutory mandate that the Secretary adjust milk prices to "reflect [economic] factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs," id. § 608c(18), also must be factored into the mix. We

therefore agree with the Court of Appeals for the District of Columbia Circuit that the objectives of federal milk price regulation, generally, are "to guarantee producers parity prices, to protect the health and purses of consumers, to establish and safeguard orderly marketing conditions, and to assure to each area of the country a sufficient quantity of pure and wholesome milk." Schepps Dairy, Inc. v. Bergland, 628 F.2d 11, 19 (D.C. Cir. 1979) (internal citations and quotation marks omitted).

We next move from the general to the specific. Gleaning information about the policies behind the federal location adjustment regime requires us to canvass statements by the United States Department of Agriculture (USDA) germane to that issue. According to the USDA, location adjustments are appropriate because "milk value varies by location." 64 Fed. Reg. 16,117 (1999). As Justice Harlan explained: "Delivery to a plant located nearby the consumer market is, of course, advantageous to the handler and the producer is compensated for this service. . . . Conversely, depositing milk at handlers' plants in outlying districts results in a negative adjustment." Zuber v. Allen, 396 U.S. 168, 178 n.11 (1969). While the USDA later identified handler equity with regard to raw product costs as a goal of its matrix of location adjustments, see 64 Fed. Reg. 16,109 (1999), the main thrust of the adjustments is to ease the movement of raw milk from areas in which the supply is plentiful to areas in which the supply is short. See Lansing Dairy, 39 F.3d at 1344.

Having catalogued the relevant federal objectives, we next inquire whether Maine's non-location-adjusted minimum price clearly conflicts with those objectives. E.g., English, 496 U.S. at 79 (stating that preemption is not to be implied absent a clear conflict); Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982) (requiring an irreconcilable conflict as a condition precedent for preemption, not just a hypothetical or potential conflict). Maine's pricing scheme conflicts with neither the AMAA's overarching purposes (namely, achieving parity in producer prices and ensuring an orderly supply of commodities) nor the goals of federal milk price regulation (namely, achieving price equality for producers, safeguarding orderly market conditions, and assuring a sufficient milk supply). The Maine minimum promotes price equality for Maine dairy farmers without in any way detracting from the orderliness of the market. Furthermore, it contributes to the promotion of an adequate supply of milk by assuring Maine producers of a steady, predictable income stream (which in turn encourages production).

In arguing that Maine's uniform minimum price frustrates federal objectives, Grant emphasizes that the state system requires it to pay its Maine producers the same price paid by its Maine-based competitors to the south (who are situated closer to the more densely populated urban areas), with no adjustment for its incrementally higher transportation costs. If the federal system alone were in place, Grant's thesis runs, it would pay producers less than handlers do in southern Maine, thereby offsetting its greater transportation costs. Thus, one effect of the Maine minimum price is to make Grant's sales in southern Maine less profitable than those of its competitors.

We understand Grant's consternation and, to some extent, we sympathize with it. But federal location adjustments were not designed to compensate handlers with perfect fairness. In Schepps Dairy, the court rejected a handler's claim that certain federal location adjustments were invalid because they did not fully cover actual transportation costs. 628 F.2d at 19. The court found that requiring federal location adjustments to reflect exact transportation costs would not be feasible and would countervail the plain meaning of the AMAA. Id. at 18-19. The same principle applies here: although the Maine minimum does not take into account handlers' differing transportation costs, that failure alone does not bring the state scheme into clear conflict with the federal regime -- a regime that does not require location adjustments to mirror actual transportation costs.

Nor is Grant's case enhanced by its repeated reference to 7 U.S.C. § 608c(5)(A). That proviso calls for uniform prices "as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any such classification thereof, is made to such handlers." Id. This is not a statement of policy, but merely a limitation on the adjustments that the USDA may apply to the minimum prices that handlers are required to pay. See Zuber, 396 U.S. at 183 (describing congressional intent to confine the boundaries of the Secretary's delegated discretion). In all events, the language of this statute ("subject to adjustments") has been interpreted authoritatively to mean that such adjustments are precatory, not obligatory. Schepps Dairy, 628 F.2d at 18-19. That eliminates any potential Supremacy Clause problem: since location adjustments are permissive under the federal policy, there is no direct conflict between that policy and Maine's uniform minimum price.

In an effort to resurrect this facet of its claim, Grant posits that, whether or not location adjustments are mandatory, federal policy favors equitable prices for handlers (as opposed to strictly uniform prices). This argument misses the mark. To the extent that federal location adjustments reflect a policy of equalizing raw product costs to handlers, that policy serves the goal of enabling handlers to compete for available milk supplies on an equitable basis. 64 Fed. Reg. 16,109-10 (1999). But Grant has presented no evidence that Maine's minimum price regulation disables it from competing for milk supplies. In fact, Grant told the court below that if it were to pay the Maine minimum, its producers would net the highest profits in the state, given their low transportation costs. This would make Grant, in effect, a preferred purchaser and ensure its supply of raw milk. Consequently, as applied to Grant, the Maine minimum does not clash with the perceived federal goal.

Three other particulars bolster our conclusion that no significant conflict exists between Maine's uniform minimum price and its federal counterpart. First, the Supreme Court noted in its most recent milk regulation case that "[t]he federal order does not

prohibit the payment of prices higher than the established [federal] minima." West Lynn, 512 U.S. at 189 n.1. This is at least some indication that prices higher than the federal minima are not fundamentally incompatible with the objectives of the federal regulatory scheme.

Second, there is circumstantial evidence that the Secretary regards Maine's regime as consistent with the policies of the AMAA. When the federal order system was restructured, see supra note 2, Maine could have been added as part of the Northeast Marketing Area. In declining to do so, the Secretary reasoned:

Maine has been and continues to be excluded from Federal order regulation . . . because of its geographic separation from other areas, its long history of successful milk marketing regulation, and the limited impact of its pricing system on other regulated areas.

There appears to be little reason to add the State of Maine to the consolidated Northeast order area. Maine handlers with significant distribution in the Federal order areas can be and are pooled under Federal orders, limiting the extent of any competitive advantage. Inclusion of Maine-regulated handlers in the consolidated marketing area would have little effect on handlers' costs of Class I milk (or might reduce them), and would reduce returns to a few producers. When not pooled under Federal orders, Maine handlers are subject to minimum prices paid for milk, and producers are assured minimum prices in payment for milk. There is no compelling reason to extend Federal order regulation to encompass this State-regulated marketing area.

64 Fed. Reg. 16,056 (1999). We think that this very recent decision is important in two ways. For one thing, it implies federal approval of Maine's non-location-adjusted method of pricing Maine milk and demonstrates the Secretary's sense of satisfaction that Maine's in-state regulation is an appropriate response to its unique geographic situation. For another thing, the decision suggests a belief on the Secretary's part that Maine's uniform minimum price does not interfere with the movement of milk in the Northeast Marketing Area.

Finally, the great weight of authority holds that state regulation of milk prices is not preempted by the extant federal regime. E.g., Crane v. Commissioner of Dep't of Agric., Food & Rural Res., 602 F. Supp. 280, 293 (D. Me. 1985); Schwegmann Bros. Giant Super Mkts. v. Louisiana Milk Comm'n, 365 F. Supp. 1144, 1156-57 (M.D. La. 1973), aff'd, 416 U.S. 922 (1974); United Dairy Farmers Coop. Ass'n v. Milk Control Comm'n, 335 F. Supp. 1008, 1014-15 (M.D. Pa. 1971), aff'd, 404 U.S. 930 (1971); Medo-Bel Creamery, Inc. v. Oregon, 673 P.2d 537, 544 (Or. Ct. App. 1983). Against this phalanx, Grant offers us only one case in which a state milk regulation was held to be preempted by federal law. That case, Pearce v. Freeman, 238 F. Supp. 947 (E.D. La. 1965), is readily distinguishable.


