Title 7: AGRICULTURE AND ANIMALS

Chapter 603: MILK COMMISSION

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§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) .]

SECTION HISTORY
1973, c. 758, §1 (AMD). 1985, c. 717, §§1,2 (AMD). 2005, c. 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) .]

SECTION HISTORY
1969, c. 362, (AMD). 1971, c. 594, §12 (AMD). 1973, c. 758, §2 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 517, §1 (RPR). 1975, c. 771, §§100,101 (AMD). 1977, c. 78, §31 (AMD). 1979, c. 731, §19 (AMD). 1979, c. 734, §6 (AMD). 1983, c. 484, §1 (AMD). 1983, c. 812, §§52,53 (AMD). 1985, c. 517, (AMD). 1985, c. 785, §B48 (AMD). 1989, c. 410, §21 (AMD). 1989, c. 503, §B46 (AMD). 1999, c. 679, §B1 (AMD). 1999, c. 679, §B14 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 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 4 different levels of production; and [2009, c. 467, §1 (AMD).]

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).]

[2009, c. 467, §1 (AMD) .]

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) .]

SECTION HISTORY
2005, c. 382, §F4 (NEW). 2009, c. 467, §1 (AMD).

§2953. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1975, c. 517, §2 (RPR). 1989, c. 123, (AMD). 2003, c. 648, §1 (AMD). 2005, c. 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); 1999, c. 679, Pt. B, §14 (AFF) .]

SECTION HISTORY
1965, c. 463, (NEW). 1989, c. 437, (AMD). 1993, c. 274, §1 (AMD). 1999, c. 679, §B2 (AMD). 1999, c. 679, §B14 (AFF). 2005, c. 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).]

SECTION HISTORY
1979, c. 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); 2005, 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); 2005, 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) .]

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

SECTION HISTORY
1965, c. 449, (NEW). 1985, c. 172, (RPR). 1987, c. 447, §2 (AMD). 1999, c. 679, §B4 (AMD). 1999, c. 679, §B14 (AFF). 2005, c. 382, §F16 (AMD).

§2954-B. STUDY OF MILK PRICE REGULATORY OPTIONS

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

[1985, c. 42, §2 (NEW) .]

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

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

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

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

[1985, c. 42, §2 (NEW) .]

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

[1985, c. 42, §2 (NEW) .]

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

[1985, c. 42, §2 (NEW) .]

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

[1985, c. 42, §2 (NEW) .]

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

[1985, c. 42, §2 (NEW) .]

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

[1985, c. 42, §2 (NEW) .]

SECTION HISTORY
1985, c. 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).]

SECTION HISTORY
1985, c. 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); 1999, c. 547, Pt. B, §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.

SECTION HISTORY
1973, c. 303, §3 (AMD). 1975, c. 517, §4 (AMD). 1977, c. 694, §141 (AMD). 1999, c. 547, §B21 (AMD). 1999, c. 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).]

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

SECTION HISTORY
2001, c. 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.

SECTION HISTORY
1969, c. 214, §2 (AMD). 1971, c. 594, §13 (AMD). 1975, c. 444, §4 (AMD).

§2958. DAIRY COUNCIL COMMITTEE

(REPEALED)

SECTION HISTORY
1975, c. 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) .]

SECTION HISTORY
1985, c. 717, §4 (RPR). 2005, c. 382, §F19 (AMD).

§2960. PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 696, §100 (RPR). 1985, c. 717, §5 (RP).

§2961. TEMPORARY MINIMUM PRICES TO BE PAID TO DEALERS AND RETAILERS FOR THE SALE OF MILK

(REPEALED)

SECTION HISTORY
1981, c. 481, §2 (NEW). RR 1997, c. 2, §29 (COR). 2005, c. 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).]

SECTION HISTORY
1985, c. 717, §6 (NEW). 2005, c. 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) .]

SECTION HISTORY
1989, c. 438, (NEW).

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