

**LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY
OFFICE OF AGRO-CONSUMER SERVICES
DAIRY DIVISION**



**LOUISIANA REVISED STATUTES
TITLE 3 – LOUISIANA DEPARTMENT OF AGRICULTURE**

PART II. MILK BUYERS

§641. Bond or other security required of milk buyers

Any person, firm, or corporation who shall engage in the business of purchasing milk from producers or co-operative associations for the purpose of manufacturing, pasteurizing, distributing milk or milk products shall, before carrying on business, furnish a bond or other security for the payment of all amounts to become due by them to the producers of milk or co-operative associations for milk sold by producers or co-operative associations. The bond shall be signed by a surety company authorized to do business in Louisiana. The bond or such other security as may be required shall be sufficient in amount to cover all amounts due the producers of milk or co-operative associations for two normal or customary pay periods, but not to exceed twenty-five days in total, based upon the average of the preceding six-month period of purchases from milk producers or co-operative associations, provided that the minimum bond or other security shall not be less than the amount sufficient to cover amounts due producers or co-operative associations for one week's purchases. The bond or other security shall be approved as to form, amount, and sufficiency by the commissioner of agriculture and forestry and shall be filed by him and retained in his office, subject to public inspection.

Amended by Acts 1950, No. 109, §1; Acts 1954, No. 128, §1; Acts 1964, No. 85, §1; Acts 2009, No. 24, §1, eff. June 12, 2009.

§642. Commissioner of agriculture and forestry to adopt regulations

The commissioner of agriculture and forestry may adopt rules as to the determination of the amount of the bond or other security and the filing of it.

Amended by Acts 1950, No. 109, §2; Acts 2009, No. 24, §1, eff. June 12, 2009.

§643. Failure to post bond or other security

Any person, firm, or corporation who shall engage in the business of purchasing milk from producers for the purpose of manufacturing, pasteurizing, or distributing milk or milk products within the state without having first posted the bond or other security that shall be required by the commissioner of agriculture and forestry, and as required by this Part, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the parish jail for not less than ten days nor more than six months, or both, in the discretion of the court.

Amended by Acts 1950, No. 109, §3; Acts 2009, No. 24, §1, eff. June 12, 2009.

§644. Producers' rights under bond or other security

Any producer of milk to whom money is due for milk sold to any manufacturer, pasteurizer, or distributor, shall have full recourse on the bond or other security that shall be required by the commissioner of agriculture and forestry, as provided by this Part, for all such amounts.

Amended by Acts 1950, No. 109, §4; Acts 2009, No. 24, §1, eff. June 12, 2009.

§645. Collection on bond or other security; pro-ration of proceeds

The commissioner of agriculture shall, upon notification of any producer or producer group, that any person, firm or corporation has failed to pay for milk delivered by them, make an immediate investigation and audit of such person's, firm's, corporation's records to determine amounts due milk producers. If such investigation and audit reveals that such person, firm, or corporation owes and is unable to pay, or refuses to pay, producers for milk delivered, the commissioner shall collect on the surety bond or other security by court action if necessary, and pro-rate the proceeds of such surety bond or other security to the milk producers based on amounts due the producers as shown by the official audit of the records.

Added by Acts 1954, No. 128, §2.

CHAPTER 25. MILK TESTING LAW

§4001. Definitions

For purposes of this subpart, the following shall be herein defined:

(1) Commissioner: The commissioner of agriculture, his representative or his agent.

(2) Cooperative: A legally chartered organization of milk producers, their representatives or their agents.

(3) Purchaser: Any person, firm, corporation or cooperative purchasing milk and cream on the basis of volume, weight and butterfat content therein.

(4) Producer: Any person, firm, corporation or cooperative producing milk for sale on the basis of volume, weight and butterfat content therein.

(5) Milk: As defined by the state health sanitary code, the butterfat requirement shall be excluded as related to milk produced at dairy farms.

(6) Fresh milk test: A butterfat analysis which shall have been determined by a method approved by law and which shall have been proven accurate and deemed acceptable as a factor of payment by the commissioner.

(7) Time composite: A sample of milk obtained by the mixing of single samples, each being representative of and proportionate to the volume from which they were taken and which shall represent a period of time not to exceed sixteen days.