Pearce dealt with a situation in which Louisiana had mandated that

handlers pay producers a blend price determined by each individual handler's actual milk usage. *Id.* at 949-50. In contrast, federal regulations required handlers to pay producers a blend price based on market-wide averages of handler milk usage. *Id.* at 950-51. Finding the two systems entirely incompatible -- a handler could not adhere to one without disobeying the other -- the *Pearce* court ruled that the federal scheme trumped the state regulation. *Id.* at 955. Since Grant can comply with both the applicable federal and state regulations, *Pearce* lends no support to its Supremacy Clause claim. *See id.* at 950 (observing, in dictum, that Louisiana's minimum prices, which were higher than federal minimum prices, "caused no difficulty as both were minimum rather than maximum prices").

To say more on the Supremacy Clause challenge would be supererogatory. Preemption is strong medicine, not casually to be dispensed. *Ruthardt*, 194 F.3d at 178-79. Although Grant chants the conventional "obstacle to accomplishment" mantra, it does not point to the kind of clear conflict that would warrant such a finding, or even to a genuine issue of material fact concerning that point. We therefore conclude that the lower court correctly rejected Grant's Supremacy Clause challenge.

C. The Commerce Clause.

The Constitution cedes to Congress the power "[t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. This power includes a negative aspect, known as the dormant Commerce Clause, "that prevents state and local governments from impeding the free flow of goods from one state to another." *Houlton*, 175 F.3d at 184. The dormant Commerce Clause prohibits protectionist state regulation designed to benefit in-state economic interests by burdening out-of-state competitors. *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330 (1996); *New Energy Co. v. Limbach*, 486 U.S. 269, 273-74 (1988).

The Supreme Court most recently addressed the question of whether state milk price regulation violated the dormant Commerce Clause in *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994). We construct our analytic framework based on the blueprint provided by Justice Stevens's majority opinion, "eschew[ing] formalism for a sensitive, case-by-case analysis of purposes and effects." *Id.* at 201. Using this flexible approach, we must determine whether the challenged state statute, as a practical matter, discriminates against interstate commerce. *Id.* The question, then, is simply this: Does the Maine Milk Commission Act treat in-state and out-of-state economic interests differently in ways that help the former and hamper the latter? 

Rather than letting the cream rise to the top, Grant presents us with a bewildering array of reasons why the Maine law ostensibly violates the dormant Commerce Clause. To facilitate discussion, we divide these reasons into four groups.

1. Direct Regulation of Interstate Commerce. Grant first contends

that, even without a showing of "burden," Maine's minimum pricing scheme transgresses the dormant Commerce Clause because it directly regulates interstate commerce. Grant grounds this contention in the Supreme Court's observation that "[w]hen a state statute directly regulates or discriminates against interstate commerce . . . we have generally struck down the statute without further inquiry." Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 579 (1986). But this reference to direct regulation as a basis for invalidation has not been repeated in subsequent Supreme Court opinions, e.g., Fulton, 516 U.S. at 330-31; Oregon Waste Sys., Inc. v. Department of Env'tl. Quality, 511 U.S. 93, 98-99 (1994), and it does not fit into the West Lynn framework. See West Lynn, 512 U.S. at 201 (directing inquiring courts to look for discriminatory "purposes and effects"). Given that the Brown-Forman Court itself conceded that "the critical consideration [in a dormant Commerce Clause analysis] is the overall effect of the statute on both local and interstate activity," 476 U.S. at 579, we rebuff Grant's attempt to forge a new mode of analysis.

In all events, even were we to give credence to the Brown-Forman dictum, Grant's "direct regulation" claim fails to raise a genuine issue of material fact sufficient to undermine the lower court's entry of summary judgment. Extrapolating from the fact that the Secretary has declared that all milk acquired, processed, and sold by fully federally regulated handlers is in the current of interstate commerce, 64 Fed. Reg. 47,899 (1999), Grant claims that any state oversight of a fully federally regulated handler's milk (including regulation of milk that never leaves the state in which it is produced) is invalid. To shore up this extreme proposition, Grant cites two cases, namely, United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942), and Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511 (1935). Neither case lends support.

Wrightwood Dairy held that the Commerce Clause gives Congress the authority to regulate purely intrastate transactions as long as those transactions affect interstate commerce. 315 U.S. at 125. Nothing in the Court's opinion intimates that a State may not regulate in areas that touch upon interstate commerce. So, too, Baldwin -- a case that arose following New York's passage of a law that prohibited the in-state sale of milk produced beyond its borders unless the out-of-state dairy farmers were paid the minimum prices established by New York for its own producers. 294 U.S. at 519. In striking down the law, the Court analogized the situation to the placement of a tariff or duty on out-of-state milk as it entered New York. Id. at 521-22. Baldwin stands for the proposition that a state law which burdens interstate commerce is invalid. It does not stand for the markedly different proposition that federal and state regulations can never apply to the same product.

That ends this aspect of the matter. The bare fact that all of Grant's milk is federally regulated is simply not enough to render concurrent state regulation of some of its milk unconstitutional. Cf. 7 U.S.C. § 610(i) (recognizing the coexistence of federal and state regulation of agriculture and agricultural products).

In a variation on this theme, Grant seems to assert that Maine has violated the dormant Commerce Clause by regulating the milk that Grant sells across state lines. This assertion depends upon the validity of Grant's allegations that Maine credits federally required payments on both in-state and out-of-state milk when it calculates a fully federally regulated handler's state obligation. By so doing, Grant says, the State enforces the federal minimum on its out-of-state sales. Even though this enforcement admittedly has no discriminatory effect -- after all, the price Maine credits is identical to the federal requirement -- Grant insists that the practice abridges the dormant Commerce Clause.

The most glaring problem with this line of reasoning is that it misrepresents Maine's method of calculating a fully federally regulated handler's state obligation. The record reveals that Maine bases its calculations on the amount of milk a fully federally regulated handler sells within the state, multiplying in-state sales by the Maine minimum. In-state sales are then multiplied by the federal minimum, and the second number is subtracted from the first. The difference is the amount the handler owes Maine producers.⁽⁵⁾ For aught that appears, Grant's assertion that Maine credits a handler's out-of-state sales in computing the handler's state obligation is constructed out of whole cloth.⁽⁶⁾

2. Discrimination Against Interstate Commerce. The courts have invalidated state statutes that overtly discriminate against interstate commerce with a regularity that borders on the monotonous. *E.g.*, *Oregon Waste*, 511 U.S. at 108; *New Energy*, 486 U.S. at 280. Grant attempts to demonstrate three times over that Maine's minimum pricing trips this wire.

Initially, Grant attacks Maine's method of computing its state obligation, arguing that the method results in a higher assessment against Grant than against handlers that make only in-state sales. This argument draws its essence from the Commission's letter to Grant, dated April 10, 1998, pegging Grant's obligation to Maine producers for January 1998 at \$20,409.71. Grant asseverates that this figure was calculated by reference to Grant's overall sales, rather than by reference to its in-state sales, and that the resulting assessment is higher than it would have been had Maine based its calculation solely on Grant's in-state sales.⁽⁷⁾

Taking Grant's factual predicate as true, its claim nonetheless founders. The January 1998 bill was not paid as presented, and the Commission has confessed error in the methodology used to calculate it. Moreover, the Commission asserts, without contradiction, that the faulty methodology has been discarded and that fully federally regulated handlers' obligations now are calculated using a formula that involves multiplying Maine Class I sales by Maine Class I minimum prices, less the product of Maine Class I sales and the applicable federal order minimum price. Grant has neither adduced evidence to disprove these facts nor explained how the Commission's revised formula burdens interstate commerce. That puts the cork in

the bottle: Grant cannot prevail prospectively based on an outdated mistake, since corrected.

Grant's second theory of a burden on interstate commerce concerns the alleged impact of the Maine minimum on its ability to compete in certain metropolitan areas. This argument derives primarily from geography. Because Maine's minimum pricing does not take into account a handler's transportation costs, Grant is at a competitive disadvantage relative to handlers located in southern Maine with respect to intrastate sales in Maine's more populous urban areas (e.g., Portland). Grant claims that this disadvantage ultimately burdens interstate commerce because it impedes Grant's effectiveness in selling milk into border areas (e.g., Portsmouth, N.H.) where the federal minimum price applies.

