

# MAINE STATE LEGISLATURE

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

January 1, 2016

Submitted by: Tim Drake  
Executive Director





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GOVERNOR

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DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
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Sen. Peter E. Edgecomb, Senate Chair  
Rep. Craig V. Hickman, House Chair  
Joint Standing Committee on Agriculture, Conservation and Forestry

RE: Agency review under the Government Evaluation Act

As required by the Government Evaluation Act the following report has been compiled. This report will begin with the enabling legislation and will be followed by a description of the programs administered by the Commission and its staff. Priorities, goals and objectives and their performance measures are also discussed.

An organizational flow chart is included to show the structure and position count for the Commission. For a financial summary two charts are included, one to show Commission income from fees on milk sales and another to show Commission expenses for the last ten years. This is followed by our regulatory agenda, which lists all anticipated rulemaking activity for the upcoming year. A list and description of other agencies and entities the Commission coordinates or deals with is then included. We identify the constituents served by our activities and discuss what alternatives are available to achieve our goals. Finally a brief description of what we see as emerging or continuing issues for the milk industry in Maine is included.

I look forward to presenting this report to the Committee and answering any questions you may have.

Sincerely,

*Tim Drake*

Tim Drake  
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Maine Milk Commission

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## Section A: Milk Commission Statutes

### Title 7, 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.

**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).]

**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:

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.

[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 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 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).]

**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 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, Conservation and Forestry 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, Conservation and Forestry 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).]

**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, Conservation And Forestry 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**

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 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)**

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;

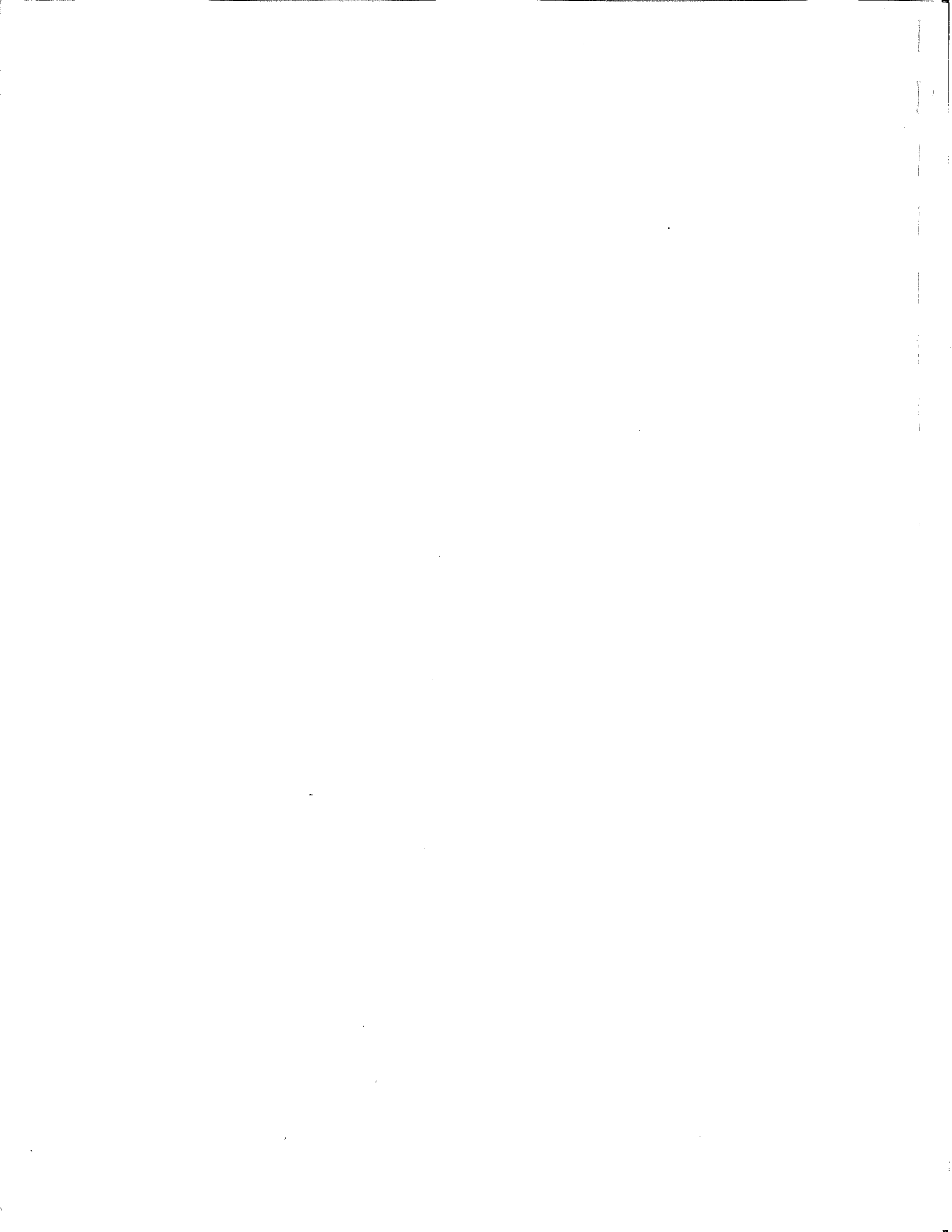
[1989, c. 438 (new).]