(8) License: Any technical license issued by the commissioner.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4002. Powers of the commissioner

The commissioner may:

(1) Regulate measuring, weighing, sampling, testing, sales and purchase of milk and cream as related to the content of butterfat, solids-nonfat and/or total solids in milk; and provide a butterfat, solids-nonfat and/or total solids in milk testing program in those instances where the purchaser or cooperative does not have adequate and approved facilities, equipment, and personnel to provide this service.

(2) Require licensing of any person who shall measure, weigh, sample, test, transport and whosoever shall otherwise be responsible for the butterfat content of milk as a basis of payment between producer and purchaser. The commissioner may further license laboratory facilities and persons responsible for calibration of laboratory testing equipment. No person shall perform the aforementioned duties without benefit of license.

(3) Publish and issue reports to the industry as relates to technical and economic data.

(4) Require purchaser and cooperative to file all technical and licensed personnel performance records with the commissioner when such records shall relate to the basis of payment between producer and purchaser or cooperative.

(5) Permit a cooperative that pays its members and conducts a butterfat testing program for its members to exercise the option of paying producers for

butterfat on the basis of either fresh milk samples or a composite sample. Within thirty days from July 31, 1974, all affected cooperatives shall notify, in writing, all their producers and the commissioner of the option selected. After an option has been selected by a cooperative, the method of sampling cannot be changed for a period of six months thereafter and without giving written notice to the producers and the commissioner at least thirty days before the effective date of such change.

A purchaser, other than a cooperative that pays its members and conducts a butterfat testing program for its members, may also be permitted to exercise the option of paying producers for butterfat on the basis of either fresh milk samples or a composite sample; provided, however, that no such purchaser may elect to change to fresh milk sampling without the concurrence of its producers, and without thirty days written notice to the commissioner. After a purchaser elects to make a change in its method of butterfat sampling, the method of sampling cannot again be changed for a period of six months thereafter and without the concurrence of the purchaser's producers, and the giving of at least thirty days written notice to the commissioner prior to the effective date of such change.

(6) The commissioner may conduct such testing and check testing programs as are provided for in this subpart.

(7) The commissioner may enter into contract with any cooperative or group of producers to provide for testing services and a more effective enforcement of this subpart.

(8) Producers shall be paid for their milk and cream on the basis of its butterfat content, until such time as solids-nonfat or protein is selected as a method of payment by a cooperative or agreed upon by a purchaser and its producers who are not members of a cooperative, and the commissioner has approved the necessary equipment for testing, and established a procedure for sampling, testing, licensing and payment in accordance with the provisions of this subpart.

(9) The commissioner may enter the business premises of any producer, purchaser, or cooperative for sampling, testing, inspection, and observation purposes.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4003. Rules and regulations

The commissioner shall promulgate rules and regulations for the administration and enforcement of this subpart.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4004. Records required

The purchaser and/or the cooperative shall maintain, both individually and collectively, a record of each producer's delivery of milk. The records shall state the date of delivery, the producer's name or permit number, the volume measurement and converted weight of milk, the temperature, the purchaser or cooperative and the signature of the licensed measurer-sampler or milk and cream tester. The producer shall be provided a daily record of volume and weight upon receipt and a collective record of weight and test upon payment. Daily and

periodic laboratory records shall be maintained as relates to volume, weight, fat analysis, calibration log and licensed personnel performance reports. Upon request, the commissioner shall be granted access and/or copy of all records required.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4005. Samples taken and stored; as a basis of payment

A. Cream samples: Cream shall be sold and purchased on the basis of fresh samples only and stored at 33° to 45° F.

B. Time composites: Composite samples shall not exceed sixteen days. Every shipment of producer milk shall be represented unless otherwise defined by rule and regulation. A preservative approved by the commissioner shall be used. The bottles or composite containers shall be clean and dry with an attached cover. All composites shall be labeled with clear, smearproof numbers of the producers represented and upon completion of the shipping period shall contain sufficient volume necessary to perform not less than four Babcock tests. Protection shall be provided against adulteration, or the entrance or loss of moisture and content. Composite samples shall be constantly maintained at a temperature range of 33° to 45° F. and shall be held intact for seven days after testing and subject to such other requirements as may be established by rule and regulation.

C. Fresh milk sample: The fresh milk sample shall be herein defined as a single shipment sample, the age of which shall not exceed forty-eight hours from the time it is secured to the time it is utilized for testing. The container shall be of a size and design approved by the commissioner and shall be labeled with the date and permit number of the producer represented. The sample shall be taken, stored, transported and maintained at a temperature range of 33° to 45° F.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4006. Responsibilities of purchaser, cooperative, and licensed personnel; suspension of license

A. Purchaser; cooperative; tank truck owner: The purchaser, cooperative and tank truck owner shall be responsible, bound, and coequally liable for their licensed employees to carry out the provisions of this subpart, and the rules and regulations promulgated by the commissioner.

