QUARTERLY DAIRY LEGAL WEBINAR

2nd Quarter 2024
July 16, 2024

Focus Topic: U.S. State Milk Pricing & Supports, Part 2—Western States

PennState Law

Center for Agricultural and Shale Law

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State Milk Pricing & Supports, Part 2

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Please submit questions in Q & A

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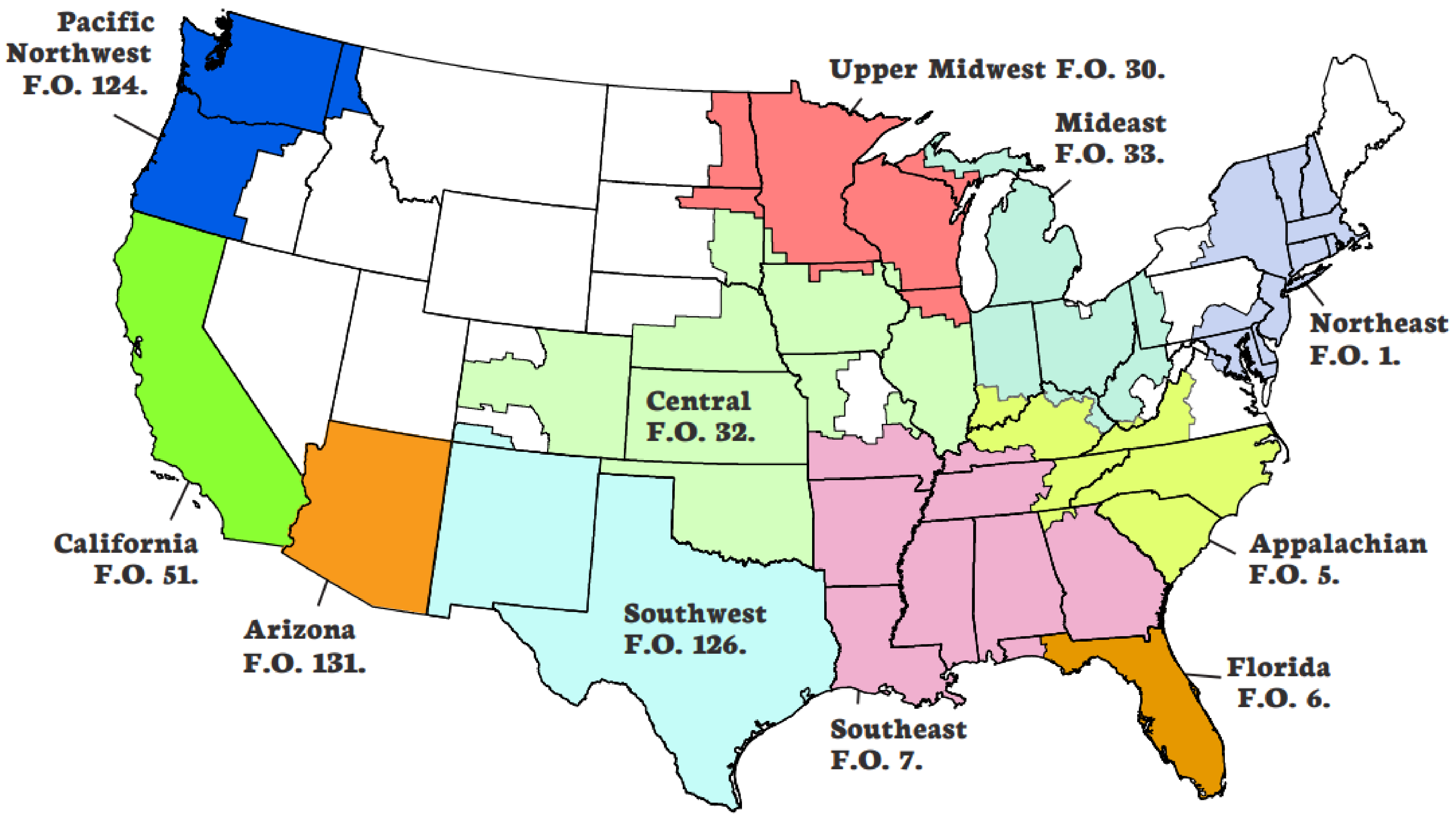
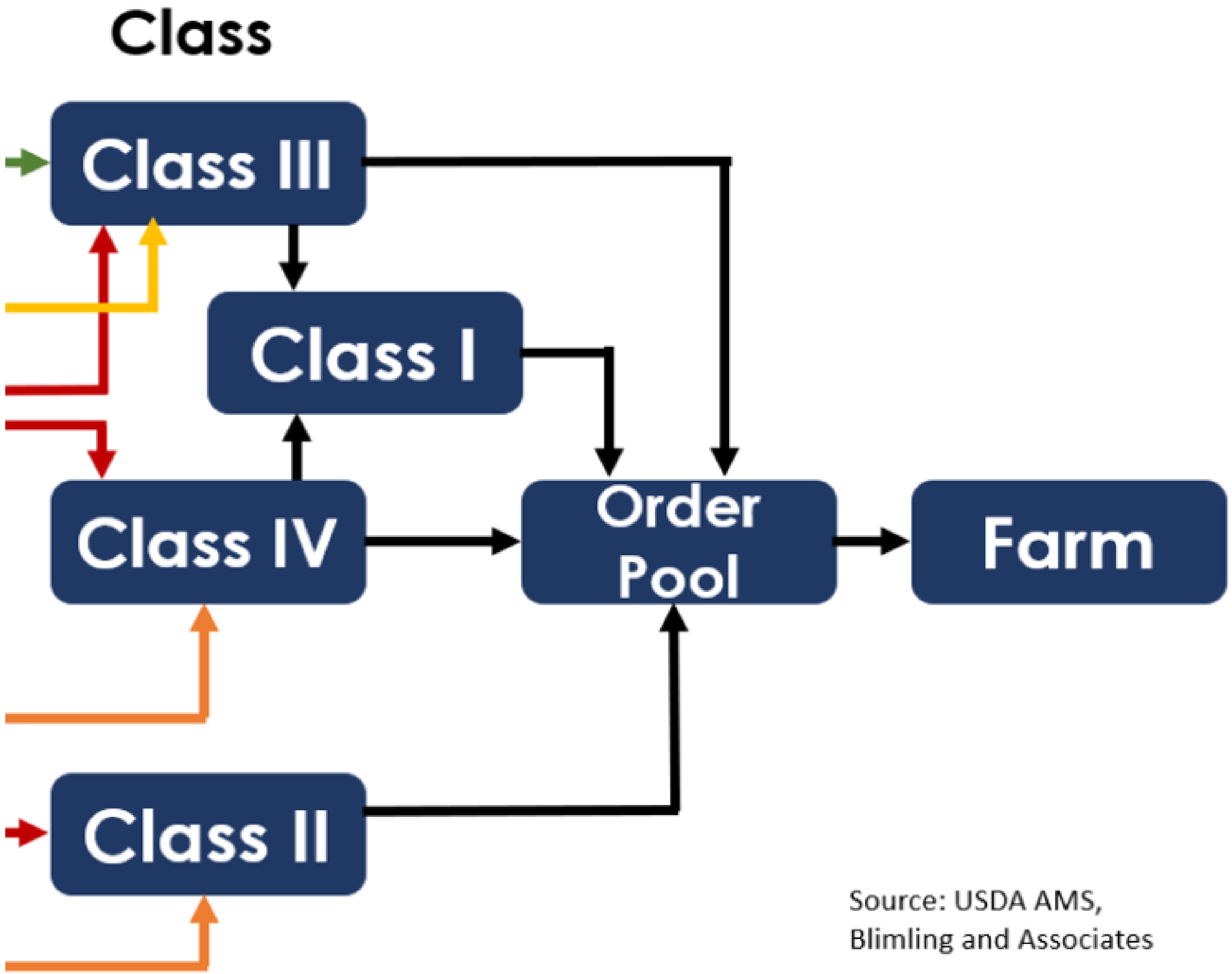
- 18 years in private practice in Lancaster County
- 12 years at the Pennsylvania Department of Agriculture (8 years as Chief Counsel)
- Penn State Ag Law Center since 2019.