**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: AGRICULTURE AND ANIMALS**

**Part 7. MILK AND MILK PRODUCTS**

**Chapter 611: MILK POOLING**

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## Maine Revised Statutes

### Title 7: AGRICULTURE AND ANIMALS

#### Chapter 611: MILK POOLING

##### §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); 1999, c. 679, Pt. B, §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); 1999, c. 679, Pt. B, §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 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).]

#### SECTION HISTORY

1983, c. 573, §4 (NEW). 1987, c. 447, §3 (AMD). 1999, c. 679, §B6 (AMD). 1999, c. 679, §B14 (AFF).

#### **§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); 1999, c. 679, Pt. B, §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); 1999, c. 679, Pt. B, §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 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); 1999, c. 679, Pt. B, §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) .]

#### SECTION HISTORY

1983, c. 573, §4 (NEW). 1985, c. 646, §§1,2 (AMD). 1987, c. 447, §§4,5 (AMD). 1989, c. 436, §§2-4 (AMD). 1991, c. 266, §§3-7 (AMD). 1999, c. 547, §B22 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 679, §§B7-11 (AMD). 1999, c. 679, §B14 (AFF). 2001, c. 471, §A10 (AMD). 2001, c. 471, §A11 (AFF). 2005, c. 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) .]

#### SECTION HISTORY

1985, c. 646, §3 (NEW). 1999, c. 161, §4 (AMD). 2005, c. 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 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); 1989, 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
- (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) .]

**6. Rules.** 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) .]

#### SECTION HISTORY

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

#### **SECTION HISTORY**

2003, c. 120, §2 (NEW). 2003, c. 522, §1 (AMD).

### **§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 4 categories of annual production. Target prices are determined in accordance with subsection 3. [2009, c. 467, §2 (AMD).]

[ 2009, c. 467, §2 (AMD) .]

**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 4 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.

The Maine Milk Commission may establish and amend ranges of production for each tier and target prices through rulemaking. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 467, §3 (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) .]

#### SECTION HISTORY

2003, c. 648, §2 (NEW). 2005, c. 382, §F34 (AMD). 2007, c. 240, Pt. OOO, §1 (AMD). 2007, c. 262, §1 (AMD). 2009, c. 467, §§2, 3 (AMD).

#### **§3153-C. MILK INCOME LOSS CONTRACT**

*(REPEALED)*

#### SECTION HISTORY

2003, c. 648, §2 (NEW). 2005, c. 230, §1 (AMD). 2009, c. 467, §4 (RP).