B. Measurer-sampler: A licensed measurer-sampler shall be responsible and liable for the correct measuring, conversion, sampling, transport and care of milk samples so long as they are under his care and as may otherwise be defined by rule and regulation.

C. Milk and cream tester: A licensed tester shall be responsible for the proper storage, preparation, mixing, testing, and posting of fresh and/or composite samples of milk and the subsequent results thereof.

D. Calibration technician: No person other than a licensed milk and cream tester, approved by the commissioner in writing or by special license, shall calibrate, adjust, or otherwise supervise any electronic fat analysis device. The employment of any electronic fat analysis device, which must be approved by the

commissioner, by any purchaser or cooperative shall require not less than two approved calibration technicians.

E. Suspension of licenses: If investigation by the commissioner discloses intentional misconduct in the procuring of any sample, or the tampering with a milk sample, equipment, electronic analysis device or butterfat records, the license of the sampler, tester or calibration technician and/or their licensed employer may be immediately suspended by the commissioner for a period of not more than thirty days, and may be revoked as provided in R.S. 3:4010.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1; Acts 1985, No. 218, §1.

§4007. Test of samples; notification

A. Time composites: The composite sample shall be tested within two days after the close of the sampling period and as otherwise defined by rule and regulation.

B. Fresh milk sample: The fresh milk sample shall be utilized for composite building and/or tested within forty-eight hours from the time it is secured and as otherwise defined by rule and regulation.

C. Notification: The purchaser and/or the cooperative shall notify each producer of this butterfat pay test not later than the 15th day of the month following that during which the tests were conducted. For semimonthly testing periods the information shall include the average pay test and volume of milk for the 1st through the 15th; the average pay test and volume of milk for the 16th through the end of the month; a weighted average test and total volume of milk for the month. In the absence of composite samples, the information may be submitted by monthly periods.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4008. Tests and check tests by the commissioner

A.(1) In the event the purchaser or cooperative elects to pay producers for butterfat on the basis of a composite sample, the commissioner may secure and test fresh milk samples on daily shipments of producer milk as a means of checking the accuracy of work performed by licensed personnel and require payment on the basis of the commissioner's test when the comparison reveals a variation in excess of one-tenth of one percent. The commissioner may also examine and check test the composite samples to ascertain their accuracy.

(2) If after a hearing the commissioner determines that a purchaser or cooperative has inadequate testing facilities or equipment or personnel, and the purchaser or cooperative will not contract for the performance of the testing services by the commissioner in accordance with R.S. 3:4002(7), the commissioner may conduct the testing program for the purchaser or cooperative on behalf of the producers involved in the same manner as herein provided for the purchaser or cooperative; require payment to producers in accordance therewith; and make the same reports to producers as provided for herein.

(3) In the event the purchaser or cooperative elects to pay producers for butterfat on the basis of fresh milk samples, the commissioner may secure and test

such fresh milk samples as he deems necessary to verify the correctness of the fresh milk sampling program of the purchaser or cooperative, and require payment on the basis of the commissioner's tests when the comparison reveals a variation in excess of one-tenth of one percent.

(4) The commissioner shall not perform, nor shall he authorize any purchaser or cooperative to perform any fresh sample testing program that shall incorporate less than three proven and acceptable fresh milk tests within a semimonthly testing period nor less than six such tests within a monthly testing period. The tests shall be stratified, as nearly as possible, so as to assure at least one fresh milk test within each five days of the shipping period. The fresh milk testing program shall represent not less than one-third of the total producer shipments within a partial period of shipment.

(5) The requirements contained herein and as otherwise defined by rule and regulation shall be binding upon the commissioner and any cooperative or purchaser authorized by the commissioner to perform this service.

B. Any person licensed to measure, sample, transport, collect or test milk samples as a basis of payment to producers shall upon request by the commissioner, secure and submit data, records, and/or fresh milk samples necessary for investigation by the commissioner.

C. In order to facilitate the taking of accurate samples by the commissioner, any purchaser, cooperative, person, firm, or corporation purchasing, handling, or transporting milk in bulk milk tank trucks shall provide adequate agitation facilities at points of delivery.