This claim of lessened distribution efficiency contemplates, at most, a roundabout kind of burden on interstate commerce, arising as a side effect of what Grant reasonably perceives as a burden imposed by Maine law on intrastate commerce. To substantiate it, Grant must show a "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Oregon Waste, 511 U.S. at 99. Virtually by definition, such a showing demands a comparison between two classifications. Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 273 (1984). Accordingly, Grant must show that handlers subject to both federal and state regulation (as is Grant) are disadvantaged in their endeavors to compete beyond Maine's borders relative to handlers who are subject only to state regulation.

Grant's effort to establish this set of facts fails. Both types of handlers must pay the Maine minimum price on Maine milk. Moreover, to the extent that the uniform state-wide price means that transportation costs to distant markets will erode profits, both groups are equally disadvantaged. The only difference is that the handlers who are subject only to state oversight sell less of their milk (under twenty-five percent) into the federal order area. In short, Maine's minimum price treats in-state and out-of-state economic interests evenhandedly.

This scenario is a far cry from West Lynn, the precedent to which Grant repeatedly alludes. There, Massachusetts imposed a tax on all milk sold to in-state retailers (regardless of whether that milk was produced in or out of state) and then distributed the proceeds exclusively to Massachusetts producers. West Lynn, 512 U.S. at 188. Because Massachusetts producers got money back, the tax effectively applied to out-of-state producers only, and had the effect of allowing Massachusetts producers, despite their higher initial costs, to sell at prices below those charged by out-of-state producers. Id. at 194-95.

To be sure, Maine's statutory scheme makes an in-state/out-of-state distinction -- out-of-state handlers, unlike in-state handlers, do not have to pay the Maine minima. Nevertheless, this distinction is irrelevant for Commerce Clause purposes because it does not advantage Maine handlers at the expense of out-of-state handlers.

Quite the contrary: it is Maine handlers (whether fully federally regulated or not) and, by extension, Maine consumers, who shoulder a burden for the benefit of Maine producers. Stripped of rhetorical flourishes, Grant's argument is nothing more than a lament that the Maine minimum burdens it relative to fully federally regulated handlers located in southern Maine. This lament should be addressed to the Maine legislature, not to the federal courts. The dormant Commerce Clause does not protect intrastate competition, but, rather, safeguards interstate markets from discriminatory regulation. Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 127-28 (1978).

Grant's final "discriminatory effect" theorem posits that the Maine minimum encourages producers to ship to the nearest market within Maine, thus discouraging them from selling across state lines. Grant adds that the Maine minimum similarly discourages producers from selling to handlers engaged in substantial interstate distribution because the more milk the handler sells out of state, the lower the revenue to the producer. On these bases, Grant hypothesizes that Maine's statutory scheme impermissibly keeps milk from leaving the state.

The Commerce Clause looks askance at state resource-hoarding. E.g., Chemical Waste Mgmt., Inc. v. Hunt, 504 U.S. 334, 339-41 (1992); Hughes v. Oklahoma, 441 U.S. 322, 338 (1979). Thus, Grant's point, taken in the abstract, possesses an aura of plausibility. As applied here, however, the resource-hoarding theory simply does not fit.

In the first place, the suggestion of resource hoarding contradicts Grant's admission to the district court that, with the Maine minimum in place, Grant finds it more profitable to sell milk out of state than in most in-state markets. As this admission demonstrates (and as the district court explicitly found), the Maine minimum appears to encourage, rather than discourage, interstate commerce. In the second place, Grant's argument about producers' incentives to sell to handlers with the smallest percentage of interstate distribution is woven out of the gossamer strands of speculation and surmise, unsupported by even the slimmest evidentiary thread. Grant has not shown that it has difficulty buying milk or that it is losing producers to handlers who do not sell into interstate markets.

If more were needed -- and we doubt that it is -- precedent strongly suggests that Grant's argument is without merit. Courts routinely have confirmed that state minimum milk prices (all of which presumably have the effect of insuring an in-state milk supply) do not offend the Commerce Clause. E.g., Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 614-16 (1937) (rejecting Commerce Clause challenge to Virginia statute setting minimum prices for milk within state); Marigold Foods, Inc. v. Redalen, 809 F. Supp. 714, 722 (D. Minn. 1992) (asserting in Commerce Clause context that "Minnesota has a right to set minimum prices for milk produced and sold by dairy farmers located within its borders"); Barber Pure Milk Co. v. Alabama State Milk Control Bd., 156 So. 2d

351, 355 (Ala. 1963) (upholding state minimum milk price against Commerce Clause challenge); School Dist. v. Pennsylvania Milk Mktg. Bd., 683 A.2d 972, 976 (Pa. Commw. Ct. 1996) (concluding that in-state minimum milk price did not violate Commerce Clause).

In the seminal case on this subject, the Supreme Court ruled that a Pennsylvania statute which set the price Pennsylvania handlers paid Pennsylvania producers for all milk (even milk ultimately shipped to other states) did not transgress the Commerce Clause. Milk Control Bd. v. Eisenberg Farm Prods., 306 U.S. 346, 349-51 (1939). The Court concluded that the minimum price did not create a barrier to interstate commerce because the state did not "essay to regulate or to restrain the shipment of the respondent's milk into New York or to regulate its sale or the price at which respondent may sell it in New York." Id. at 352. The case before us fits comfortably within this mold: Maine imposes no restriction on the sale of milk out of state and does not attempt to regulate the price at which Maine-produced milk is sold in other venues. See Maine Milk Comm'n v. Cumberland Farms N., 205 A.2d 146, 154 (Me. 1964) (finding that Maine's milk price regulation does not offend the Commerce Clause because it "does not attempt to control the price paid for milk purchased outside of Maine, or the sales price outside this state of milk produced here").

The cases Grant cites in connection with its resource-hoarding claim are inapposite. Those cases concern situations in which a state either has blocked out-of-staters' access to an in-state resource, e.g., Philadelphia v. New Jersey, 437 U.S. 617, 628 (1978), or has taken an affirmative step to prevent the export of a state resource, e.g., H.P. Hood & Sons v. DuMond, 336 U.S. 525, 528-29 (1949). The Maine Milk Commission Act contains no such vice. It neither erects barriers to access nor inhibits exports.

3. Discriminatory Purpose. It is a commonsense proposition that the purpose of a statute is relevant to a Commerce Clause analysis. See West Lynn, 512 U.S. at 194; see also Chemical Waste, 504 U.S. at 344 n.6 (explaining that a finding of impermissible economic protectionism may be made on the basis of a discerned discriminatory purpose). Grant attempts to invoke this proposition, suggesting that Maine's statutory scheme is invalid because it was designed with a discriminatory purpose. It relies on four pieces of evidence. The first is a statement mined from the State's brief in an earlier case to the effect that allowing Maine handlers to decide on a monthly basis whether they will be federally regulated or state regulated would create "economic chaos in the State's dairy industry." The second consists of a comment made at oral argument in the same case that the State perceived a handler becoming federally regulated as being "potentially disruptive to the State's dairy industry." The third is a newspaper article in which the Commissioner (a defendant here) is quoted as saying that Grant's decision to become fully federally regulated and its refusal to pay the Maine minimum "shakes the entire system." The fourth is a statement by a state functionary calling the Clarification Act "essential to the stability of an industry undergoing considerable change."

Grant's suggestion that we draw an inference of protectionist intent from this meager collection of statements -- the first two of which were made in the context of Maine Milk Pool litigation, not in the context of minimum pricing -- elevates hope above reason. We hold this view notwithstanding that the summary judgment praxis requires us to evaluate the evidence in the light most favorable to Grant. See Houlton, 175 F.3d at 184. Despite the generosity of this standard, "conclusory allegations, improbable inferences, and unsupported speculation" are entitled to no weight. Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990).