#### **§3153-D. TRANSFER OF REVENUES**

On or before the 18th day of each month, the administrator of the Maine Milk Pool shall subtract the amount in the Maine Milk Pool, Other Special Revenue Funds account that is available for distribution for dairy stabilization support from the total amount to be distributed for the previous month pursuant to section 3153-B and certify this amount to the State Controller, who shall transfer the certified monthly amount when certified from General Fund undedicated revenue to the Maine Dairy Farm Stabilization Fund, Other Special Revenue Funds account. [2013, c. 368, Pt. Y, §1 (AMD).]

#### SECTION HISTORY

2005, c. 418, §1 (NEW). 2009, c. 467, §5 (AMD). 2011, c. 625, §2 (AMD). 2011, c. 690, §1 (AMD). 2013, c. 368, Pt. Y, §1 (AMD).

## §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); 1995, c. 693, §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).]

#### SECTION HISTORY

1983, c. 573, §4 (NEW). 1985, c. 506, §B6 (AMD). 1987, c. 447, §§9,10 (AMD). 1995, c. 693, §19 (AMD). 1995, c. 693, §25 (AFF). 1999, c. 161, §7 (AMD). 2005, c. 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).]

#### SECTION HISTORY

1983, c. 573, §4 (NEW). 1983, c. 816, §A1 (AMD). 1987, c. 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.

[ 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); 1999, c. 547, Pt. B, §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).]

#### SECTION HISTORY

1987, c. 447, §12 (NEW). 1999, c. 547, §B23 (AMD). 1999, c. 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).]

#### SECTION HISTORY

2005, c. 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).]

#### SECTION HISTORY

1983, c. 573, §4 (NEW).

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## Section B: Description of The Program

### MAINE MILK COMMISSION

#### Strategic Plan

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

#### **Maine Milk Commission 0188**

Conduct 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.

<b><u>Performance Measures</u></b>	<b>Baseline</b>	<b>2007-08</b>	<b>2014-15</b>
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%	94%

#### ASSESSMENT

A Maine Milk Control Law was enacted in 1935 by the 87<sup>th</sup> 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 dealer's 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 94% of the fresh milk consumed in Maine produced by Maine farmers, the Commission believes it continues to meet this goal.





## 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 DAIRY RELIEF PROGRAM (“TIER”)

This program was established by the legislature in 2003 to provide economic relief to Maine dairy farmers in times of low milk prices. The program works as follows; Payments are calculated as prescribed in title 7, chapter 611, and subsection 3153B. Funding is derived from the general fund, milk handling fee proceeds are collected by Maine Revenue Service and deposited in the general fund. After the payments are calculated and certified each month the required funds are requested from the state controller to be transferred to the milk pool account, then payments are sent to milk processors and cooperatives for payment to individual farms. Each processor or cooperative is given a spreadsheet which details how much each farm is to receive that month.

### Maine’s Tier Pay Program November 2011

7 M.R.S.A. Section 3153-B

<http://www.mainelegislature.org/legis/statutes/7/title7sec3153-B.html> explains how **base price** is calculated. A monthly base price is established by adding to the Federal Milk Order One Suffolk County Statistical Uniform Price of milk the amount received by producers as a result of cost of production adjustments added to Class I by the Maine Milk Commission. Section 3153-B identifies a **target price** as the most recent **short-run-breakeven** cost of production adopted by the Maine Milk Commission for each producer. See link to Chapter 26 at the website below:  
<http://www.maine.gov/agriculture/mmc/index.shtml>

Once the base price is established for each producer, it is then compared to the target price for that producer. If the base price is less than the target price, the difference is paid to the producer. The target price for a producer depends on which of four production ranges a producer is in. All producers begin in the first level of production beginning June 1. Annual production is counted from June 1 to May 31. Some producers move into the second and third levels of production fairly quickly. Others never get out of the first level.