D. The commissioner may secure processed or finished product samples as a means of checking the utilization of fat and skim by purchasers and cooperatives in such manner as shall be defined by rule and regulation.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4009. Licenses required

A. No person shall engage in measuring, weighing, sampling, transporting or testing producer milk, or cream as a basis of payment unless he has first procured a license from the commissioner.

B. No person shall calibrate, adjust or otherwise supervise the operation of any electronic fat analysis device unless he has first procured a milk and cream testers license and special authorization or license from the commissioner.

C. No person shall own and/or operate a bulk tank transport for milk hauling purposes without having first procured a license from the commissioner. Such persons shall be held coresponsible and coliable with licensed personnel in their employ when such business shall effect payment to producers.

D. The commissioner may require application for license on a form prescribed and furnished by him. The applicant shall submit to written or practical examination or both by the commissioner, and upon passing the examination and approval by the commissioner as to the applicant's integrity, the applicant shall

receive the license for which he applied. Renewal of licenses shall be effected on June 30 of every other year.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1; Acts 1985, No. 218, §1.

§4010. Revocation of license

The commissioner may revoke any license or permit issued to any person under the provisions of the subpart, after a hearing, upon at least five days' notice stating the grounds for the revocation. The notice may be served personally upon or sent by registered mail to the person. The grounds for revocation are incompetence, any dishonest, deceptive, or fraudulent practice, or a violation of any provision of this subpart.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4011. Use of other than approved method, equipment, glassware, tests or installation prohibited

A. No person shall use for butterfat analysis in milk or cream any method, equipment, glassware, supplies or electronic analysis device except that which conforms to the United States Bureau of Standards or which shall have been inspected, researched, tested and approved by the commissioner.

B. No method other than the Majonnier, Babcock, or electronic fat analysis device shall be used for butterfat analysis in milk and cream until the method or device shall have been approved by the commissioner. The electronic fat analysis device shall be calibrated by the Babcock method in such manner as shall be defined by rule and regulation.

C. Every installation of laboratory equipment to be used for butterfat analysis in milk and cream shall be inspected and approved by the commissioner. No one shall use an unapproved installation.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1; Acts 1985, No. 218, §1.

§4012. Purchaser shall use only correct weight and measures

No person purchasing milk or cream on the basis of its butterfat content shall use any weight, measure, or butterfat test thereof other than the correct weight, measure, or butterfat test; nor shall such person have in his possession any inaccurate, defective, or untrue weighing or measuring device. Also such a person shall not make any misrepresentation as to any weight, measure, or test.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4013. Falsifying tests or weights or measures or records thereof prohibited

No person shall underread, overread, or in any way manipulate any approved butterfat test so that other than the true butterfat percentage is obtained; or any weighing or measuring device so that other than the true weight or measure of the milk or cream purchase is obtained.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

§4014. Standardization of milk

No person, firm, or corporation shall sell or deliver for consumption fluid milk which contains less than three and one-fourth percent of butterfat; provided, however, that milk furnished military installations or federal hospitals on contract

may meet minimum specifications of the United States Public Health Ordinance and Code. Nothing in this Section shall be construed to prohibit the sale of milk from a dairy farm to a fluid milk plant, whole and unadulterated as it is produced by the cows, even though the fat content of such milk may be less than three and one-fourth percent butterfat.

Acts 1974, No. 306, §1. Amended by Acts 1974, No. 517, §1; Acts 1985, No. 74, §1; Acts 1986, No. 169, §1.

§4015. Penalties

Any person violating any of the provisions of this subpart or the rules and regulations promulgated by the Commissioner shall be fined not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for not less than thirty days nor more than six months.

Acts 1974, No. 306, §1; Acts 1985, No. 74, §1.

CHAPTER 26. DAIRY STABILIZATION LAW

§4101. Findings, policies and purposes

It is hereby declared:

- (1) That milk is a necessary article of food for human consumption.
- (2) That an adequate supply of good quality dairy products at fair and reasonable prices is essential to the public health and welfare.
- (3) That milk is a highly perishable commodity, which is easily contaminated by harmful bacteria if not produced, processed, and distributed under the best of sanitary conditions, and if not properly refrigerated at all times.
- (4) That the supply of milk can neither be substantially increased nor substantially decreased from day to day.
- (5) That milk can be stored for only limited periods of time.
- (6) That the dairy industry is peculiarly susceptible to injury resulting from price wars and a variety of disruptive trade practices that flourish in the absence of effective regulation.
- (7) That price wars and disruptive trade practices in the dairy industry tend to cause financial ruin for dairy farmers and for locally-owned processors and distributors, regardless of how efficient and well managed they might be.
- (8) That the production, processing, packaging and distribution of good quality dairy products requires skilled and properly trained personnel and also requires substantial investments in expensive equipment, facilities, and other items.
- (9) That price wars and disruptive trade practices in the dairy industry weaken the financial condition of dairy farmers, processors and distributors, tend to lessen their ability to employ the skilled and properly trained personnel required for their operations, and tend to postpone construction and purchases of needed equipment and repairs of facilities.
- (10) That failure to provide effective regulation of the Louisiana dairy industry will lead to a resumption of unfair methods of competition that once existed in the Louisiana dairy industry, will result in the economic destruction of many dairy farmers, of independent dairy processors and of many distributors, and will tend to create a monopoly in the processing and distribution of milk and dairy products.
- (11) That recent developments have made it less feasible to move milk to Louisiana from areas of heavy production and have created the possibility that milk shortages will become a reality in the United States in the foreseeable future.
- (12) That the consumers of this state need to be protected against excessive prices on milk and dairy products, particularly during periods when such items are in short supply.
- (13) That the citizens of this state will be benefited by a regulatory program that is designed to stabilize the Louisiana dairy industry in order to assure an adequate supply of milk and dairy products at fair and reasonable prices.

(14) That monopoly, disruptive trade practices, and unfair methods of competition should be prohibited in the Louisiana dairy industry.

(15) That consumers should be protected against inadequate supplies of milk and dairy products and against excessive prices for milk and dairy products.

(16) That dairy farmers and independent processors and distributors should be encouraged to make necessary investments and hire needed personnel, and that conditions should be created that would permit reasonably efficient processors and dairy farmers to remain in business.

(17) That an effective program of regulation for the Louisiana dairy industry should be established in order to eliminate speculation and waste, to assure a continued supply of high quality dairy products, and to enable dairy farmers, processors and distributors to borrow funds required for their operations.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4102. Definitions

As used in this Subpart, unless the context otherwise requires:

(1) "Milk" means the lacteal secretion of one or more cows (including such secretions when raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated) which meets applicable requirements of the state health officer.

(2) "Bulk milk" means milk which has not yet been placed in the container in which the product will be offered for sale to consumers, retailers or institutions.

(3) "Commissioner" means the commissioner of agriculture of the State of Louisiana.

(4) "Person" means any individual, partnership, corporation, cooperative association, governmental agency, or other business entity.

(5) "Dairy farmer" means any person who produces bulk milk for sale to a processor. The term "dairy farmer" is used interchangeably with "milk producer".

(6) "Processor" means a person who processes one or more dairy products or a person who purchases bulk milk for a dairy farmer for resale to a person who processes dairy products, or a person who purchases bulk milk from anyone for resale to a person who processes dairy products. The term "processor" does not include a person who purchases ice cream mix, or ice milk mix and whose processing activities are limited to converting such mix into a dairy product, all the sales of which are then made by such person to consumers at retail on the premises where such processing activities take place.

(7) "Distributor" means a person, other than a processor, who sells dairy products to one or more retail (home delivery) routes or to retailers, or to both.

(8) "Retailer" means any person who is engaged in transferring title to dairy products to consumers at a fixed place of business located in this state.

(9) "Supplier" means a processor or a distributor.

(10) "Dairy product" means any of the following:

(a) Homogenized milk, regular milk, pasteurized milk, special milk, buttermilk, cottage cheese, creole cream cheese, yogurt, flavored milk, flavored

milk drink, skim milk, low-fat milk, fluid cream, concentrated milk, ice cream, fruit ice cream, nut ice cream, ice milk, malt ice cream, French ice cream, milk sherbets, mellorine, olarine, sherine, and the mix from which any such products are made.

(b) Any product which contains milk solids not fat, butterfat, or a milk derivative, and which is manufactured in the semblance of one of the products listed in the preceding subparagraph, provided, however, that the term "dairy products" shall not include butter, cheese (other than cottage cheese or creole cream cheese), nonfat dry milk, skim condensed milk, whole condensed milk, or sweetened condensed milk.

(11) "Marketwide pool" means that arrangement under which the same blend price is received by all dairy farmers supplying milk of equivalent butterfat content to those processors who are fully regulated by the same production stabilization plan.