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 <u>no federal preemption</u> 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?

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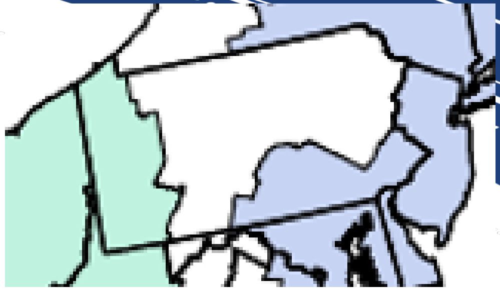
Recap of Part 1 Webinar

Classified Pricing Programs – Eastern States

- Pennsylvania
- Maine
- New York
- Virginia



Pennsylvania – "Over-Order Premium" (OOP)

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

Pennsylvania Milk Producers

Federal Orders:
- Class prices
- Pooling

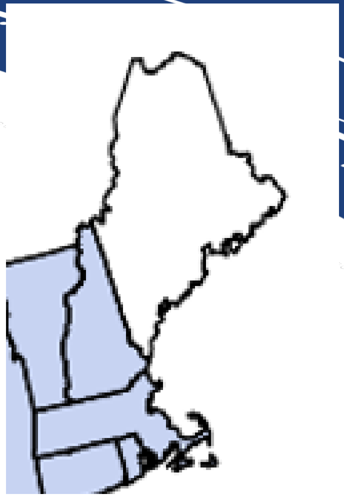
PMMB Over-order premium on Class I milk use

Wholesale: Milk Dealers

- Raw milk cost
- Container
- Processing
- Adjustments
- Delivery costs
- Milk dealer rate of return @ 2.5%-3.5%

Retail

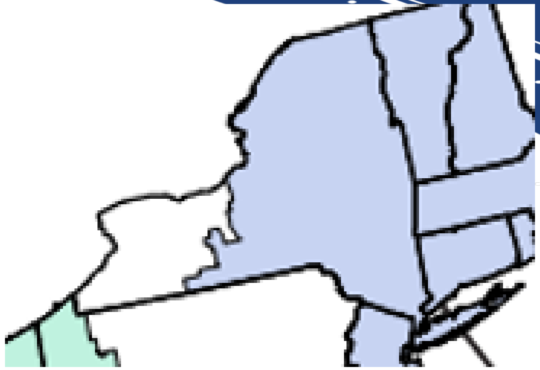
- Wholesale cost
- Pricing discounts
- In store handling
- Retail rate of return @ 2.5%-3.5%



Maine – "Milk Commission Premium" (~$1.00) & "Producer Margin" (~$1.50 cwt)

Maine Milk Commission state premiums:

- 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.



New York – Western NY "MMO"

NY Dept. of Ag. Administered Marketing Order

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.

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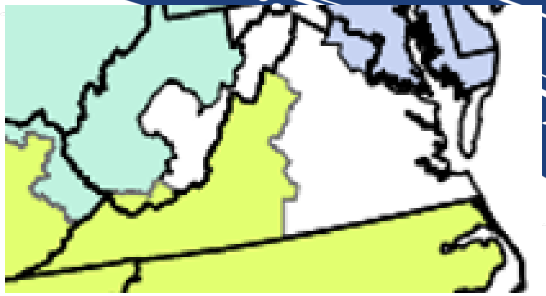

Virginia – "Milk Commission Base" (MCB)

State Milk Commission – purchasing "base" to earn a higher producer price

- Milk commission base is essentially a certificate to sell the stated amount of milk at a premium Class I price each month
- 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

So far . . .

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.

Classified Pricing Programs—Western States

- Montana
- Nevada
- North Dakota

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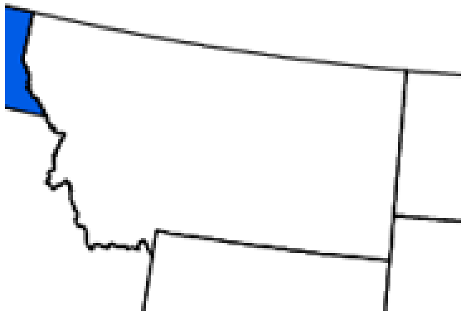


