

QUARTERLY DAIRY LEGAL WEBINAR

1st Quarter 2024
April 23, 2024

Focus Topic:
U.S. State Milk Pricing & Supports,
Part 1



PennState Law

Center for Agricultural
and Shale Law



Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.



Quarterly Dairy Legal Webinar Series

#15 in the series – covering the 1st quarter of 2024

- February 2024: Pennsylvania Milk Marketing Law (Beyond the OOP)
- October 2023: Risk Management/Income & Revenue Protection
- July 2023: Federal Milk Marketing Order Administrative Process
- April 2023: International Dairy Trade
- January 2023: Interstate Regulation of Milk Production and Processing
- October 2022: 2023 Farm Bill and the Potential Implications for the Dairy Industry
- July 2022: Labeling Standards
- April 2022: Animal Welfare
- February 2022: Dairy Industry Carbon Reduction Programs
- December 2021: USDA's Pandemic Assistance Programs
- July 2021: Geographical Indications
- April 2021: Federal Milk Marketing Order Reform
- January 2021: International Trade with Becky Rasdall
- October 2020: Federal Milk Marketing Order 51

Find upcoming topics at <https://aglaw.psu.edu/quarterly-dairy-legal-webinar/>





Past Quarterly Dairy Legal Webinars and Materials

April 18, 2023 (1st Quarter of 2023) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the **International Dairy Trade: Canada-U.S. USMCA Arbitration Round 2**. Almost immediately upon entering the USMCA trade pact with Canada and Mexico in 2020, the U.S. trade relationship with Canada hit a rough patch over potential dairy exports to Canada, specifically the eligibility criteria for Canadian importers' potential use of a quota of favorable dairy tariff rates on U.S. dairy products. The U.S. took Canada to arbitration in 2021 and won. Nevertheless, Canada held steadfast to its dairy tariff rate quota system and made minimal changes. As a result, we are now headed to a second round of USMCA arbitration between the U.S. and Canada over the same, and some newly added, tariff rate eligibility issues. All will be explained as we examine the details of this dispute between international neighbors.

- [PowerPoint – April 2023 Quarterly Dairy Legal Webinar](#)
- [January-March 2023 Quarterly Dairy Legal Update](#)
- [Recording: April 2023 Quarterly Dairy Legal Webinar – Industry Round Up](#)
- [Recording: April 2023 Quarterly Dairy Legal Webinar – International Dairy Trade](#)

January 17, 2023 (4th Quarter of 2022) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the *Interstate Regulation of Milk Production and Processing: An Overview of the Pasteurized Milk Ordinance and Interstate Milk Shippers Program*. The federal government's current role in the creation and maintenance of a federal milk pricing system is recognized. The historical state-by-state regulation of milk production and processing as a food safety function of government is sometimes said to be historically "left to the states." However, the reality is much more complex. Learn the nuts and bolts of how this most perishable of agricultural commodities has been freely flowing across state lines through a combination of federal and state regulatory authority and a large amount of voluntary industry contribution and compliance.

- [2022 Annual Dairy Legal Update](#)
- [October-December 2022 Quarterly Dairy Legal Update](#)
- [PowerPoint – January 2023 Quarterly Dairy Legal Webinar](#)
- [Recording: January 2023 Quarterly Dairy Legal Webinar](#)

Shale Law Weekly Review

A WEEKLY UPDATE ON IMPORTANT
SHALE LAW DEVELOPMENTS



AG LAW PODCAST



FARMLAND ENERGY
LEGAL PODCAST

<https://aglaw.psu.edu/quarterly-dairy-legal-webinar/>



More upcoming programs from the Ag Law Center.



July 16, 2024 Quarterly Dairy Legal Webinar: U.S. State Milk Pricing & Supports, Part 2

Understanding Agricultural Law Webinar Series:

- April 26, 2024** *Understanding the Basics of Producer Protections Against Buyer Default*
- May 24, 2024** *Understanding the Basics of Pennsylvania's Agricultural Area Security Law*
- June 28, 2024** *Understanding the Basics of the Clean Water Act & Agriculture*
- July 26, 2024** *Understanding the Basics of Agritourism Laws*
- Aug. 23, 2024** *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*



HOUSEKEEPING

- This webinar will be recorded.
- Use the Q&A feature for questions.
- **CLE credits:**
- Link will be posted in the chat
 - Please fill out form
 - Listen for code word
 - Questions?
 - Email: aet17@psu.edu

QUARTERLY DAIRY LEGAL WEBINAR

1st Quarter – 2024
April 23, 2024

Round Up – 1st Quarter 2024



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Industry Round-up – 1st Quarter 2024

- **U.S. Department of Agriculture (USDA) Actions**

- USDA Climate-Smart Grant Recipient Opened Application Period for Dairy Manure Management Incentive Program
- USDA Concluded National Federal Milk Marketing Order (FMMO) Hearing on Pricing Formula
- USDA Announced 2024 Dairy Margin Coverage (DMC) Program Enrollment
- Highly Pathogenic Avian Influenza (HPAI) Confirmed in Dairy Herds in Eight States

- **U.S. Food and Drug Administration (FDA) Actions**

- FDA Approved Qualified Health Claim for Yogurt and Reduced Type 2 Diabetes

- **National Dairy Stakeholders' Actions & Issues**

- Dairy Farmers of America (DFA) and Athian Completed First Carbon Credit Sale

- **Regional Dairy Actions & Issues**

- Minnesota AG Filed Complaint Against Dairy Farm for Wage and Housing Violations
- Oregon Dairy Farmers Challenged Reinterpretation of State's CAFO Requirements that Classify Milking as Confinement
- Tennessee Governor Signed Law for Whole Milk in School Meals



USDA Climate-Smart Grant Recipient Opened Dairy Manure Management Incentive Program Application Period

- The USDA awarded in 2022 \$70 million in funding through its Partnerships for Climate-Smart Commodities Project to the [Transforming the Farmer-to-Consumer Supply Chain with Climate-Smart Agriculture Partnerships \(Transform F2C\)](#) project led by Carbon A List, LLC.
- As part of the Transform F2C project, Carbon A List, LLC launched the [Dairy Manure Management Incentive](#)—“incentive payments will be used to compensate farmers for the cost of adopting new climate-smart manure management practices, including storage, handling, and cropland applications that fit their site-specific needs.”
 - Farmer eligibility : CA, ID, IN, KS, MD, MI, MN, NE, NM, NY, OH, PA, TX, UT, and WI
 - **The application period opened on January 22, 2024, and closed on March 29, 2024.**

[Partnerships for Climate-Smart Commodities Project Summaries, USDA Webpage](#)



USDA Concluded National FMMO Hearing on Pricing Formula

- On January 30, 2024, the USDA [concluded](#) the hearing on proposed amendments to the [National Federal Milk Marketing Orders \(FMMO\) Pricing Formula](#).
- All hearing transcripts, exhibits and briefs are available to the public on the [USDA dedicated webpage](#).



