# **01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**015 MAINE MILK COMMISSION**

**Chapter 1: ORDERS**

**SUMMARY**: This rule contains certain definitions, Commission Rulings, required records, price computations, container sizes and other matters necessary to carry out the *Maine Milk Commission Law*.

**1. DEFINITIONS**

As used in this order, the following words shall have the following meaning:

A. "Books and Records" means books, records, accounts, memoranda or other data pertaining to the purchase and distribution of milk.

B. "Commission" means the Maine Milk Commission.

C. "Consumer" means any person other than a milk dealer or producer who purchases milk for fluid consumption.

D. "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

E. "Federal Order" means USDA, Agriculture Marketing Service, Dairy Division, Federal Milk Order No. 1.

F. "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.

G. "Milk" means whole milk and cream, fresh, sour or storage; skimmed milk and buttermilk, irrespective of whether or not any such milk is flavored.

H. "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.

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

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

K. "Retail Sale" means a doorstep delivery and over-the-counter sales by stores.

L. "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.

M. "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.

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

**2. COMMISSION RULINGS**

A. Quantity discounts, except as provided in price schedules are illegal.

B. All containers in which milk or cream is sold must carry the name or trade name of the dealer on the container or the cap and, in addition thereto, all cream containers shall be marked with the words, "Half-and-Half", "Light Cream", "Medium Cream" or "Heavy Cream".

C. Skim milk is hereby defined as that fluid product of milk which contains less than 0.25% milk fat.

D. Half-and-Half is hereby defined as the milk product resulting from the combining of milk and cream in such proportions as to result in a mixture containing not less than 10.5%, but less than 18% milk fat. (See Section #16)

E. Light Cream is hereby defined as fluid cream, containing not less than 18% milk fat.

F. Medium Cream is hereby defined as fluid cream containing not less than 30% milk fat.

G. Heavy Cream is hereby defined as fluid cream containing not less than 36% milk fat.

H. Whole milk is hereby defined as fluid milk containing not less than 3.25% milk fat.

I. Low fat milk is hereby defined as milk which contains at least .5% and not more than 2.5% of milk fat. Low fat milk shall contain not less than 8.5% of milk solids not fat.

J. No milk or cream shall be sold for human fluid consumption in any controlled area at any other butterfat percentages than those defined in these Rules and Orders.

K. Dealers paying a blended price to producers shall compute payments on a monthly basis and use the current Class prices. Dealers desiring to pay on a semimonthly basis may do so by using the appropriate Class prices or by an estimated advance payment and making the necessary adjustments when monthly prices are announced.

L. 1. Dealer-to-Dealer sales of milk are payable at the Class I price to producers.

2. Dealer-to-Dealer sales of cream are payable at the Class II milk equivalent price to producers.

M. Dealers who regularly buy milk from producer-dealers shall include this milk in their records as "receipts from producers" and pay the hundredweight fees on said milk.

N. Dealers wishing to pay producers on a rating or quota plan must have prior approval by the Commission based upon six months notification to the producers.

O. There can be no contract or agreement whereby a dealer on a use plan pays one or more producers less than the minimum payable to all producers in any given pay period.

P. Milk sold by a dealer in a controlled area to a consuming unit which is not a consumer as defined by statute, or sold in an uncontrolled area, shall not be subject to the minimum prices fixed by the Commission. The minimum prices fixed shall nevertheless apply to sales of milk destined for use of such consuming unit or in such uncontrolled area, from producers to dealers. These minimum prices shall be prevailing producer prices in the immediately adjoining or surrounding controlled market area to the physical location of such consuming unit or uncontrolled area.

Q. Any dealer may deduct an allowance for transportation from the producer's farm to the dealer's dairy plant pursuant to a reasonable schedule of charges filed with the Commission, with a copy to each affected producer, at least 30 days prior to the proposed effective date. Should any producer or producer organization petition the Commission for a hearing and such hearing is granted, it will be incumbent upon the dealer to substantiate the reasonableness of the schedule of charges filed. In absence of such evidence, the schedule of charges in question shall be deemed unreasonable.