Montana

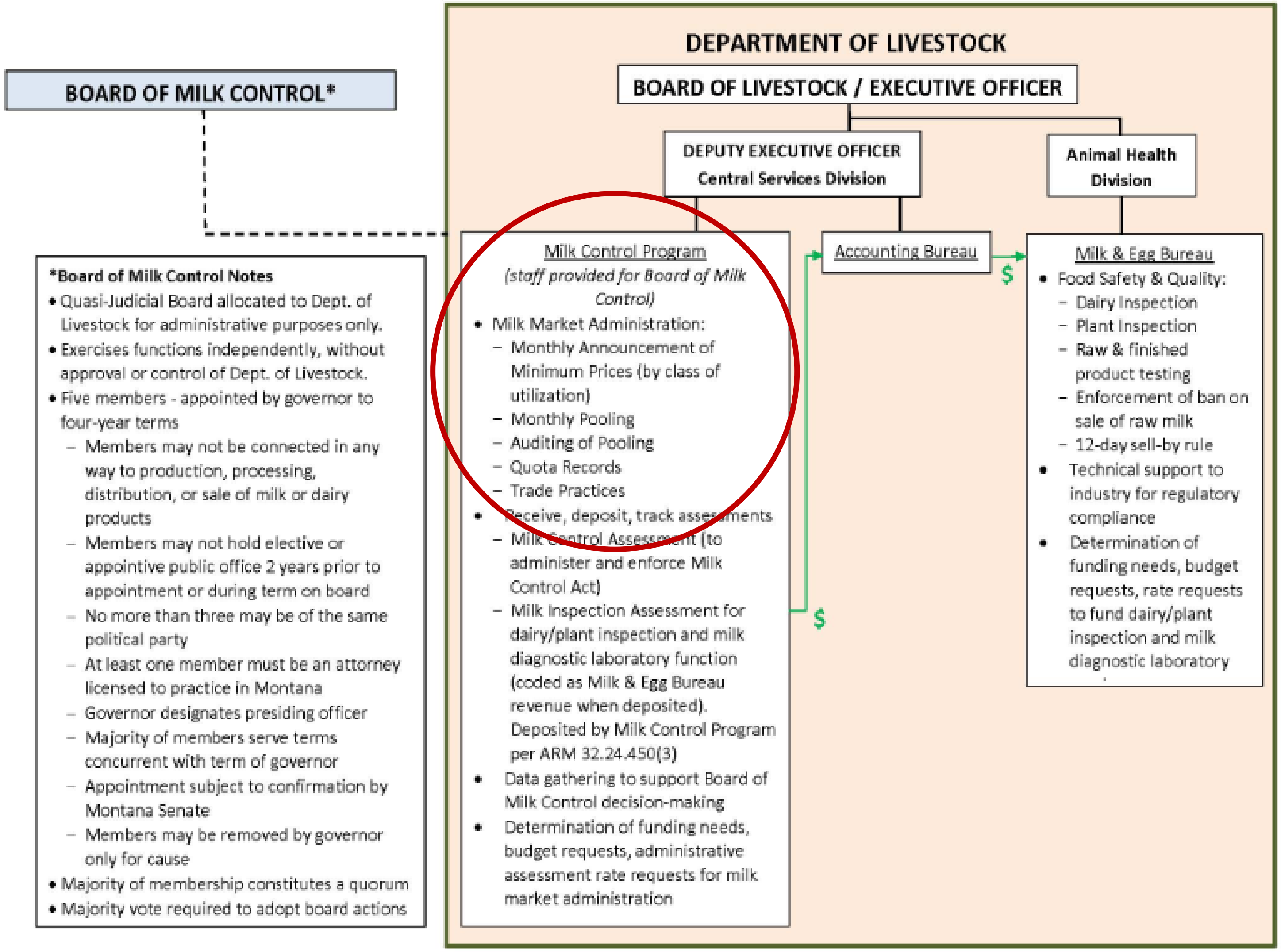
Less than 50 total dairy farms statewide

- Milk Control Act established **Board of Milk Control** in 1935 (within Montana Department of Livestock).

fine print →

Milk Market Administration:

- Monthly announcement of minimum prices by class utilization.
- Monthly pooling.
- Audit of pooling.
- Quota Records