USDA Announced 2024 Dairy Margin Coverage (DMC) Program Enrollment

- Dairy producers can enroll in the [2024 Dairy Margin Coverage \(DMC\)](#) **starting February 28, 2024, until April 29, 2024**; the DMC program offers price support to offset milk and feed price differences.
 - DMC coverage is available for the entire 2024 calendar year, with coverage applying retroactively to January 1.
 - Eligible small dairy operations with less than 5 million pounds of production can make a one-time adjustment to their established production history by combining supplemental production history with DMC production history.
 - Lock-in eligibility for multi-year contracts extended until December 31, 2024, with discounted premium rates.
- [Congressional call to open 2024 DMC enrollment](#) in a letter to USDA Secretary Tom Vilsack (January 16, 2024) – “This delay in DMC enrollment coupled with the already unpredictable nature of the industry is concerning for the farm economy and the constituents we represent.”



HPAI Confirmed in Dairy Herds in Eight States

- On March 25, 2024, the USDA, FDA, and CDC [confirmed](#) the detection of highly pathogenic avian influenza (HPAI) in two dairy herds in Texas and two dairy herds in Kansas.
- On April 1, 2024, the Centers for Disease Control and Prevention (CDC) [reported](#) a human case of HPAI in Texas— “[t]his infection does not change the H5N1 bird flu human health risk assessment for the U.S. general public, which CDC considers low.”
- As of April 22, 2024, and according to [USDA data](#), the USDA confirmed a total of 32 cases in dairy cattle:
 - Texas (12); Kansas (4); Michigan (6); New Mexico (6); South Dakota (1), Idaho (1), Ohio (1), and North Carolina (1).
- According to the agencies, “[t]here continues to be no concern about the safety of the commercial milk supply because products are pasteurized before entering the market, or that this circumstance poses a risk to consumer health.” They added, “[m]ilk loss resulting from symptomatic cattle to date is too limited to have a major impact on supply and there should be no impact on the price of milk or other dairy products.”
- For more information on this topic, please stay tuned for our upcoming Ag Law Podcast, available at the following link: <https://aglaw.psu.edu/watch-or-listen/ag-law-podcast/>



FDA Approved Qualified Health Claim for Yogurt and Reduced Type 2 Diabetes

- On March 1, 2024, the FDA allowed the following qualified health claims for yogurt labels:
 - “Eating yogurt regularly, at least 2 cups (3 servings) per week, may reduce the risk of type 2 diabetes. FDA has concluded that there is limited information supporting this claim.”
 - “Eating yogurt regularly, at least 2 cups (3 servings) per week, may reduce the risk of type 2 diabetes according to limited scientific evidence.”
 - [RE: Petition for a Qualified Health Claim for Yogurt and Reduced Risk of Type 2 Diabetes Mellitus \(Docket No. FDA-2019-P-1594\)](#)
- Health claims are statements on food labels that make a **direct or implied link between a food or substance in food and a disease or health-related condition**, e.g., “diets low in sodium may reduce the risk of high blood pressure.”
 - **Authorized health claims:** these claims must be based on “significant scientific agreement” (SSA)
 - **Qualified health claims:** these claims must be supported by *some* scientific evidence
- The FDA concluded that “there is some credible evidence supporting a relationship between yogurt intake and reduced risk of type 2 diabetes, but **this evidence is limited.**”



Dairy Farmers of America and Athian Completed First Carbon Credit Sale

- On January 3, 2024, Athian [announced](#) the first sale of verified carbon credits in the livestock carbon insetting marketplace to Dairy Farmers of America (DFA).
 - Texas dairy farmer Jasper DeVos reported that using Athian’s first approved protocol to generate carbon credits resulted in a reduction of nearly 1,150 metric tons of carbon dioxide equivalent (CO₂e).
 - “If the entire U.S. dairy industry leveraged this same intervention, it could avoid 4.7 million metric tons of CO₂e emissions annually from enteric, feed and manure emissions, accelerating the impact animal agriculture has in being part of the climate solution.”
- On November 2, 2023, Elanco Animal Health, Inc. and High Alpha Innovation [launched](#) the Athian platform, a “first-of-its-kind livestock carbon inset market.”
 - This carbon marketplace allows farmers to (1) earn income by reducing greenhouse gas (GHG) emissions, (2) implement verified emission reduction practices and approved feed management solutions to generate revenue, and (3) enables companies to offset their Scope 3 emissions by purchasing Athian’s tradable carbon credits, derived from verified emission reductions on dairy farms.
- Companies can buy enteric methane reduction carbon credits are available on [Athian’s insetting carbon marketplace platform](#).



Minnesota AG Filed Complaint Against Dairy Farm for Wage and Housing Violations

- On January 8, 2024, Minnesota Attorney General Keith Ellison [filed](#) a complaint in state court against Evergreen Acres Dairy, LLC, alleging wage theft, overtime violations, unlawful pay deductions, and “squalid” housing.
- According to the complaint, “Evergreen **systematically underreports the number of hours that employees work on their paystubs**, often shaving 12-24 hours from employee paystubs in each two-week pay period. In doing so, the State estimates that Evergreen has **avoided paying millions of dollars in regular wages and overtime premiums to its employees.**”
- “Evergreen also **frequently refuses to pay employees their outstanding wages** once their employment with Evergreen has ceased. Evergreen further gouges its employees by **making systematic, unlawful deductions from employee pay without first obtaining written authorization** to do so from its employees as required by law.”
- “To ensure it can hire and retain sufficient workers in a region where rental housing is sparse, Defendants also act as landlords and sell rental housing services to many of their employees. However, **the homes’ conditions are squalid, substandard, and do not meet Minnesota’s standards for habitability.**”
- “Many are unauthorized workers largely from the Oaxaca region of Mexico that speak the Zapotec language as their first language, Spanish as their second language, and limited or no English.”