That principle applies here: on their face, the cited statements seem to be innocuous expressions of concern anent the stability of the Maine dairy industry in the face of significant change. Fairly read, they are consistent with the stated purposes of Maine's minimum price law, which is aimed at "insuring . . . an adequate supply of pure and wholesome milk to the inhabitants of this State," Me. Rev. Stat. Ann. tit. 7, § 2954(2), and at stabilizing prices to producers, see id., § 2954(9). Interpreting the statements in a more sinister fashion would require a leap of faith that we are unwilling to undertake. The bottom line, then, is that Grant has not presented competent evidence to substantiate its conclusory allegation of discriminatory purpose. See Cadle Co. v. Hayes, 116 F.3d 957, 960, 962 (1st Cir. 1997) (stating and applying principle that a party having the burden of proof must present evidence that is "significantly probative," not merely colorable, to thwart summary judgment).

4. Incidental Effects. Grant tries to pull one last rabbit from the hat. Shifting away from arguments based on discriminatory purpose and effect, it contends that even if Maine's regulations only indirectly burden interstate commerce, there is a genuine issue of material fact as to whether those burdens outweigh the benefit conferred by the Maine Milk Commission Act. This contention, which calls for an application of what has come to be known as the Pike balancing test, see Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); see also Houlton, 175 F.3d at 185, stands on uncertain legal terrain. The case-by-case approach described in West Lynn focuses on an "analysis of purposes and effects." 512 U.S. at 201. In earlier cases, however, the Court addressed dormant Commerce Clause questions in a somewhat different way, asking, inter alia, whether the challenged law "regulates evenhandedly with only 'incidental' effects on interstate commerce . . ." Oregon Waste, 511 U.S. at 99. The answer to this question determined the level of scrutiny to be applied. Id. It is unclear whether the Court intended the West Lynn approach to supplant, or merely to complement, the analytic structure typified by Oregon Waste.

We need not resolve this enigma today. Instead, we address the Pike balancing test on the merits. In doing so, we begin with a recitation of the test itself. "Where [a] statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be

upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." Pike, 397 U.S. at 142.

Grant has canvassed the possible burden on interstate commerce created by the Maine statute in meticulous detail. Despite the valiant efforts of capable counsel, Grant has identified only two conceivable vulnerabilities: (1) the alleged distribution inefficiency created in some dual-state metropolitan areas as a result of Grant's inability to sell milk profitably in southern Maine; and (2) the alleged tendency of the Maine minimum price to discourage milk from leaving the state. These possibilities need not detain us. As our earlier comments make clear, both of them are unsubstantiated. In short, Grant's slim showing of an imagined burden does not suffice to trigger Pike balancing. Moreover, even were we to give Grant the benefit of the doubt on that issue, the modest burdens that it describes obviously are outweighed by the benefits Maine seeks to secure by imposing minimum prices -- benefits that include ensuring an adequate in-state supply of milk at reasonable prices and maintaining market stability. See Me. Rev. Stat. Ann. tit. 7, § 2954(2) & (9). Hence, the district court did not err when it granted summary judgment for the defendants on this point.

III. CONCLUSION

We need go no further. Grant's various Supremacy Clause and Commerce Clause claims are factually unsubstantiated, legally impuissant, or both. Consequently, the judgment below must be

Affirmed.

FOOTNOTES

1. "Handlers" and "producers" are defined terms. See 7 C.F.R. §§ 1000.9, 1001.12. The definitions are unremarkable.

2. As of January 1, 2000, the Secretary reduced the number of federal order milk marketing areas from thirty-one to eleven. See 64 Fed. Reg. 47,898 (1999), as amended by 64 Fed. Reg. 70,868 (1999). The parties have stipulated that recent changes to the federal milk pricing system, including this change, have no bearing on the litigation at hand.

3. The Maine statute uses the term "dealer" instead of "handler," Me. Rev. Stat. Ann. tit. 7, § 2951(4), but, for simplicity's sake, we use the latter term throughout this opinion.

4. The Clarification Act provides in pertinent part:

[M]inimum wholesale prices paid by dealers to producers for their milk that is sold in this State are subject to the minimum producer prices established by the Maine Milk Commission, regardless of whether the dealer is subject to federal milk pricing regulation in addition to state milk pricing regulation.

Me. Rev. Stat. Ann. tit. 7, § 2954(9) (footnote omitted).

5. To illustrate, assume that a handler bought all its milk in Maine and then sold 100 units in Maine, with the Maine price set at \$1.00 and the federal price set at 80¢. The ensuing calculation would run as follows: \$100 of in-state sales at the Maine minimum, minus \$80 that would have been paid on in-state sales at the federal minimum but for the overriding Maine minimum, leaving \$20 owed to the handler's Maine producers (to be shared pro rata among them).

6. We hasten to add that even if Maine used a figure derived from a fully federally regulated handler's out-of-state sales at the federal minimum in some of its calculations, merely acknowledging that federal obligation is not the same as enforcing it.

7. Maine apparently assigned a value of \$1,371,510 to Grant's total purchases of 93,280.22 hundredweights of milk. It added a premium of 25¢ per hundredweight to Grant's net sales (gross sales minus milk purchased from other handlers) of 87,940.38 hundredweights. The total premium added, therefore, was \$21,985, and the total of the assigned value plus the premium was \$1,393,495. Maine then seems to have given Grant a credit of \$1,373,085 (\$14.72 per hundredweight) to arrive at the amount of the underpayment.



[Case in WordPerfect Format](#)



[Return to First Circuit Home Page](#)

MAINE MILK POOL

In 1983 the Maine Legislature created the Milk Pool in order to equalize payments to farmers and ensure an adequate, wholesome and safe supply of milk within the state. Prior to the milk pool, Maine market suppliers received more for their milk than Boston Market suppliers as a result of the state and federal regulatory milk pricing framework, as well as from actual cost differences regardless of any regulatory actions. Specifically, higher prices on the Maine market were from cost savings realized by Maine market producers in transporting milk to local markets, and from a comparatively higher fluid milk, Class I, utilization rate. Other input costs or price fluctuations result from changing milk price support policies and are largely controlled by national and international policies and are beyond the control of the Maine dairy farmer.

This relative vulnerability engendered instability in the marketing system resulting in destructive competition for higher priced markets among Maine's dairy farmers. This instability was and still is a serious threat not only to the viability of Boston market farms but also to the Maine dairy industry as a whole. Loss of dairy farms would seriously erode Maine's agricultural base.

Dairy farms in Aroostook, Washington and northern Penobscot Counties presently operate at significantly higher costs because of their distance from markets and supplies and face greater risks because they operate on a closer margin. Negative changes in the overall economy have a magnified effect in the northern Maine region.

In 1983, the Legislature believed it was in the best interest of the Maine dairy industry and the well-being of the State as a whole to adjust prices paid to Maine milk producers and to redistribute this benefit among Maine milk producers in both markets. Therefore, the legislature established the milk pool in order to achieve this goal and to eliminate differences attributable to the higher utilization rates that are a product of the two regulated markets.

Beginning in February 2001, the only milk plant in Maine not subject to the Federal Order milk pool was Houlton Farms in Aroostook County. This situation meant Houlton Farms was the only contributor to the Maine milk pool. Because Houlton Farms is a small dairy and because it is located in northern Maine and because the intent of the legislature was to maintain stability in the milk industry, the milk pool statute was changed in May 2001. It exempts a single dairy processor, with a handle of less than 1,000,000 pounds per month, from being subject to the Maine milk pool when that dairy is the only dairy subject to the provisions of the Maine pool.

During the period of May 2001 through October 2001 the only funds distributed by the Maine milk pool were cost of production premiums established by the Commission.

In summary, the milk pool balances monthly milk prices and distributes any premiums set by the Commission. This balancing procedure is similar to how the Federal Market Administrator equalizes processor and producer prices in the Northeast Marketing Area.

MAINE MILK COMMISSION

Strategic Plan

Objective: Continue 100% compliance with all stat and federal milk pricing laws to ensure an adequate supply of wholesome milk within the State of Maine.

Maine Milk Commission 0188

Conduct and audit and surveys to ensure compliance with minimum milk prices, complete milk cost studies, operate the Maine Milk Pool, and track all federal milk pricing requirements.