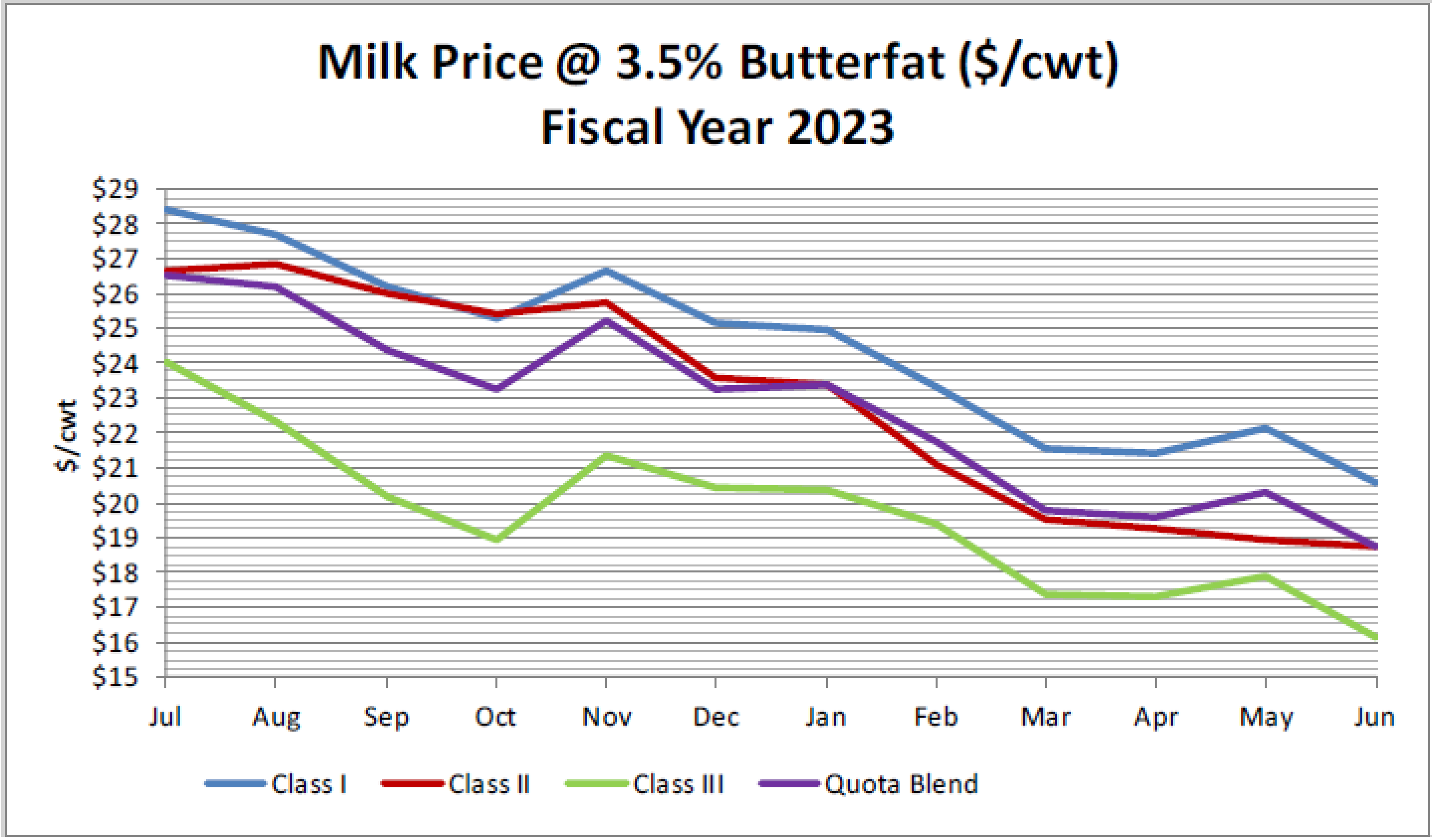


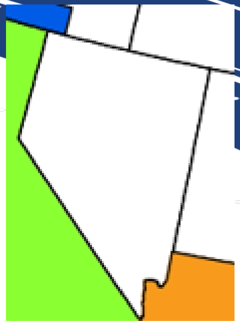
Montana (cont.)

- Resource: [Montana Board of Milk Control, Market Administration & Industry Report, Fiscal Year 2023](#) (May 2024).
- Statewide mandatory FMMO-like ***pooling*** conducted, coupled with a ***quota*** plan. However, the pool does not create one final "uniform producer price." It creates the ability for quota holders to receive a higher final producer price. Highly complex because final price paid is based upon "component pricing" across entire pool.
  - *Quota* = akin to "base" as in Virginia. Producers own quota by production history and can purchase from another producer.
  - Producers are paid a higher price for their volume of "quota" milk and a lesser price for "excess" production beyond quota volume.
- Milk Control Program sets producer prices but not minimum wholesale or minimum retail.

- Class I producer price is fixed at FMMO Class I price + $2.55/cwt.