Oregon Farmers Challenged Reinterpretation of State CAFO Requirements that Classify Milking as Confinement

- On January 23, 2024, a group of small dairy farmers challenged in federal district court the Oregon Department of Agriculture’s reinterpretation of the state’s CAFO requirements for raw milk dairies, alleging violations of the Fourteenth Amendment to the U.S. Constitution; *King, et al. v. Hanson, et al.*, USDC Oregon, No. 3:24-cv-152
- “Confined animal feeding operation (CAFO)” means, in relevant part, “[t]he concentrated confined feeding or holding of animals ... including but not limited to ... dairy confinement areas ... [i]n buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material[.]” -- [OAR 603-074-010\(3\)](#)
- Small dairy farms are exempt from the state’s food safety and fluid milk licensing requirements (1) if they sell the milk directly to consumers on the farm and (2) **if they own no more than two producing cows, or nine producing goats or sheep** -- [ORS 621.012 – Exception for small-scale on-farm sales](#)
- The Oregon Department of Agriculture’s (OAD) CAFO reinterpretation: “As far as is known, raw milk dairies will generally be considered small CAFOs, defined as having fewer than 200 mature dairy cows and fewer than 3,000 milking goats or sheep ... The confinement of animals is highly variable among operations, **but all animals are technically confined during the milking process, whether in pens, lots, or buildings**” – [White Paper: Raw Milk Dairies and CAFO Permit Requirements \(January 2023\)](#)



Tennessee Governor Signed Law for Whole Milk in School Meals

- On April 11, 2024, Tennessee Governor Lee signed the “Whole Milk for Healthy Kids Act” (SB 1914) into law.

AN ACT to amend Tennessee Code Annotated, Title 43; Title 44; Title 49 and Title 53, relative to dairy products.

WHEREAS, the nutritional benefits of whole milk that are critical for children to obtain include the necessary levels of vitamin D, potassium, high-quality protein, calcium, vitamin A, vitamin B12, and other key dietary nutrients; and

WHEREAS, it is fitting that public school students be afforded the opportunity to obtain the nutritional benefits of whole milk during school mealtimes; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 23, is amended by adding a new, appropriately designated section:

(a) Notwithstanding § 49-6-2301, this section is known and may be cited as the “Whole Milk for Healthy Kids Act.”

(b) Notwithstanding another law to contrary, each local board of education and public charter school governing body may establish policies for its public schools to offer students whole milk options, which are pasteurized dairy products as defined in § 53-3-103, through bulk milk dispensers.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

1st Quarter – 2024
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*State Milk Pricing &
Supports, Part 1*



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PLEASE SUBMIT QUESTIONS!

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- 18 years in private practice in Lancaster County
- 12 years at the Pennsylvania Department of Agriculture (8 years as Chief Counsel)
- Penn State Ag Law Center since 2019.