**3. DEALER RECORDS AND REPORTS**

Dealers buying milk from producers shall keep the following records available for inspection and audit by the Commission or its agents at all reasonable times in permanent ledger form approved by the Commission or its agents.

**4. FOR EACH PAY PERIOD**

A. Daily amount of milk supplied by each producer (own included), totaled for the pay period for each producer, and totaled for the pay period for all producers.

B. Daily Class I sales at retail, wholesale and dealer-to-dealer, totaled for the pay period.

C. Daily sales of skim milk and cultured buttermilk for human fluid consumption, totaled for the pay period.

D. Record of dealer-to-dealer sales of milk and cream and dealer-to-dealer purchases of milk and cream with names of dealers, date and amount of sale or purchase, each totaled for the pay period.

E. Gross amount due each producer, itemized deductions and net payment.

F. Canceled checks or signed receipts of payments to producers must be available for proof of payments.

G. Each dealer shall furnish his producers a statement of the amount of milk purchased, the price per hundredweight, the total amount paid for each pay period, the itemized deductions for transportation and other services, the percentage of milk in each classification (unless the dealer is a federal order plant) and the butterfat test when weight and test method of payment is used.

**5. CLASS I MILK SHALL MEAN:**

A. All fluid milk sold, distributed or disposed of as or in milk which contains not more than 10.5% butterfat and skim milk and cultured buttermilk sold for human consumption.

B. All milk products sold, distributed or disposed of for human consumption as or in flavored milk and flavored skim milk.

C. All fluid milk in bulk form which contains not more than 11% butterfat, skim and cultured buttermilk which is transferred between plants operated by one company, if the receiving plant is not subject to the jurisdiction of the Commission and not part of the Federal Milk Marketing Order #1, and sells, distributes or disposes of fluid milk for human consumption in amounts equal to or in excess of the amount of milk transferred.

**6. CLASS II MILK SHALL MEAN:**

Class II milk shall mean milk and cream not classified as Class I and is one or more of the following:

A. disposed of in the form of packaged fluid cream;

B. manufactured into soft products, such as cottage cheese, ice cream, milk shake, egg nog or ice milk mixes, custards, puddings or any other semi-solid products resembling a Class II product.

C. sold in bulk form to another Maine dealer provided that the purchasing dealer has a Class II license.

D. milk or cream used for in-house manufacturing of soft products or,

E. surplus milk or cream sold to a manufacturing plant to produce soft products.

**7. CLASS III MILK**

Class III milk shall be milk not classified as either Class I or Class II and is one or both of the following:

A. milk or cream used in the manufacturing of hard products including milk or cream which is used for in-house manufacturing of hard products or,

B. surplus milk or cream sold to a manufacturing plant to produce hard products such as hard cheese, butter or dry powder.

Sales of surplus milk and cream to a manufacturing plant shall be classified as Class III sales unless the audit identifies a Class II sale.

**8. COMPUTATION OF CLASS I PRICE**

For Class I milk - the Zone 1 price as announced by the U.S. Department of Agriculture, Federal Milk Order No. 1 for the New England Marketing Area.

**9. COMPUTATION OF CLASS II PRICE**

For Class II milk - the price for all zones as announced by the U.S. Department of Agriculture, Federal Milk Order No. 1 for the New England Marketing Area.

**10. COMPUTATION OF CLASS III PRICE**

For Class III milk - the price for all zones as announced by U.S. Department of Agriculture, Federal Milk Order No. 1 for the New England Marketing Area.

**11. BUTTERFAT DIFFERENTIAL**

The butterfat differential payable by dealers to producers for each 1/10 of 1% of butterfat variance from the basic 3.5% shall be the monthly butterfat differential as announced by the U.S. Department of Agriculture, Federal Milk Order No. 1 for the New England Marketing Area.

**12. SKIM MILK**

Skim milk - (not flavored) and cultured buttermilk sold for human fluid consumption shall be paid for at the Class I - 3.5% producer price applicable to the market area where sold.

**13. CLASS I FOR CHOCOLATE AND FLAVORED MILK**

The producer shall be paid the Class I price for all the whole, lowfat, or skim milk which is used in chocolate and flavored milk.