	<u>Performance Measures</u>	Baseline	2006-07	2007-08
1.	% of Maine citizens with access to wholesome milk that is produced, processed and sold in Maine		100%	100%
2.	% of fresh milk sold in Maine which is produced by Maine farmers.		95%	97%

ASSESSMENT

A Maine Milk Control Law was enacted in 1935 by the 87th Legislature to eliminate a number of serious problems confronting the dairy industry and the consuming public. Glaring conditions necessitating this corrective action included price wars, farmers failing to receive payment for milk deliveries, dealer bankruptcies, consumers receiving low quality milk, etc.

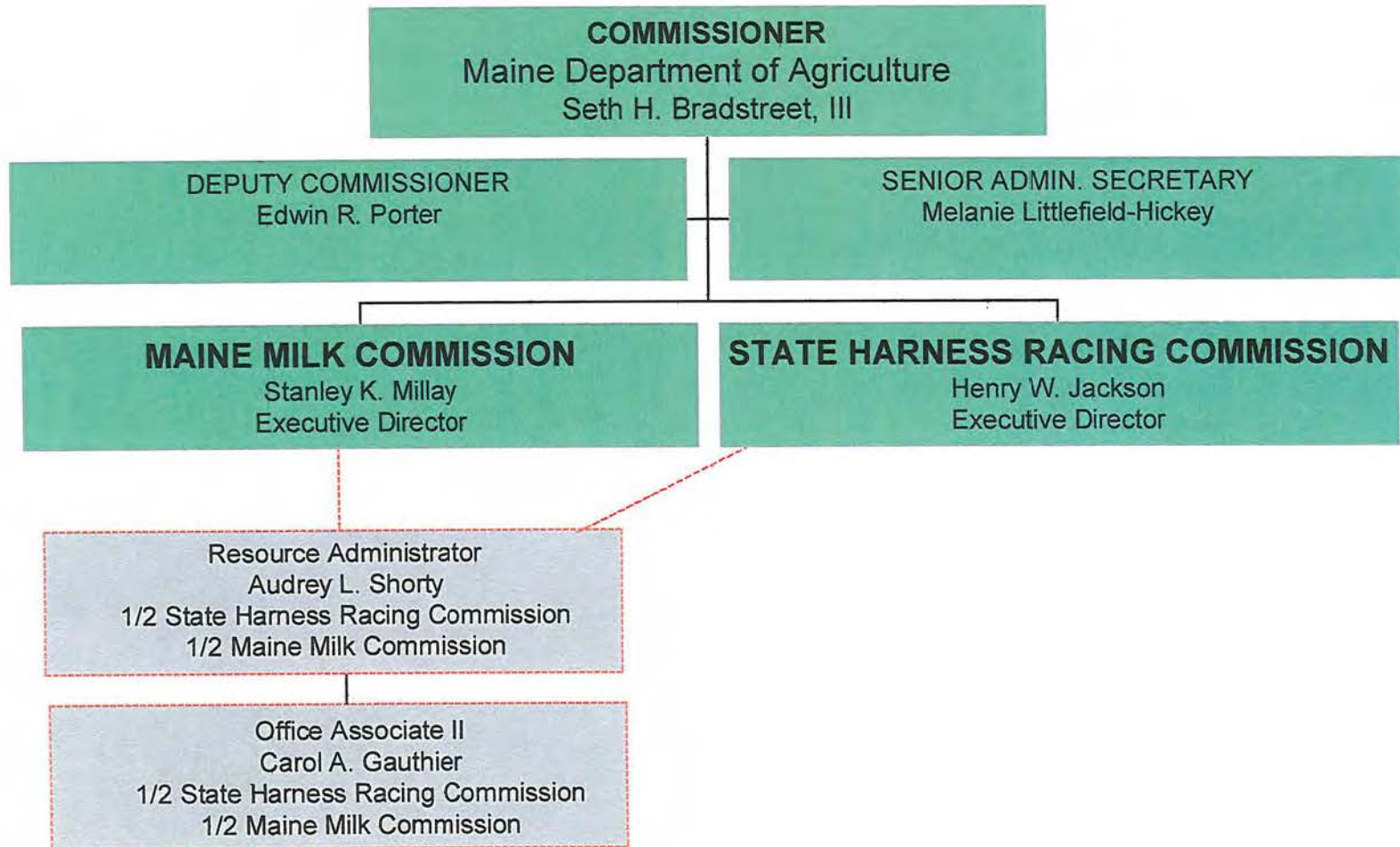
Among the specified powers granted by the Legislature to the Commission is the authority to set minimum prices paid to producers as well as minimum retail and wholesale milk prices. The Milk Commission is authorized to audit dealers' books and to determine the utilization of all milk purchased.

Under the law a Maine Milk Commission was created to arbitrate differences, establish minimum prices after proper hearings and exercise general supervision over the milk industry. Its basic function was, and still is, to see that there will be a plentiful supply of pure, wholesome milk available at all times, in all places, at reasonable prices to Maine citizens.

The Commission believes it is vital to its mission to do all in its power to assist Maine dairy farmers to stay in business. Otherwise, Maine becomes dependent on out-of-state milk and will experience increased transportation costs, have less control over milk quality and risk reduced milk supplies. With over 95% of the fresh milk consumed in Maine produced by Maine farmers, the Commission believes it has met its goal.

Maine Milk Commission

Organizational Structure



**DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
POLICY STATEMENT AGAINST HARASSMENT**

I. General Policy Statement

The State of Maine recognizes the dignity of the individual employee and the right of employees to work in an environment which is free of intimidation and harassment. Such intimidation or harassment based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, or marital status is a violation of State policy. Because such harassment seriously undermines the integrity of the work place and adversely affects employee morale, it is unacceptable and will not be tolerated. In addition, it is considered grounds for disciplinary action up to and including discharge. Harassment based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity or previous assertion of a claim or right under the Maine Workers' Compensation Act may also constitute illegal employment discrimination.

Examples of harassment related to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity or previous assertion of a claim or right under the Maine Workers' Compensation Act, include the following, which may be a series of incidents or a single occurrence:

- Unwelcome sexual advances, gestures, comments, or contact;
- Threats;
- Offensive jokes;
- Subjecting employees to ridicule, slurs, or derogatory actions;
- Basing employment decisions or practices on submission to such harassment;
- Refusal to cooperate with employees in performing work assignments;
- Inequitable disciplinary actions and work assignments.

Further examples of sexual harassment include: behavior that is verbal and sexual in nature – such as comments about a person's looks, personal inquiries, sexual jokes, use of derogatory sexual stereotypes, uttering sexually suggestive sounds, writing sexual notes, use of State computer equipment to send, receive and/or download material of a sexual nature; **non-verbal sexual behavior**- such as looking someone up and down, staring or leering at someone's body, deliberate blocking of a person's path, displaying sexual visuals, making sexual gestures; or **physical** – such as pinching, grabbing, sexual assault or any physical contact of a sexual nature.

As a matter of State policy, any behavior of a sexual nature in the workplace is considered unprofessional regardless of whether it constitutes illegal sexual harassment. Similarly, any conduct that degrades, ridicules or otherwise draws unwanted attention to any employee or other person having dealings with the department on the basis of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act, or marital status is considered unprofessional regardless of whether it constitutes unlawful harassment. Such unprofessional conduct will not be tolerated in the work place because it undermines morale, interferes with performance and demeans its victims. Each employee is personally responsible for compliance with this policy.

As part of their supervisory responsibilities, supervisors are required to actively prevent or stop inappropriate, unprofessional conduct in the workplace regardless of whether the conduct rises to the level of illegal harassment. If they become aware of any such conduct occurring, they must take immediate and appropriate corrective action, including discipline, to end the conduct. Corrective action is required regardless of whether a complaint is made or the conduct appears to be unwelcome.

The Department's EEO Coordinator may be consulted for advice and direction and must be contacted if a complaint is received, even if the complainant requests that no action be taken. Managers and supervisors who fail to fulfill their obligations under this policy will be subject to disciplinary action, up to and including discharge.