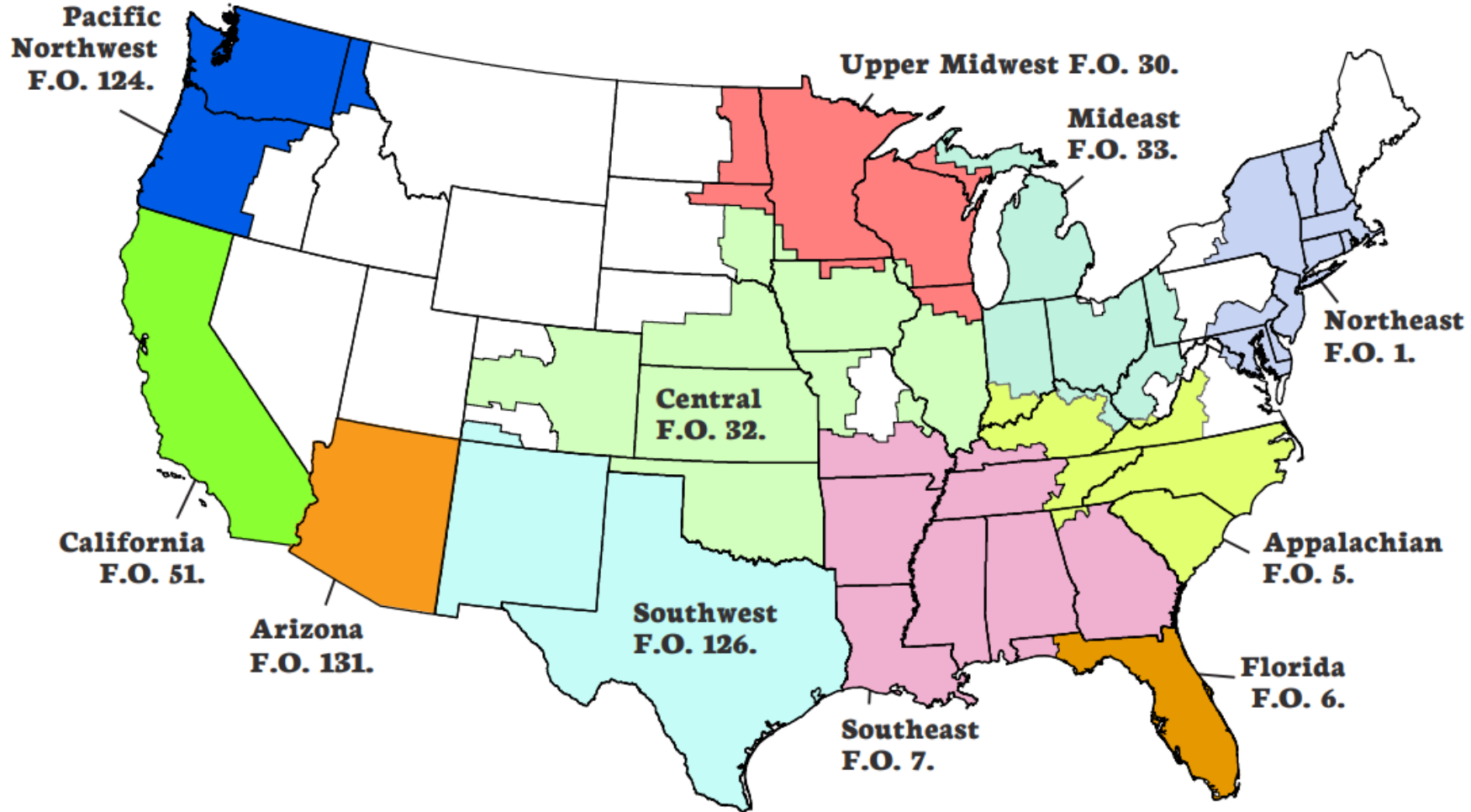


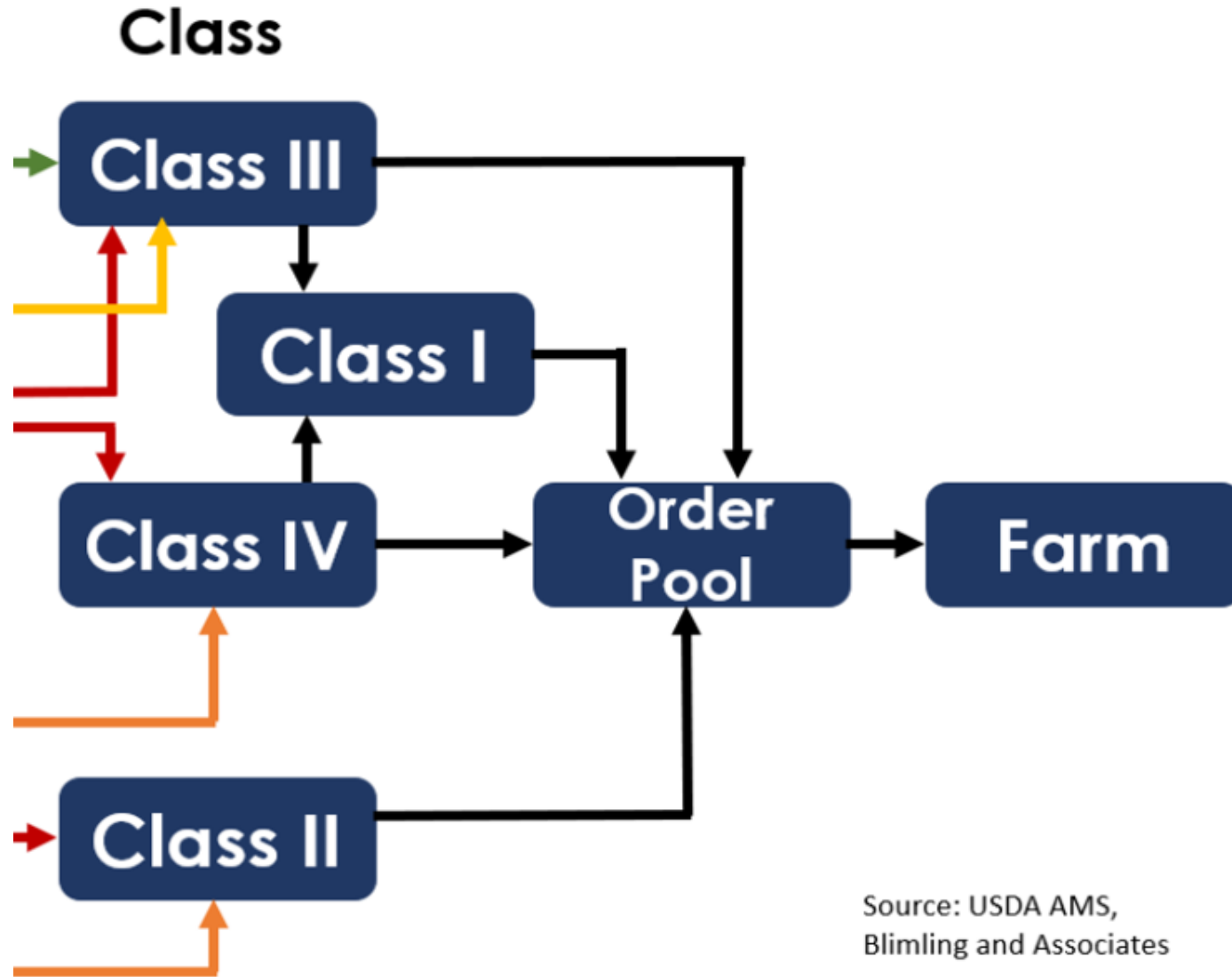
How is the “producer price” of raw milk set?

- Milk is one raw agricultural commodity whose price is not established entirely by market forces.
- Federal Milk Marketing Order formula – adopted, maintained and amended by vote of milk producers as a “marketing order” under federal law going back to the Agricultural Marketing Agreement Act of 1937.



11 Federal Milk Marketing Order Areas





Source: USDA AMS,
Blimling and Associates



What about State Price Regulation?

- There is no federal preemption just because USDA administers a system of marketing orders.
- Interference with market forces through government mandated pricing is controversial, to say the least.
- Wouldn't state assistance to dairy farmers be a win-win "feel good" action for state legislatures?



Classified Pricing Programs – Eastern States

- Pennsylvania
- Maine
- New York
- Virginia





Pennsylvania:

3-Part Minimum Pricing Scheme administered by PA Milk Board (PMB)

1. Minimum Producer Price & OOP — Class I / fluid utilization
2. Minimum Wholesale – Class I / fluid
3. Minimum Retail – Class I / fluid



PMB's Minimum Producer Price

WEB SITE: www.pmb.pa.gov

Minimum Producer Price Data										
For Milk Purchased From Producers in January 2024										
AREA-ZONE		CLASS I DIFF.	CO-OP PROCUREMENT COST	OVER ORDER PREM ¹ (A999 & A1018)	PURCHASED FROM CO-OPS			PURCHASED FROM INDEPENDENTS		
					BUTTERFAT VALUE (per lb.)	SKIM VALUE (per cwt.)	CLASS I PRICE	BUTTERFAT VALUE (per lb.)	SKIM VALUE (per cwt.)	CLASS I PRICE
1-0	Southeastern Pennsylvania Milk Marketing Area	\$3.05	\$0.2416	\$1.38	\$3.0558	\$12.91	\$23.15	\$3.0534	\$12.67	\$22.91
2-0	East Central Pennsylvania Milk Marketing Area	\$2.80	\$0.2416	\$1.38	\$3.0533	\$12.66	\$22.90	\$3.0509	\$12.42	\$22.66
3-0	Northeastern Pennsylvania Milk Marketing Area	\$2.80	\$0.2416	\$1.38	\$3.0533	\$12.66	\$22.90	\$3.0509	\$12.42	\$22.66
4-0	South Central Pennsylvania Milk Marketing Area	\$2.90	\$0.2416	\$1.38	\$3.0543	\$12.76	\$23.00	\$3.0519	\$12.52	\$22.76
5-0	Western Pennsylvania Milk Marketing Area	\$2.30	\$0.2416	\$1.38	\$3.0483	\$12.16	\$22.40	\$3.0459	\$11.92	\$22.16
6-0	West Central Pennsylvania Milk Marketing Area	\$2.50	\$0.2416	\$1.38	\$3.0503	\$12.36	\$22.60	\$3.0479	\$12.12	\$22.36