**14. CONTAINER SIZES**

A. The half-gallon prices shall apply to 2 single quarts banded together, so called twin-packs or half-gallon containers.

B. The gallon prices shall apply to milk sold in gallon containers only.

**15. CONTAINER DEPOSIT**

The minimum deposit to and by all wholesale customers and stores purchasing milk for resale in reusable container shall be $.25 for gallons, $.15 for half-gallons and $.10 for quarts.

**16. CLASS II FOR HALF AND HALF**

The producer shall be paid the Class II price for all volume of sales of half and half.

**17. FLAT PRICE METHOD**

The minimum price payable to producers by dealers who purchase milk by the flat price method in any controlled market area shall be 100%, the price as announced by the Commission.

**18. WEIGHT AND TEST METHOD**

The established minimum prices payable to producers by dealers who purchase milk by the "Weight and test" method in any controlled market area shall be based on the butterfat equivalent of 3.5% for all classifications according to its various usages, and such prices shall be increased by the announced butterfat differential for each 1/10 of 1% of average butterfat content above said test and decreased a like amount for each 1/10 of 1% of average butterfat content below said test.

**19. CHANGE METHOD OF PAYMENT**

Any change in the method of payment by dealers to producers, either to a flat price or weight and test method, shall have the prior approval of the Maine Milk Commission.

**20. FLUID DIETARY MILK PRODUCTS**

Fluid dietary milk products shall be considered as flavored milk, or as flavored skim milk if the butterfat content is less than 2.25%; and as such, the classifications of these products will be as Class I milk.

**21. FLAVORED MILK AND STANDARD WEIGHT**

Flavored milk and flavored skim milk, to include fluid dietary milk products, shall have a standard weight equivalent to 2.0 pounds per quart.

**22. BASE RATING OR QUOTA PLAN**

Licensed dealers having a base rating or quota plan, which has had the prior approval of the Commission, may deduct $.50 per hundredweight from the Class II price for milk beyond each producer's quota provided such milk has been utilized in the manufacture of butter only, in the plant where received from producers. This milk so used in the manufacture of butter shall not become a part of the normal plant blend calculation, and shall be carried as a separate factor in the dealer's records and on the producer's checks.

**23. MILK BALANCING**

A dealer's calendar month's utilization and blend price shall be based on that dealer's "Net Class I Sales". "Net Class I Sales" shall be calculated as follows:

A. A dealer shall first calculate its "Gross Class I Sales". "Gross Class I Sales" is the sum of:

1. the dealer's packaged fluid Class I milk sales;

2. the dealer's Class I sales of fluid milk in bulk to other Maine dealers.

B. The dealer shall then calculate "Milk Purchased From Other Dealers". "Milk Purchased From Other Dealers" is the sum of:

1. Bulk Class I milk receipts from Maine dealers' producer milk;

2. Bulk Class I milk receipts from federal order sources;

3. Bulk Class I milk receipts or transfers from dealers outside of Maine, after deducting the amount of Class I milk sold outside of Maine in any area not regulated by any Federal Marketing Order, to the extent that such net receipts or transfers do not exceed 10% of the milk dealer's total Maine Class I sales; and

4. Class I milk receipts in packaged form.

C. Milk Purchased From Other Dealers shall not include purchases of bulk skim milk, unless;

1. the purchasing dealer's total producer production is less than the purchasing dealer's total needs, or;

2. when the purchase of skim is the direct result of separator equipment failure.

D. If a dealer purchases bulk skim but has not experienced separator equipment failure, only the amount of skim needed to bring the dealer's total purchases up to 105% of a dealer's total needs will be included in milk purchased from other dealers. Any skim purchases that results in a dealer's total purchases exceeding 105% of the dealer's total needs will be considered a Class II purchase.

E. A dealers "total needs" includes:

1. all Class I packaged milk sales less sales of purchased packed products.

2. all in-house Class II and Class III manufactured dairy products.

3. all shrinkage

4. the disposal of all surplus butterfat as marketable bulk cream

F. A dealer's "Net Class I Sales" shall be the dealer's "Gross Class I Sales" minus "Milk Purchased From Other Dealers".

G. A dealer's "Total Maine Class I Sales" shall be the dealer's gross Class I sales minus the sum of Class I sales outside the State of Maine, and transfers of packaged milk to plants outside the State of Maine.