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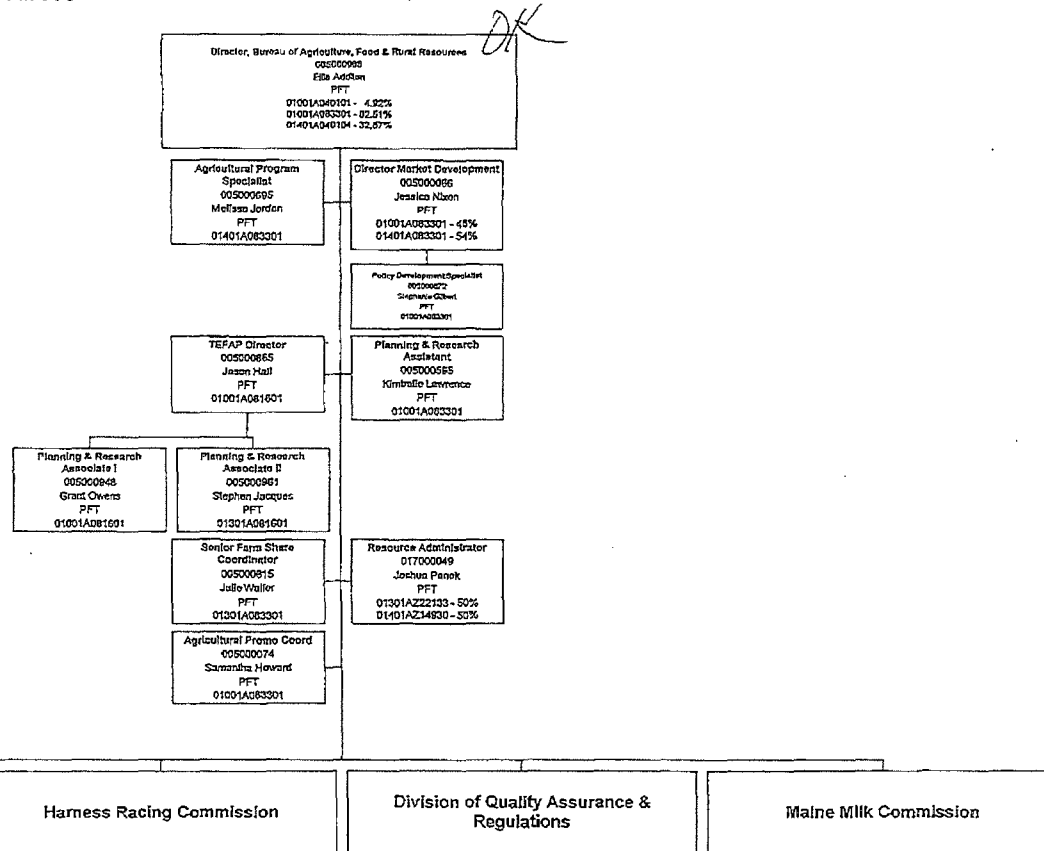
Section C: Organizational Flow Chart

Agriculture, Conservation, and Forestry  
Bureau of Agriculture, Food & Rural Resources

Last Modified: 8/27/2015

Page 2

Position Type:
ACFT - Acting Cap Full-time
PFT - Permanent Full-time
PPT - Permanent Part-time
PerInt - Permanent Intermittent
SFT - Seasonal Full-time
SPT - Seasonal Part-time
SeasInt - Seasonal Intermittent
ProjFT - Project Full-time
ProjPT - Project Part-time
ProjInt - Project Intermittent
LPFT - Limited Period Full-time
LPPT - Limited Period Part-time
LPInt - Limited Period Intermittent



Prepared by the Department of Agriculture, Conservation and Forestry









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



**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION  
FORESTRY  
MAINE MILK COMMISSION  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028**

**WALTER E. WHITCOMB  
COMMISSIONER**

**AND**

**PAUL R. LEPAGE  
GOVERNOR**

**MICHAEL WIERS  
CHAIRMAN**

**TIM DRAKE  
EXECUTIVE DIRECTOR**

The Maine Milk Commission complies with all applicable Federal and State health and safety laws.