1. Includes a Fuel Adjustment of \$0.38 per Hundredweight.

Minimum Wholesale Price – to Dealer

AREA 1

PENNSYLVANIA MILK MARKETING BOARD
SOUTHEASTERN MILK MARKETING AREA
MINIMUM WHOLESALE PRICES
SCHEDULE I

	CLASS I	CLASS II
SKIM RATE	\$ 13.65	\$ 10.01
BUTTERFAT RATE	\$ 2.8129	\$ 3.3909

January 2024

A-993 (CRO 7)

DESCRIPTION	PRODUCT CODE	BUTTERFAT % RANGE		BULK PER QT. EQUIV.	NON-RETURNABLE							
		LOW	HIGH		/1/	/2/	QUART	PINT	12 OZ.	10 OZ.	/5/	4 OZ.
					GAL.	1/2 GAL.					1/2 PT.	
STANDARD MILK	400	3.10	6.00	\$ 1.1584	\$ 4.2926	\$ 2.2070	\$ 1.2648	\$ 0.7158	\$ 0.4260	\$ 0.3550	\$ 0.3103	\$ 0.1916
REDUCED FAT MILK, 2% MILKFAT	800	1.50	3.09	\$ 1.0788	\$ 3.9742	\$ 2.0478	\$ 1.1851	\$ 0.6760	\$ 0.3962	\$ 0.3302	\$ 0.2904	\$ 0.1817
LOWFAT MILK, 1% MILKFAT	900	0.50	1.49	\$ 1.0199	\$ 3.7383	\$ 1.9298	\$ 1.1262	\$ 0.6465	\$ 0.3741	\$ 0.3117	\$ 0.2756	\$ 0.1743
NONFAT MILK	1200	0.00	0.49	\$ 0.9713	\$ 3.5443	\$ 1.8329	\$ 1.0776	\$ 0.6223	\$ 0.3559	\$ 0.2966	\$ 0.2635	\$ 0.1682
FLAVORED MILK	500	3.10	6.00	\$ 1.2377	\$ 4.6099	\$ 2.3656	\$ 1.3440	\$ 0.7554	\$ 0.4558	\$ 0.3798	\$ 0.3302	\$ 0.2016
FLAVORED REDUCED FAT MILK	600	0.50	3.09	\$ 1.0906	\$ 4.0212	\$ 2.0713	\$ 1.1969	\$ 0.6819	\$ 0.4006	\$ 0.3339	\$ 0.2934	\$ 0.1831
FLAVORED NONFAT MILK	700	0.00	0.49	\$ 1.0193	\$ 3.7361	\$ 1.9287	\$ 1.1256	\$ 0.6462	\$ 0.3739	\$ 0.3116	\$ 0.2755	\$ 0.1742
BUTTERMILK	1000	0.00	6.00	\$ 1.0924	\$ 4.0287	\$ 2.0750	\$ 1.1988	\$ 0.6828	\$ 0.4012	\$ 0.3344	\$ 0.2938	\$ 0.1833
EGG NOG	510	0.00	17.99	\$ 1.6093	\$ 6.0963	\$ 3.1088	\$ 1.7156	\$ 0.9412	\$ 0.5951	\$ 0.4960	\$ 0.4230	\$ 0.2480
MIXED MILK /3/	1500	6.10	17.99	\$ 1.8336		\$ 3.5573	\$ 1.9399	\$ 1.0534	\$ 0.6793	\$ 0.5660	\$ 0.4791	\$ 0.2761
LIGHT CREAM	1700	18.00	29.99	\$ 2.3961		\$ 4.6822	\$ 2.5024	\$ 1.3346	\$ 0.8902	\$ 0.7418	\$ 0.6197	\$ 0.3463
MEDIUM CREAM	1800	30.00	35.99	\$ 3.2126		\$ 6.3155	\$ 3.3190	\$ 1.7429	\$ 1.1965	\$ 0.9970	\$ 0.8238	\$ 0.4485
HEAVY CREAM	1900	36.00	50.00	\$ 3.7446		\$ 7.3794	\$ 3.8509	\$ 2.0089	\$ 1.3960	\$ 1.1632	\$ 0.9568	\$ 0.5149
SOUR CREAM /4/	1600	0.00	29.99	\$ 1.3043 / LB. \$ 2.7748		\$ 5.4607	\$ 2.8013	\$ 1.4562	\$ 1.0323	\$ 0.8602	\$ 0.7098	\$ 0.3795