II. Definitions

"Sexual harassment" is defined as unwelcome sexual conduct that is a term or condition of employment. Unwelcome sexual conduct is sexual harassment when submission to such conduct is expressly or implicitly made a term or condition of employment.

"Quid pro quo" harassment occurs when submission or rejection of such conduct is used as the basis for employment decisions affecting an individual, *such as promotions in exchange for sexual favors, or an unfavorable change of duties in response to rejected sexual advances.*

"Hostile Work Environment." Unwelcome sexual conduct which unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment also constitutes illegal sexual harassment. Conduct which is not sexual in nature may still create a sexually hostile work environment if it is based on the victim's gender. Such conduct may include excluding or isolating employees, tampering with belongings or equipment, or physical or verbal abuse based on gender.

III. Applicability

This policy applies to:

- Co-workers and supervisors
- Outside parties having dealings with the department (i.e., customers, vendors, contractors)
- Interactions between individuals of the same sex as well as of the opposite sex
- Interactions in the workplace during work hours as well as outside activities related to the workplace (i.e., parties, trips, conferences)

IV. Complaint Process

The State of Maine is committed to preventing harassment prohibited by this policy through education and dissemination of information as well as employee accountability. Such harassment may be reported by any employee, regardless of whether that employee is the recipient of the harassment, a witness or otherwise becomes aware of harassment prohibited by this policy.

Internal complaints may be filed by contacting any of the following individuals:

- Immediate supervisor or any supervisor/manager in the chain of command
- Departmental Equal Employment Opportunity Coordinator
- Departmental Human Resource Manager
- State Equal Employment Opportunity Coordinator

Although every attempt will be made to resolve complaints at the lowest possible level, if an investigation is warranted, it will be conducted promptly and with as much confidentiality as possible, respecting the rights of all parties involved. All employees are expected to cooperate in any departmental investigation of harassment.

In addition to initiating the internal complaint procedure, employees covered by collective bargaining agreements may file a grievance through the applicable grievance procedure. A discrimination complaint alleging harassment on the basis of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity or previous assertion of a claim or right under the Maine Workers' Compensation Act may also be submitted to the Maine Human Rights Commission at any time within 180 days of the alleged discriminatory incident. It is not required that any of the above procedures be utilized first or in any sequence, nor is it required that any procedure be exhausted before the other is used. In those instances where the prior workers' compensation claim or right is made against the State of Maine, the complaint may be submitted to the Maine Workers' Compensation Board.

For more information, contact: Maine Human Rights Commission.....624-6050
624-6064 (TTY)
State EEO Coordinator.....287-4651
.....287-4537 (TTY)

V. Retaliation

Any form of retaliatory action or threat or suggestion of retaliation by either employees or supervisors against any person filing a complaint under this policy or assisting in an investigation is a violation of State policy. Any discriminatory action against any individual because the individual has opposed a practice that would be a violation of the Maine Human Rights Act, Title VII, the Americans with Disabilities Act, or the Age Discrimination in Employment Act or because the individual has made a charge, testified or assisted in any investigation, proceeding or hearing under the Maine Human Rights Act, Title VII, the Americans with Disabilities Act or the Age Discrimination in Employment Act is illegal. A complainant is protected from retaliation regardless of the merits of the original complaint. Retaliation should be reported in the same manner as described above for complaints of harassment and will be promptly investigated. Such retaliatory conduct will be grounds for disciplinary action.

Each State agency has designated EEO Officers responsible for handling complaints and providing technical assistance to staff regarding these issues. For information contact Amanda Beckwith at 287-7578, Kim Pierce at 287-5505, or Debra Phillips at 287-4925.

Laurel Shippee, the state EEO Coordinator in the Bureau of Human Resources, is also available as a resource to any state employee or supervisor. She may be reached at (207) 287-4651 (TTY - 287-4537).

Seth. H. Bradstreet, Commissioner
June 2007

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION POLICY STATEMENT

The State of Maine shall continue to pursue a policy of non-discrimination in all employment actions, practices, procedures and conditions of employment.

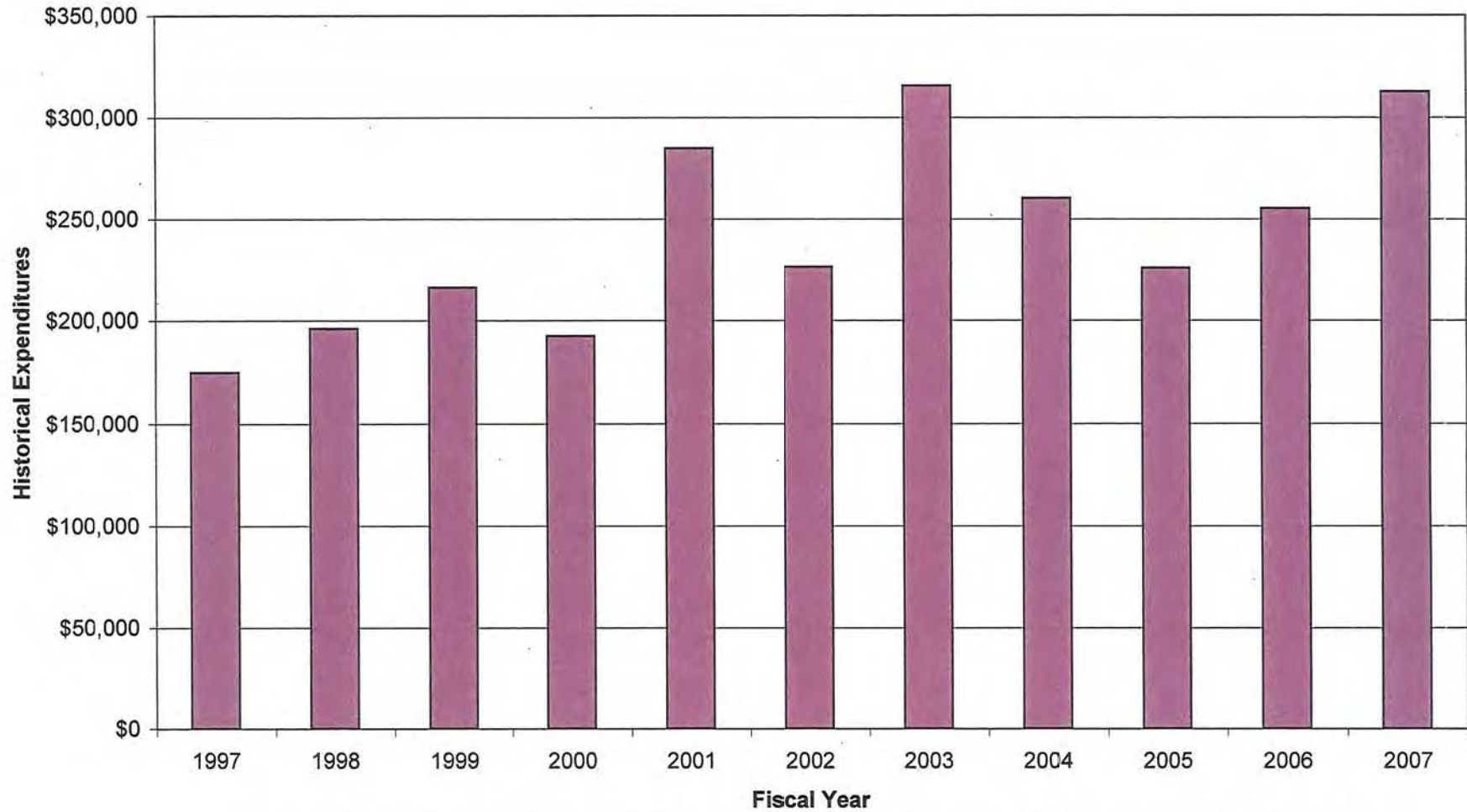
1. Employment decisions will be based on the principles of equal employment opportunity. Recruitment, testing, selection, and promotion will be administered without regard to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act or marital status unless a bona fide occupational qualification exists.
2. Further, personnel actions and conditions of employment, such as compensation, benefits, layoffs, job assignments, employee development opportunities and discipline shall be administered without regard to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, whistleblower activity, previous assertion of a claim or right under the Maine Workers' Compensation Act or marital status.
3. Reasonable accommodations will be made for any qualified individual, applicant or employee, in accordance with the provisions of the Maine Human Rights Act and the Americans with Disabilities Act.
4. Managers and supervisors are responsible for awareness of and response to potential discriminatory situations. Employees are required to cooperate fully with the investigation and/or resolution of any discrimination complaint.
5. Managers and supervisors are required to actively prevent and correct retaliation or harassment toward any employee who has been involved in the filing, investigation, or resolution of a discrimination claim.
6. The Department will address and attempt to resolve employee complaints regarding discrimination and harassment as expeditiously as possible. Supervisors and managers are required to contact the agency EEO Officer if they receive a complaint of this nature.
7. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

Each State agency has a designated EEO Officer who is responsible for the implementation, monitoring, and record keeping of the agency EEO/AA Program as well as providing technical assistance to applicants and employees. The State EEO Coordinator in the Bureau of Human Resources is also available as a resource to any state employee or supervisor. She may be reached at 287-4651 (TTY - 287-4537).