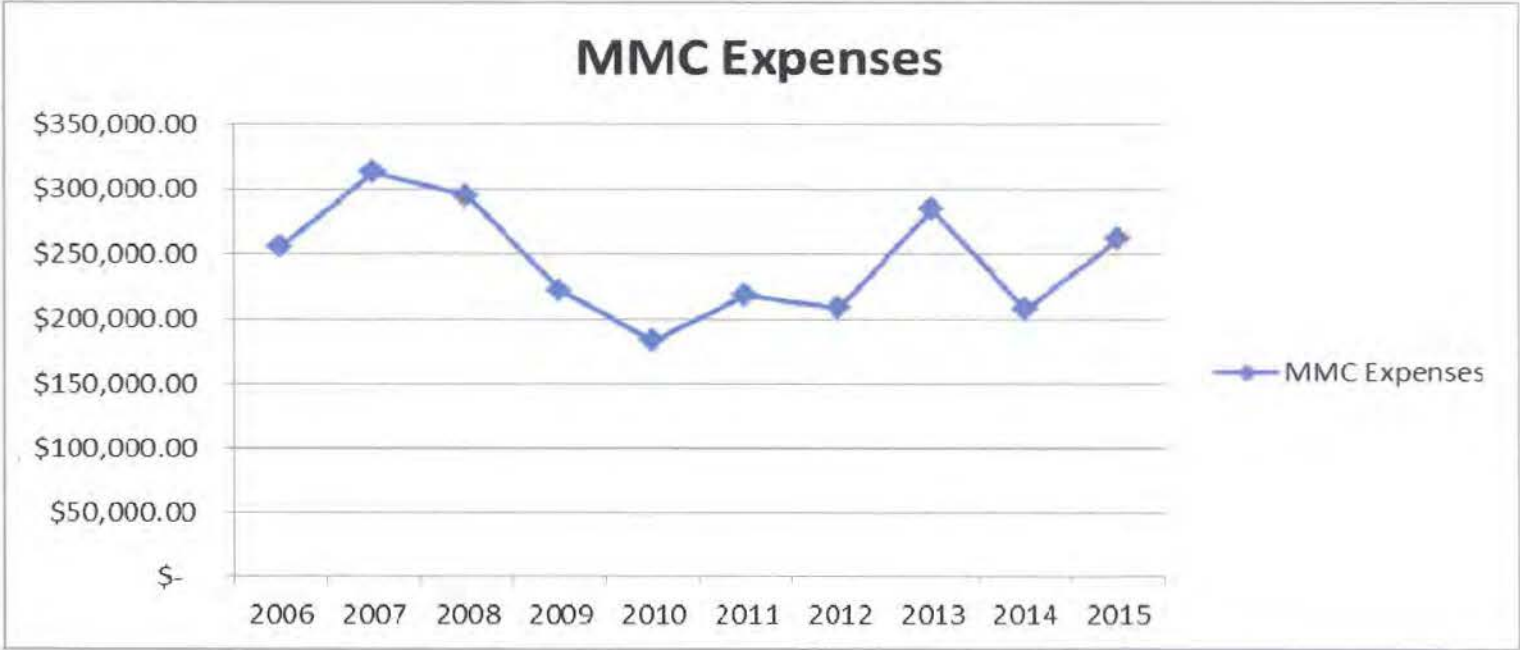


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**Section E: Financial Summary**