Minimum Retail Price – to Retailer

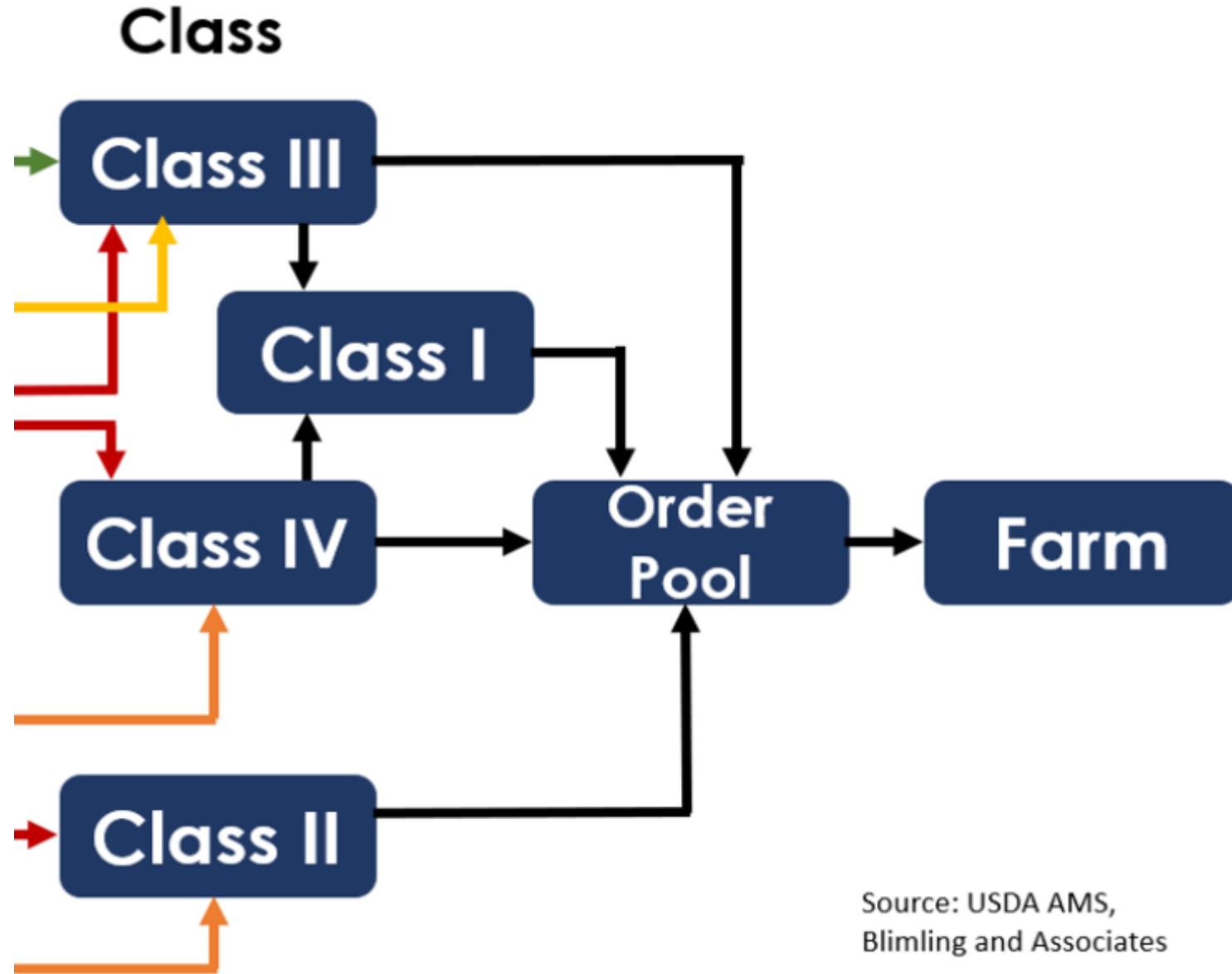
AREA 1

PENNSYLVANIA MILK MARKETING BOARD
 SOUTHEASTERN MILK MARKETING AREA
 MINIMUM RETAIL OUT-OF-STORE (CASH AND CARRY)
 SCHEDULE II /4/

January 2024

A-993 (CRO 7)

DESCRIPTION	PRODUCT CODE	BUTTERFAT % RANGE		BULK PER QT. EQUIV.	NON-RETURNABLE							
		LOW	HIGH		/1/	/2/	QUART	PINT	12 OZ.	10 OZ.	/5/ 1/2 PT.	4 OZ.
					GAL.	1/2 GAL.						
STANDARD MILK	400	3.10	6.00	\$ 1.28	\$ 4.09	\$ 2.35	\$ 1.38	\$ 0.86	\$ 0.55	\$ 0.46	\$ 0.40	\$ 0.23
REDUCED FAT MILK, 2% MILKFAT	800	1.50	3.09	\$ 1.21	\$ 4.09	\$ 2.21	\$ 1.31	\$ 0.83	\$ 0.52	\$ 0.44	\$ 0.38	\$ 0.22
LOWFAT MILK, 1% MILKFAT	900	0.50	1.49	\$ 1.16	\$ 4.09	\$ 2.10	\$ 1.26	\$ 0.80	\$ 0.51	\$ 0.42	\$ 0.37	\$ 0.21
NONFAT MILK	1200	0.00	0.49	\$ 1.12	\$ 3.92	\$ 2.02	\$ 1.21	\$ 0.78	\$ 0.49	\$ 0.41	\$ 0.36	\$ 0.21
FLAVORED MILK	500	3.10	6.00	\$ 1.35	\$ 4.85	\$ 2.48	\$ 1.45	\$ 0.90	\$ 0.58	\$ 0.48	\$ 0.41	\$ 0.24
FLAVORED REDUCED FAT MILK	600	0.50	3.09	\$ 1.22	\$ 4.34	\$ 2.23	\$ 1.32	\$ 0.83	\$ 0.53	\$ 0.44	\$ 0.38	\$ 0.22
FLAVORED NONFAT MILK	700	0.00	0.49	\$ 1.16	\$ 4.09	\$ 2.10	\$ 1.25	\$ 0.80	\$ 0.51	\$ 0.42	\$ 0.37	\$ 0.21
BUTTERMILK	1000	0.00	6.00	\$ 1.23	\$ 4.34	\$ 2.23	\$ 1.32	\$ 0.83	\$ 0.53	\$ 0.44	\$ 0.38	\$ 0.22
EGG NOG	510	0.00	17.99	\$ 1.68	\$ 6.14	\$ 3.13	\$ 1.77	\$ 1.06	\$ 0.70	\$ 0.58	\$ 0.49	\$ 0.28
MIXED MILK	1500	6.01	17.99	\$ 1.87		\$ 3.56	\$ 1.96	\$ 1.16	\$ 0.77	\$ 0.64	\$ 0.54	\$ 0.30
LIGHT CREAM	1700	18.00	29.99	\$ 2.40		\$ 4.69	\$ 2.51	\$ 1.40	\$ 0.96	\$ 0.80	\$ 0.67	\$ 0.36
MEDIUM CREAM	1800	30.00	35.99	\$ 3.22		\$ 6.32	\$ 3.32	\$ 1.76	\$ 1.22	\$ 1.02	\$ 0.84	\$ 0.45
HEAVY CREAM	1900	36.00	50.00	\$ 3.75		\$ 7.38	\$ 3.86	\$ 2.01	\$ 1.40	\$ 1.17	\$ 0.96	\$ 0.52
SOUR CREAM /3/	1600	0.00	29.99	\$ 2.78		\$ 5.47	\$ 2.81	\$ 1.51	\$ 1.08	\$ 0.90	\$ 0.74	\$ 0.39