I sincerely appreciate the continued cooperation and support of all employees and supervisors in making the State a positive example for other employers in the State

Seth H. Bradstreet, Commissioner
June 2007

Maine Milk Commission Historical Expenditures



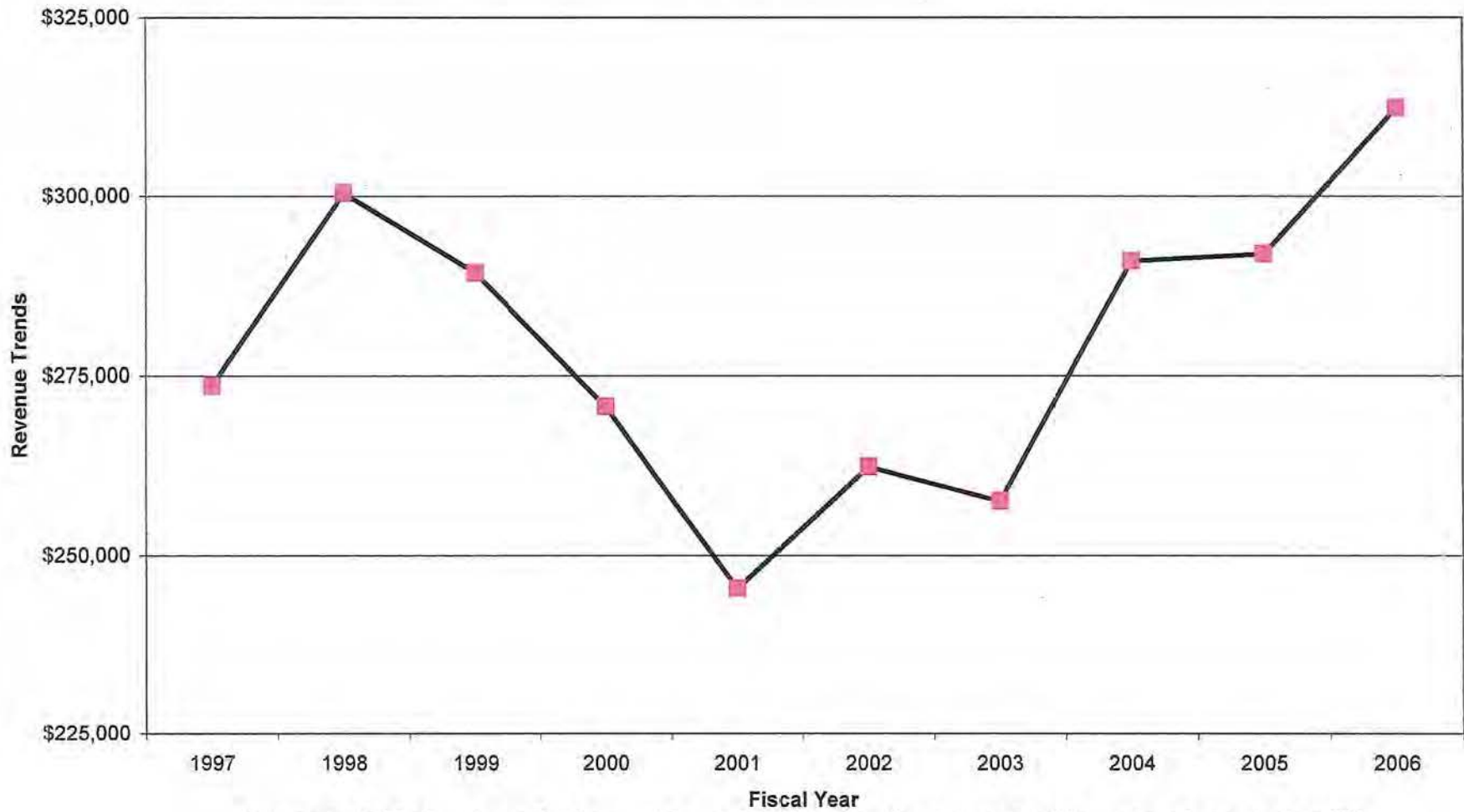
Although the Milk Pool was housed in this account through FY 2000 the figures were removed for this exercise to isolate the Maine Milk Commission activity.

Maine Milk Commission
Revenue History

APPROPRIATION REVENUE		1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
NUMBER	CODE REVENUE TITLE										
01401A018801											
	611 MILK COMM FEES 1 CENT CWT	202,221	233,933	226,209	231,333	219,965	233,684	227,911	253,602	245,083	259,141
	1413 MAINE MILK COMM LICENSES	124	-41	36	36	32	29	29	28	21	34
	2611 JURY DUTY REIMBURSEMENT	0	0	0	80	0	0	0	104	0	0
	2669 SALE MAILING LISTS	110	20	0	0	0	0	0	0	0	0
	2685 SALE OF PUBL/COPIES/CERTS	0	0	20	0	0	0	0	0	0	0
	2719 CONT FROM OTHER SPECIAL REVENUE	71,204	66,424	62,975	39,281	25,340	28,728	29,670	37,172	46,759	53,136
01401A018801 Total		273,660	300,335	289,240	270,729	245,337	262,441	257,611	290,906	291,864	312,311

Although the Milk Pool was housed in this account through FY 2000 the figures were removed for this exercise to isolate the Maine Milk Commission activity.

Maine Milk Commission Revenue Trends



Although the Milk Pool was housed in this account through FY 2000 the figures were removed for this exercise to isolate the Maine Milk Commission activity.

UMBRELLA/UNIT NUMBER: 01-015

AGENCY: Maine Milk Commission

CONTACT PERSON: Ned Porter, Deputy Commissioner, 28 State House Station, Augusta, Maine 04333-0028

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2007-2008 RULEMAKING ACTIVITY:

CHAPTER 1: Minimum Retail Pricing of Bulk Containers

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set minimum retail price for bulk containers to cover sales for home delivery and grocery stores.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Dealers, retailers, and consumers.

CHAPTER 1: Payment by Dealers and Retailers and Others

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set dates and minimums when payment for milk received must be made.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Milk dealers, retailers and others.

CHAPTER 1: Integrated Operations

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set minimum controls for integrated operations.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Producers, dealers and retailers.

CHAPTER 1: Late Payment Penalty

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set variable penalty fee on late payments to Commission.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers and dealers.

CHAPTER 1: Base Rating-- Quota Plan

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set producer production base or quota production.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers.

CHAPTER 1: Container Deposits

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set deposit price for any container.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers and dealers.

CHAPTER 1: Milk Balancing

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Amend new milk balancing rule based on latest information and practices put into place since adoption of first rule, September, 1991.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers and consumers.

CHAPTER 1: Interstate Conference and Compacts

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Enter into agreements with other Northeastern states for special conferences and or compacts for regulation of the dairy industry.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Any or all segments of the dairy industry.