Montana Class I Price Computations per ARM 32.24.480(2) for June 2023	
Federal Order Base Class I Price for Milk Testing 3.5% Butterfat ($/cwt)	$18.01
Plus: Montana Differential ($/cwt)	$2.55
Montana Class I Milk Price for Milk Testing 3.5% Butterfat ($/cwt)	**$20.56**





Nevada

- Nevada Milk Commission does not maintain a website. See:

Two marketing orders adopted as part of Nevada Admin Code:

- Northern Nevada Marketing Area (NVMA)
- Southern Nevada Marketing Area (SVMA)

- Only resources from NDA ->

Key: Pricing Justification

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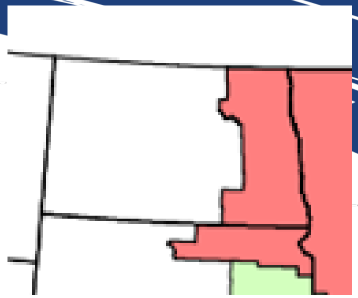
April – June 2024 Southern Nevada Producer Prices

SNMA CL I	20.58	20.58	19.86	19.86	21.48	21.48
Pacific Northwest Price CL I	21.08	21.08	20.36	20.36	21.98	
Difference	0.50	0.50	0.50	0.50	0.50	-21.48
SNMA CL II	9.49	20.83	9.29	21.10	9.10	8.79
Pacific Northwest Price CL II		21.23		21.50		
Difference	-9.49	0.40	-9.29	0.40	-9.10	-8.79
SNMA CL III		20.11		20.50		0.00
>Pacific Northwest Price Cl III or IV		20.11		20.50		
Difference		0.00		0.00		0.00

SNMA Class I cwt price should be $ .50 lower than the Federal Pacific Northwest area Class I cwt price.
SNMA Class II cwt price should be $ .40 lower than the Federal Pacific Northwest area Class II cwt price.
SNMA Class III cwt price should be the higher of the Pacific Northwest Cl III or Cl IV cwt Price.
Class I cwt price does not include Federal mandated obligations.

24 dairy farms presently



North Dakota

- North Dakota Milk Marketing Board also lacks a website. However, an historical account is contained in the State Archives. Est. in 1967 as the "Milk Stabilization Board" and name changed in 1995.
- North Dakota Code 04.1-26 "Milk Marketing Board" authorizes the establishment of milk marketing areas and "Milk Stabilization Plans" that must include minimum producer prices (among other things).
- North Dakota Administrative Code, Article 51-03

Chapter	Chapter Name
51-03-01(PDF)	Market Area Boundaries
51-03-02(PDF)	Stabilization Plans for Market Area 1
51-03-03(PDF)	Stabilization Plans for Market Areas 2, 5, 7, and 8
51-03-04(PDF)	Stabilization Plans for Market Areas 3, 4, and 6

- Sets minimum producer Class I, II and III prices, minimum wholesale and retail prices.
- ND operates a robust FMMO-like pool system across 8 marketing areas.
- Class 1 utilization rate of milk production covered is 87.4%!
- Min. wholesale and min. retail pricing is not done to allow recovery of any mandated premium but simply to avoid "race to the bottom."

Excerpt of 2014 Report Legislative Agriculture Committee

North Dakota's 1967 Legislature enacted the law that established a Milk Marketing Board with powers to regulate fluid milk prices and fair trade practices within the industry and establish milk-marketing areas within the state. Experts in the field consider it to be the best and most flexible state milk law in the country.

The need for the legislation arose when huge plants in the Twin Cities started to turn North Dakota into a dumping ground for their surplus milk supplies in the Minnesota-Wisconsin production region. They were practicing unfair and demoralizing trade practices against the North Dakota dairy industry by taking the large super market accounts away from local dairies with low subsidized prices and leaving the small country markets, schools, cafes and nursing homes with small sales volumes and long distances to the local dairies. In an effort to compete, local dairies started to pay the Grade A dairy farmers less for their milk, thus forcing many out of the dairy business. These very same forces are waiting today to move in and disrupt the market from out-of-state locations. They want to dump their surpluses on high volume accounts with easy access to major highways. However they do not want to serve the small volume accounts in the very rural areas, accounts the Board requires those currently licensed to service at the present. (An example of this is the fast food chains and national accounts that buy everything off of a truck from the Twin Cities.)

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THANK YOU FOR ATTENDING.

QUESTIONS?

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

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CENTER MISSION AND BACKGROUND

Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. 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.

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