**EXPENSE GRAPH**

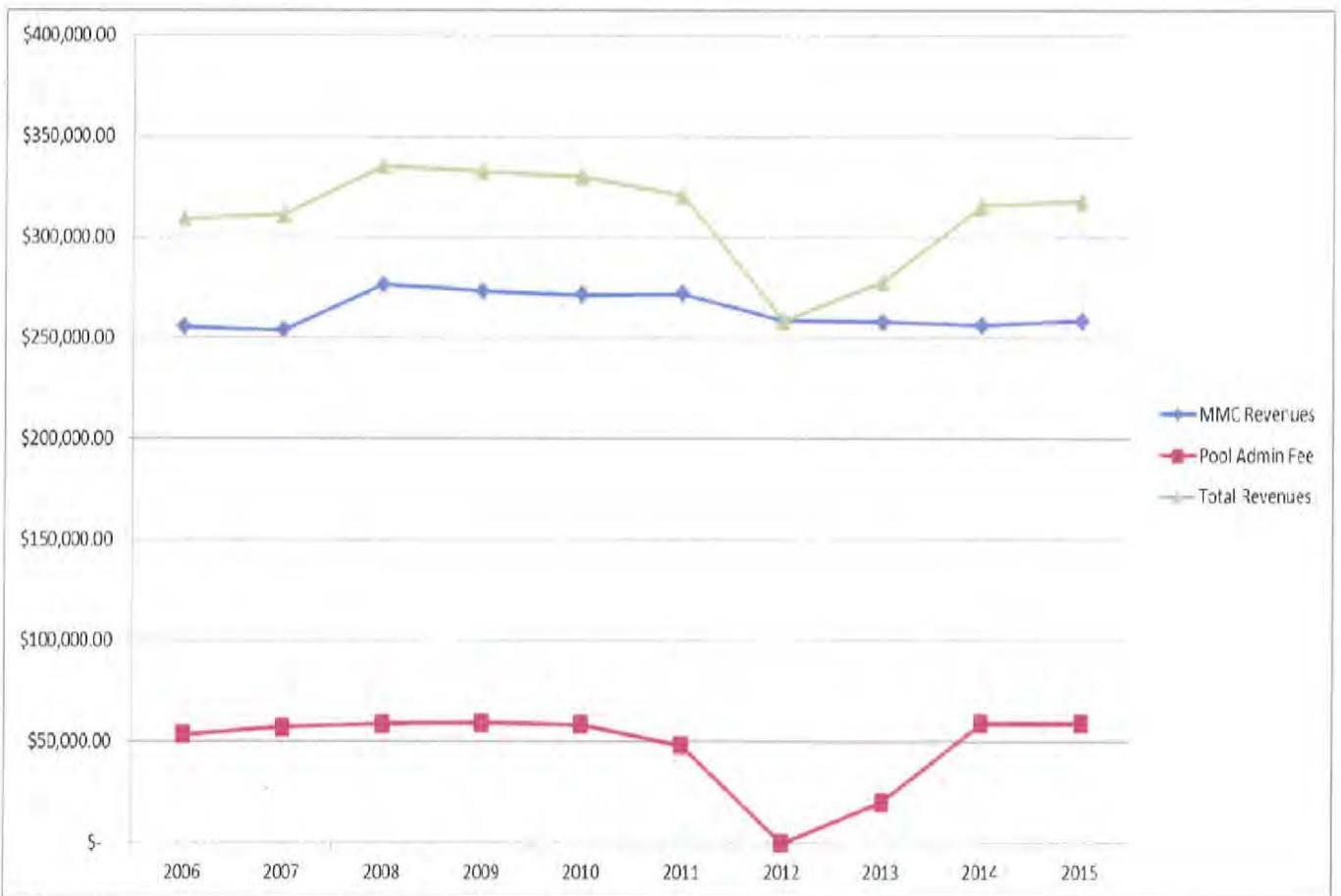
2006	\$ 255,421.33
2007	\$ 312,667.78
2008	\$ 294,890.29
2009	\$ 221,804.78
2010	\$ 183,708.07
2011	\$ 218,031.59
2012	\$ 208,558.27
2013	\$ 284,453.02
2014	\$ 207,498.52
2015	\$ 262,018.52





## Maine Milk Commission Revenues

2006	\$ 255,478.54	\$ 53,924.05	\$ 309,402.59
2007	\$ 253,863.72	\$ 57,309.86	\$ 311,173.58
2008	\$ 276,500.09	\$ 58,957.86	\$ 335,457.95
2009	\$ 273,249.91	\$ 59,456.01	\$ 332,705.92
2010	\$ 271,394.49	\$ 58,671.03	\$ 330,065.52
2011	\$ 271,943.86	\$ 48,514.21	\$ 320,458.07
2012	\$ 258,666.67	\$ -	\$ 258,666.67
2013	\$ 257,904.24	\$ 20,332.21	\$ 278,236.45
2014	\$ 256,313.49	\$ 59,255.39	\$ 315,568.88
2015	\$ 258,605.71	\$ 59,157.43	\$ 317,763.14