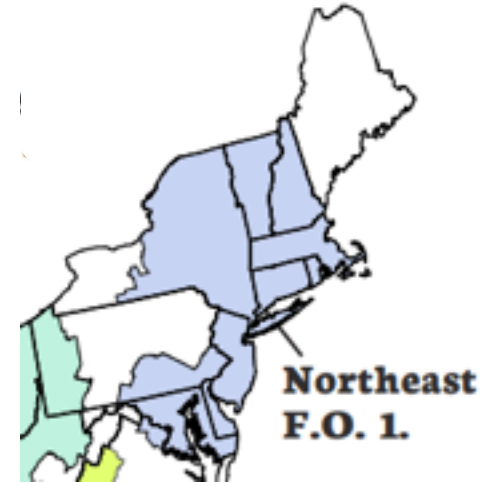


Source: USDA AMS,
Blimling and Associates



Maine:

Maine Milk Commission (MMC)



- Very similar to PA.
- Maine Milk Control Law – enacted in 1935.
- 5 members (including Commissioner of Ag).
- Funded by a fee per cwt. paid by licensed dealers.
- Set various producer prices, as well as Class 1 minimum wholesale and retail prices.
- Maine Over-Order Premium (~\$1.00) & “Cost of Production Premium” (aka “Producer Margin”) (~\$1.50)



MMC - Proposed / Draft Order 12-23 Minimum Price Sheet (Excerpt)

THE MAINE MILK COMMISSION SCHEDULE OF MINIMUM WHOLESALE AND RETAIL						
EFFECTIVE	DATE:	December 3, 2023	ORDER NO:	12-23		
		MINIMUM	HANDLER	MINIMUM		
		WHOLESALE	FEE	RETAIL		
GALLON:	Whole Milk		\$3.78	\$0.04	\$4.23	
	Lowfat	2.0%	\$3.53	\$0.04	\$3.98	
	Lowfat	1.5%	\$3.44	\$0.04	\$3.89	
	Lowfat	1.0%	\$3.35	\$0.04	\$3.80	
	Skim		\$3.26	\$0.04	\$3.71	

Class I Price	Actual	Dec-23	\$23.01	Per CWT
Milk Commission Premium		Dec-23	\$1.04	Per CWT
Producer Margin		Dec-23	\$1.63	Per CWT
Total Class I Producer Price		Dec-23	\$25.68	Per CWT
Federal Promotion Fee		Dec-23	\$0.200	Per CWT
Handling Fee		Dec-23	\$0.47	Per CWT
Total Class I Dealer Cost		Dec-23	\$26.35	Per CWT



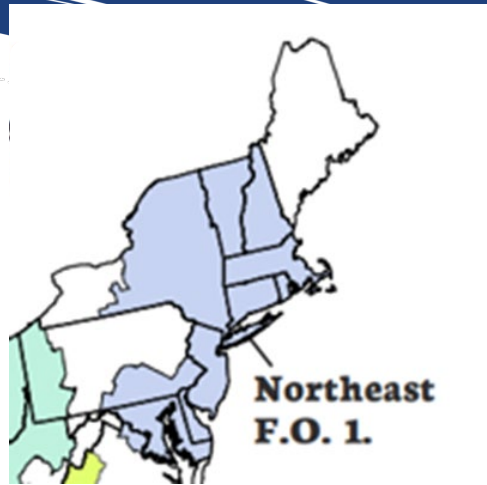
MMC: “How Prices are Established”

- Only on milk produced, processed and sold in Maine (of course).
- 2 producer groups (145 total dairy farms as of 12/31/23).
 - Maine Market Producers (ship to plants not subject to a Fed. Order) (~14 producers).
 - Boston Market Producers (ship to plants subject to a Fed. Order) (~130 producers).
- Plants subject to FMMO – Mandated to pay MMC’s two producer price premiums (Milk Commission Over-Order Premium and Producer Margin premium on % utilized in Maine).
- Plants not subject to FMMO – MMC mandates Federal Order price (and also operates a tiny “Maine Milk Pool” akin to the FMMO system to achieve a uniform producer price across all class utilization) & MMC’s two producer price premiums.
- Minimum Wholesale and Retail established by nearly identical process as PA.



Maine's Destructive Competition Law

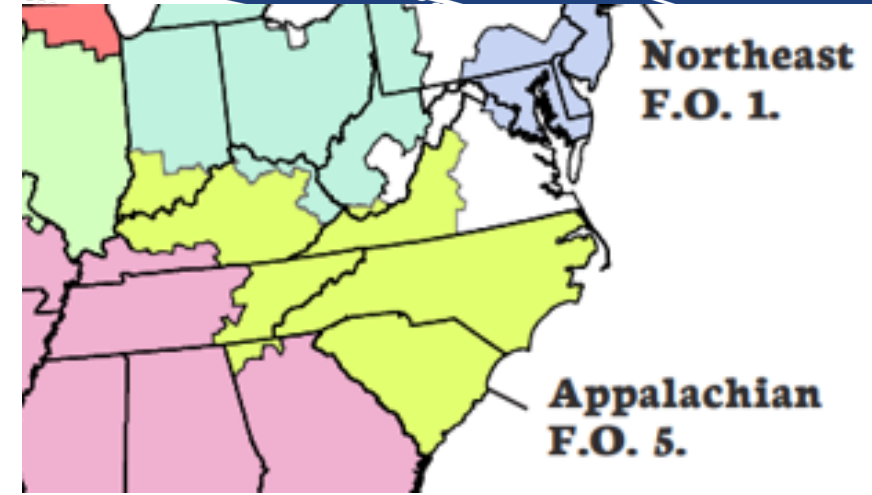
- Enacted in 1983. Contains civil penalties, injunctive relief and private right of action.
- **“It is unlawful for any dealer or retail store to sell milk for fluid consumption at less than the cost thereof to the dealer or retail store with the purpose or intent to injure competitors or destroy competition.”**
- In all proceedings brought to enforce this section, proof of consistent and repeated advertisements, offers to sell or sales of milk for fluid consumption by any dealer or retail store at less than cost to them, as defined in [sections 2984](#) and [2985](#), the advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. This section shall not apply where the price of milk for fluid consumption is set in good faith to meet legal competition.
- “Dealers shall observe this chapter only when no applicable minimum dealer price for milk established under [chapter 603](#) is in effect. Retail stores shall observe this chapter only when no applicable minimum retail price or minimum retail margin for milk established under [chapter 603](#) is in effect. This chapter shall be administered by the Maine Milk Commission.”