**24. OUT OF STATE CLASS I SALES**

Out of State Class I Sales of Maine producer milk shall be credited at the Federal Order #1 Zone I blend price for the current month when the dealer determines its blend price. (This calculation only applies when a dealer's out of state Class I sales exceed out of state bulk milk purchases.)

**25. TRANSPORTATION ALLOWANCE**

A. **COMPUTATION FOR CLASS II PRICE**

**For Class II milk** - the price for all zones as announced by the United States Department of Agriculture for the New England marketing Area. Such Class II price may be reduced by 0.3 cents per hundredweight for each one mile distance from the originating purchasing dealer's plant or, at the dealer's discretion, any facility in Maine at which the milk is first received and reloaded to in turn be shipped to any Federal Order or manufacturing plant using the shortest highway route for that volume of surplus milk and cream which is in excess of the Class I , II and III needs of the originating purchasing dealer and which is moved to that Federal Order or manufacturing plant. A 20 mile buffer zone will be recognized around each dealer's plant or reload station for which no transportation allowance will be allowed for surplus milk. The maximum mileage that will be allowed in any case will be from the dealer's plant to West Springfield, Massachusetts less that 20 mile buffer. Furthermore, for the months of September, October, and November, the combined volume of surplus Class II and Class III milk to which the transportation allowance will apply shall not exceed 3% of the dealer's Maine market producer purchases during each of these individual months. For the months of January, July, August, and December, the transportation allowance shall not apply to more than 8% of the dealer's Maine market producer purchases during each of these individual months. For the months of February, March, April, May, and June, the transportation allowance shall not apply to more than 12% of the dealer's Maine market producer purchases during each of these individual months.

B. **COMPUTATION FOR CLASS III PRICE**

**For Class III milk** - the price for all zones as announced by the United States Department of Agriculture for the New England Marketing Area. Such Class III price may be reduced by 0.3 cents per hundredweight for each one mile distance from the originating purchasing dealer's plant or, at the dealer's discretion, any facility in Maine at which the milk is first received and reloaded to in turn be shipped to any Federal Order or manufacturing plant using the shortest highway route for that volume of surplus milk and cream which is in excess of the Class I, II and III needs of the originating purchasing dealer and which is moved to that Federal Order or manufacturing plant. A 20 mile buffer zone will be recognized around each dealer's plant or reload station for which no transportation allowance will be allowed for surplus milk. The maximum mileage that will be allowed in any case will be from the dealer's plant to West Springfield, Massachusetts less that 20 mile buffer. Furthermore, for the months of September, October, and November, the combined volume of surplus Class IT and Class III milk to which the transportation allowance will apply shall not exceed 3% of the dealer's Maine market producer purchases during each of these individual months. For the months of January, July, August, and December, the transportation allowance shall not apply to more than 8% of the dealer's Maine market producer purchases during each of these individual months. For the months of February, March, April, May and June, the transportation allowance shall not apply to more than 12% of the dealer's Maine market producer purchases during each of these individual months.

**26. MONTHLY DEALER BLEND PRICE CALCULATION**

A. The sum of B, C and D below divided by a dealer's producer purchases equals the monthly dealer blend price:

B. Net Class I Sales as determined in 23 and 24 above multiplied by Class I price for the current month.

C. Class II Sales as determined in 25 above.

D. Class III Sales as determined in 25 above.

**27. MONTHLY REPORT**

Dealers must report monthly purchases and sales to the Commission on a form provided or approved by the Commission. This completed form is due in the Maine Milk Commission office by the twentieth (20th) of each month.

**28. RULES AND PRICE ORDERS**

These Rules and Orders shall supplement all price orders and any variance between the Rules and Orders and the price order shall be resolved in favor of the effective price order.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 2953 and 2954

EFFECTIVE DATE:

January 1, 1986

AMENDED:

February 1, 1988

EFFECTIVE DATE:

First day of the month following passage by the Legislature of a change to statute adding Class III.

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