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## Section F: Regulatory Agenda

AGENCY UMBRELLA - UNIT NUMBER: **01-015**

AGENCY NAME: Department of Agriculture, Conservation and Forestry,  
**Maine Milk Commission**

**CONTACT PERSON:** Mari Wells-Eagar, 22 SHS, Augusta, Maine 04333, (207) 287-4909,  
[mari.wells@maine.gov](mailto:mari.wells@maine.gov)

**EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA:**  
Chapter 3, Schedule of Minimum Prices monthly

### **EXPECTED 2014-2015 RULE-MAKING ACTIVITIES:**

#### **CHAPTER 1: Interstate Conference and Compacts**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

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

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

#### **CHAPTER 2: Hearing Procedures**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Commission, intervenors and industry.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

#### **CHAPTER 5: Milk Commission Monthly Forms**

STATUTORY AUTHORITY: 7 MRSA § 2952-A-2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Farmers, dealers and retailers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

#### **CHAPTER 6: Inspection of Records, Books and Accounts**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 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.

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Farmers, dealers and retailers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)



**CHAPTER 11 and 25: Hauling and Transportation Costs**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

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

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

**CHAPTER 26: Producer Cost**

STATUTORY AUTHORITY: 7 MRSA §2953-2954

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

ANTICIPATED SCHEDULE: Prior to October 1, 2015

AFFECTED PARTIES: Producers, dealers, retailers and consumers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

**CHAPTER 13 and 27: Retail Margins**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Retailers and consumers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

**CHAPTER 29: Dealer Margins**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954

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

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Dealers and consumers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)

**CHAPTER 61: Maine Milk Pool Cost of Administration**

STATUTORY AUTHORITY: 7 MRSA § 2952-A through 2954 and 3154

PURPOSE: Set new cost of administration of Maine Milk Pool after public hearings and testimony.

SCHEDULE FOR ADOPTION: Prior to October 1, 2014

AFFECTED PARTIES: Processors and producers.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

CONTACT PERSON: Tim Drake, 28 SHS, Augusta, Maine 04333, (207) 287-7521,  
[tim.drake@maine.gov](mailto:tim.drake@maine.gov)







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## **ITEM G: COOPERATION WITH OTHER AGENCIES**

The Maine Milk Commission, Herbein & Co. and The University of Maine's Department of Resource Economics, have established contractual arrangements through the R.F.P. process to study costs associated with producing, processing and retailing milk in Maine.

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

Funds for the projects are solely the responsibility of the Milk Commission.

The Maine Milk Commission also cooperates with the Maine Revenue Service in the setting and collection of the Milk Handling Fee.

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## **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, retailers, 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 Maine Milk Commission minimum price laws provide a measure of oversight to this situation.

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## **ITEM I: ALTERNATIVE DELIVERY SYSTEMS**

The Maine Milk Commission, Herbein & Co. and The University of Maine's Department of Resource Economics have entered into contracts through the RFP process to study costs associated with producing, processing and retailing milk in Maine. The Maine Milk Commission has coordinated its efforts with these entities in order to uphold its statutory obligation and assess the health of the milk industry. Funds for the project are only contributed by the Milk Commission.

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.







## **ITEM 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 do 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

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## ITEM K: CONCLUSION

In conclusion, the Maine Milk Commission continues to protect the Maine milk industry through the minimum prices set for both the retail and wholesale sales of milk within Maine. The success of this protection can be measured by the fact that Maine's milk production has remained fairly stable while milk production in neighboring New England states has declined. This success can also be attributed to the Maine Dairy Relief Program (Tier Program). We do continue to lose farm numbers and this continues to be a concern for the Commission members and is considered at each month's deliberations. On the retail side of the dairy business in 2014, we had over 80 percent of our production volume sold in some form within the State of Maine. Not all of these products were processed and produced in Maine but a lion's share was.