New York

Dept. of Ag. and Markets, Division of Milk Control

- New York [Milk Control Law](#) – enacted in 1933.
 - Section 258-m. Order fixing prices for milk and marketing agreements.
 - Authorizes est. of marketing order areas by producer vote akin to FMMO system.
- Regs: Title 1, Part 21 [Western New York Milk Marketing Area—Official Order No. 127](#).
- Very storied history and frequently amended. Operates like the FMMO system by establishing monthly advance milk pricing by class, administering a market-wide pool and ultimately establishing a uniform producer price for an enumerated list of Western New York counties and portions of counties that are not included in an FMMO.



Virginia

State Milk Commission

- Enabling legislation enacted in 1934.
- 7 voting members (2 producers, 5 consumers with no “connection financially or otherwise” with dairy prod./dist.)
- Virginia Tech Extension 2023 publication summarizes their system “ . . . dairy farmers selling milk in Virginia can buy Virginia milk commission base (MCB) to obtain higher milk prices.” ([“Decision-Making Tool to Determine Feasibility of Purchasing Virginia Milk Commission Base.”](#) - [VT Pub DASC-30P](#))



Virginia: Milk Commission Base (MCB)

- “Milk Commission base gives the producer the right to sell milk at Class I prices . . . equal to the amount (i.e. pounds) of MCB owned by the producer.” ([VT Pub DASC-30P](#))

As an example, consider a 220-milking-cow dairy farm in Virginia producing 5,000 hundredweight (cwt) of milk per month and owning 500 cwt of MCB (i.e., 10 percent of its total production). Assuming a net price of \$22.75 per cwt for the MCB and \$19.50 per cwt for the nonbase milk, the producer income would be equal to \$99,125 per month (i.e., $500 \text{ cwt} \times \$22.75 + 4,500 \text{ cwt} \times \$19.50 = \$99,125$).



Virginia: MCB (cont.)

- “Milk commission base is essentially a certificate to sell the stated amount of milk at a premium price each month . . . Failure to sell that amount can result in penalties or loss of MCB.”
- MCB is bought and sold by auction and private transactions.
- Using today’s dollars to purchase future income. Price of the MCB needs to make financial sense. Reduce future dollars to net present value & factor in debt service if borrowing to purchase it.
- MCB has resale value, but it is uncertain. Totally controlled by market conditions for MCB. “It is possible the MCB will cost the same, more, or less per cwt than when it was purchased.

Announcement of Producer Class I Price at 3.5% Butterfat

February 2024



STATE MILK COMMISSION
 Crafton O. Wilkes, Administrator

	DEC 2023	JAN 2024	FEB 2024
Eastern Market			
Established Price	\$8.46	\$8.46	\$8.46
Add Adjustment (per §2VAC15-20-81)	\$17.52	\$16.26	\$15.79
Eastern Market Class I Price (per cwt)	\$25.98	\$24.72	\$24.25
Eastern Market Skim Price (per cwt)	14.1740	14.4750	14.0090
Eastern Market Butterfat Price (per lb)	3.5148	3.0715	3.0661
Western Market			
Established Price	\$8.16	\$8.16	\$8.16
Add Adjustment (per §2VAC15-20-81)	\$17.62	\$16.36	\$15.89
Western Market Class I Price (per cwt)	\$25.78	\$24.52	\$24.05
Western Market Skim Price (per cwt)	13.9740	14.2750	13.8090
Western Market Butterfat Price (per lb)	3.5128	3.0695	3.0641
Southwestern Market			
Established Price	\$7.96	\$7.96	\$7.96
Add Adjustment (per §2VAC15-20-81)	\$17.32	\$16.06	\$15.59
Southwestern Market Class I Price (per cwt)	\$25.28	\$24.02	\$23.55
Southwestern Market Skim Price (per cwt)	13.4740	13.7750	13.3090
Southwestern Market Butterfat Price (per lb)	3.5078	3.0645	3.0591
Class II Price Announcement Date	JAN 4, 2024	JAN 31, 2024	FEB 28, 2024
Milk Commission Class II Price (per cwt)	\$19.88		
Milk Commission Class II Skim Price (per cwt)	\$9.7800	\$9.9500	\$9.9900
Milk Commission Class II Butterfat Price (per lb)	2.9848		
Milk Commission Bi-Monthly Composite Index	423.7	357.7	291.5
Milk Commission Assessment Rate (per cwt)	0.03950	0.03950	0.03950
Federal Order Base Class I Price (per cwt)	\$19.76	\$18.48	\$17.99



MCB – tracking historically



Figure 4. Milk prices (\$/cwt) paid to a dairy farm in Virginia. Solid and broken lines represent the Virginia milk commission base and the nonbase milk prices, respectively.



SUMMARY

Multiple variations on state classified pricing programs:

- **Marketing Orders** adopted vs. **Commission ordered** mandates.
- FMMO-like market area **pooling paired with a uniform producer price.**
 - “Redistribute the Class I wealth” to all.
- Over-Order **Premiums** and other state provided premiums **coupled with minimum wholesale / retail prices.**
- “**Base**” / “**Quota**” systems.



PennState Law

Center for Agricultural
and Shale Law

THANK YOU FOR ATTENDING.

QUESTIONS?





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Understanding Agricultural Law Webinar Series:

April 26, 2024 *Understanding the Basics of Producer Protections Against Buyer Default*

May 24, 2024 *Understanding the Basics of Pennsylvania's Agricultural Area Security Law*

June 28, 2024 *Understanding the Basics of the Clean Water Act & Agriculture*

July 26, 2024 *Understanding the Basics of Agritourism Laws*

Aug. 23, 2024 *Understanding the Basics of the H-2A Temporary Agricultural Worker Program*

CENTER MISSION AND BACKGROUND

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