

§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.

[PL 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. [PL 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. [PL 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. [PL 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. [PL 2005, c. 382, Pt. F, §8 (NEW).]

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

[PL 1999, c. 56, §1 (AMD).]

10. Additional considerations in establishing prices.

[PL 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.

[PL 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.

[PL 1989, c. 436, §1 (NEW).]

13. Report to State Tax Assessor.

[PL 2005, c. 382, Pt. F, §14 (AMD); PL 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.

[PL 1993, c. 274, §2 (AMD).]

15. Exception.

[PL 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.

[PL 2005, c. 396, §4 (NEW).]

SECTION HISTORY

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

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