CHAPTER 2: Hearing Procedures

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Amend present rules to reflect changing industry standards, new APA requirements, and/or to upgrade and modernize past practices.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Commission, intervenors and industry.

CHAPTER 3: Monthly Minimum Milk Prices

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Reflect latest Federal Government price announcements and any prevailing premiums in southern New England.

ANTICIPATED SCHEDULE: Monthly

AFFECTED PARTIES: Farmers, dealers and consumers.

CHAPTER 4: Marketing Areas

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set new marketing areas based on new information and latest buying or selling practices in State.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers, consumers and retailers.

CHAPTER 5: Milk Commission Monthly Forms

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Adopt regular reporting forms to meet needs of Commission and Milk Pool.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers and retailers.

CHAPTER 6: Inspection of Records, Books and Accounts

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Adopt or amend rule to inspect industry records, books, accounts and any matter relating to the dairy industry and the setting of minimum prices.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers and retailers.

CHAPTER 11: Dealer and Subdealer Route Information Reports

STATUTORY AUTHORITY: 7 MRSA Section 2954

PURPOSE: Require dealers to report special route delivery information.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Dealers and consumers.

CHAPTER 11 and 25: Hauling and Transportation Costs

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set minimums/maximums on hauling and transportation cost.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers, retailers, and consumers.

CHAPTER 13 and 27: Retail Margins

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set new minimum retail margins according to cost study and hearing testimony.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Retailers and consumers.

CHAPTER 14: 30 Days Notice

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Minimum number of days notice required before a producer can be dropped by a Maine dealer.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers and dealers.

CHAPTER 20: Prevention of Destructive Competition

STATUTORY AUTHORITY: 7 MRSA Section 2981 et seq.

PURPOSE: Prohibits predatory pricing.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers, retailers, and milk consumers.

CHAPTER 26: Producer Cost

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set minimum producer price based on Federal order and actual cost of production.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Producers, dealers, retailers and consumers.

CHAPTER 29: Dealer Margins

STATUTORY AUTHORITY: 7 MRSA Sections 2953-2954

PURPOSE: Set new minimum dealer margins based on latest cost study and public hearings and testimony.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Dealers and consumers.

CHAPTER 603: Milk Promotion

STATUTORY AUTHORITY: 7 MRSA Section 2954

PURPOSE: Establish guidelines for promotions of milk.

ANTICIPATED SCHEDULE: Prior to October 1, 2008

AFFECTED PARTIES: Farmers, dealers, retailers and consumers.

ITEM G: COOPERATION WITH OTHER AGENCIES

The Maine Milk Commission and The University of Maine's Department of Resource Economics, have established cooperative arrangements in studying costs associated with producing, processing and retailing milk in Maine.

The Maine Milk Commission has coordinated its efforts with The University of Maine System in order to uphold its statutory obligation and assess the health of the industry.

Funds for the project are not only contributed by the Milk Commission but also by the University.

Responsibilities are shared in this effort.

ITEM H: IDENTIFICATION OF CONSTITUENTS

The Maine Milk Commission (MMC) regulates the minimum price of milk produced, processed and sold in Maine which, in turn, affects dairy processors, farmers and members of the milk products consuming public.

By establishing minimum monthly prices, the MMC provides stability for Maine's processors and producers, which helps maintain the supply of fresh wholesome milk to Maine consumers.

Maine is unique geographically placing it at the end of the line for many commodities. Distance from markets, increasing transportation costs and costs of raw materials are important factors for the survival of Maine's dairy industry and the supply of fresh milk.

Currently, New England has two major processors that control much of the dairy industry. This trend to consolidation threatens Maine's smaller local processors and limits the markets available for raw milk. The MMC minimum price laws provide a measure of oversight to this situation.

ITEM I: ALTERNATIVE DELIVERY SYSTEMS

The Maine Milk Commission and The University of Maine's Department of Resource Economics, have established cooperative arrangements in studying costs associated with producing, processing and retailing milk in Maine. The Maine Milk Commission has coordinated its efforts with The University of Maine System in order to uphold its statutory obligation and assess the health of the milk industry. Funds for the project are not only contributed by the Milk Commission but also by the University.

Maine is unique geographically placing it at the end of the line for many commodities. Distance from markets, increasing transportation costs and costs of raw materials are important factors for the survival of Maine's dairy industry and the supply of fresh milk. Since the Milk Commission regulates the minimum price of milk produced, processed and sold in Maine which, in turn, affects dairy processors, farmers and members of the milk products consuming public, the Commission provides a measure of stability to Maine's processors and producers, which helps maintain the supply of fresh wholesome milk to Maine consumers.

Currently, New England has two major processors that control much of the dairy industry. This trend to consolidation threatens Maine's smaller local processors and limits the markets available for raw milk. The Commission's minimum price laws provide a measure of oversight to this situation.

There really is no alternative method of providing this protection and stability.

(J) Emerging Issues

The Milk Commission monthly price setting meetings continue to be a forum for airing difficulties and issues, many of which the Commission has no control over.

One issue that is of particular frustration is the perception that retailers have excessively high mark-ups on milk. Time and again, this subject is discussed with no answers forthcoming. Retail representatives rarely attend Commission meetings and have not responded to the issue.

This question will continue until a satisfactory answer is received or legislation is enacted that addresses it.

(K) Additional Information Requested by the Committee of Jurisdiction

None

(L) A Comparison of Any Related Federal laws and Regulations to the State Laws Governing the Agency or Programs and the Rules Implemented by the Agency or Program

None

(M) Agency Policies for Collecting, Managing and Using Personal Information Over the Internet and Non-electronically, Information on the Agency's Implementation of Information technologies and an Evaluation of the Agency's Adherence to the Fair Information Practice Principles of Notice, Choice, Access, Integrity and Enforcement

The Agency follows statutes and rules established by State of Maine Policy

(N) A List of Reports, Applications and Other Similar Paperwork Required to be filed with the Agency by the Public

None

As mentioned above, by rules of the Federal Order, Boston market producers are required to be paid for milk produced in a calendar month based on butterfat, protein, and other solids contents plus a Producer Price Differential (PPD). Maine law was changed in 1999 to allow the same method of payment for Maine market producers. (7 MRSA. Section 2956.3).

The Commission intends that any Class I Premium adopted will be passed on proportionately to Maine farmers by the processors paying them using the Class I utilization of Maine milk for that particular processing plant. For example, a Maine Dairy with 60% of its Class I sales in Maine would be obliged to pay 60 cents per CWT as a premium to its Maine farmers when the Commission adopts a Class I Premium of \$1.00. Likewise, a Maine Dairy with 48% of its Class I sales in Maine would be obligated to pay 48 cents per CWT when a Class I Premium of \$1.00 is adopted by the Commission. In other words, multiply the percentage of Class I Maine sales by the Class I Premium to get the amount payable to the farmer. See 7 M.R.S.A. Section 2954.9 and *Grant's Dairy Maine LLC v. Commissioner of Maine Department of Agriculture, et. al.*, F.3rd,n. 5 (1st Cir. 2000).

How are Minimum Milk Processing Prices Established by the Maine Milk Commission?

Minimum prices paid to processors (dairies) are established to reflect the lowest price at which milk purchased from Maine producers at Maine minimum prices can be received, processed, packaged and distributed to retailers within the state at a just and reasonable return. To arrive at the dairy processing cost, also known as the dealer margin, the Commission conducts a cost study for the operation of hypothetical model milk processing facilities. Using the models and current cost data for supplies, labor, electricity, trucking, etc., a theoretically, lowest achievable price is calculated, which is the theoretical price at which a dairy should be able to process milk from raw product to finished product and deliver it to the retailer. The Commission adjusts the theoretical price to take into account Maine conditions to arrive at a proposed processor margin. The Commission conducts a public hearing on the proposed processor margin and after considering the input of processors, any other interested parties, and the public, the Commission adopts a rule establishing the processor margin. This margin is the return that processors are guaranteed until a new study is completed. Processors may obtain a higher price for a gallon of milk from retailers, but the price paid by retailers cannot be below the minimum processor margin. By statute, a cost study is required every three years.