(12) "Handler pool" means that arrangement under which the same blend price is received by all dairy farmers supplying milk of equivalent butterfat content to a processor.

(13) "Production marketing area" means that area within which minimum prices established by the commissioner shall be uniform.

(14) "Representative processors" means two large processors, two medium size processors, and two small processors selected by the board in accordance with any fair and reasonable procedure.

(15) "Institution" means a school, hospital, state agency, religious organization, charitable organization, or nursing home.

(16) "Board" means the "Dairy Stabilization Board".

(17) "Cooperative" or "co-op" means any organization that meets the requirements of R.S. 3:131-149 and whose members are all dairy farmers.

(18) "Blend price" means the price received by the dairy farmer in payment for his bulk milk, which price reflects the manner in which the bulk milk was utilized either by the processor to whom the bulk milk was sold (handler pool) or by all processors regulated by the same production stabilization plan (marketwide pool).

(19) Repealed by Acts 1976, No. 695, §2.

(20) "Dairy farmer-processor" means a person who is both a dairy farmer and a processor. For the purposes of this subpart, a dairy farmer-processor is a dairy farmer in any sale of bulk milk produced by him to a processor, and is a processor in any processing, manufacturing, or sale of dairy products, or in any receipt of bulk milk from a source other than his own production.

Added by Acts 1974, No. 31, §1. Acts 1976, No. 695, §2; Acts 1985, No. 75, §1.

§4103. Production marketing areas

The commissioner shall establish production marketing areas, shall describe the territorial extent thereof, and shall designate the same by name or number. The commissioner may increase or decrease the number of production marketing areas, combine two or more production marketing areas, or alter the boundaries of such areas. In exercising the authority granted by this section, the commissioner shall take into consideration the historical conditions affecting the production, distribution and sale of bulk milk and dairy products in such areas, the need for establishing area boundaries in a manner which will facilitate cooperation between the commissioner and federal authorities engaged in regulating prices paid by processors for bulk milk, and all other factors necessary to effectuate the purposes and policies of this subpart. Nothing contained in this subpart shall prevent the commissioner from including the entire state in one production marketing area.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4104. Production stabilization plans

A. The commissioner shall issue for each production marketing area a production stabilization plan that shall provide comprehensive regulation of the marketing of bulk milk by dairy farmers and the acquisition of bulk milk by processors. Each production stabilization plan issued by the Commissioner shall provide the means for determining which such plan is applicable to the bulk milk purchases of a processor engaged in selling dairy products in two or more production marketing areas. The applicability of any such plan to bulk milk purchased by a processor from a particular dairy farmer shall in no way be dependent upon the location of the seller's dairy farm nor upon the location at which title passes.

Any production stabilization plan issued by the commissioner may provide for a classified pricing system predicated upon utilization, and may provide for a market-wide pooling arrangement or a handler pooling arrangement.

Any production stabilization plan may also contain provisions establishing the prices payable by a processor for bulk milk purchased from sources other than dairy farmers and may contain such other provisions as are necessary and appropriate in order to insure that prices paid for butterfat and milk solids not fat (whether in the form of bulk milk or otherwise) shall be uniform for all processors whose bulk milk purchases are regulated by same production stabilization plan.

If the commissioner issues a production stabilization plan containing a market-wide pooling arrangement, the plan may require that milk produced by dairy farmer-processors be included in such pooling arrangement.

Any production stabilization plan may provide for price adjustments based upon the butterfat content of the bulk milk, the location where received, the location of the plant to which a portion of the bulk milk is transferred or diverted by the processor from the plant where such bulk milk is normally utilized, and

other such factors for which price adjustments are now provided in 7 U.S.C. §608(c).

B. Minimum prices to milk producers

(1) Within sixty days following the effective date of this act,* the commissioner shall call a public hearing to consider the establishment of an economic pricing formula for determining the minimum prices payable to milk producers for milk used as Class I milk. The objective of the formula shall be to insure that the minimum prices in each milk marketing area within the state shall be beneficial to the public interest, protect the dairy industry of the state, and insure a sufficient quantity of pure and wholesome milk for inhabitants of this state.

(2) In establishing the formula, the commissioner shall give consideration to those economic indices that will reflect changes in each of the following categories and such others as the commissioner may deem relevant: the quantity of fluid milk produced and disposed of; ability and willingness of consumers to buy; cost factors in producing milk; alternative opportunities for milk producers; and indexes of manufacturing milk. The formula shall be designed to bring about such automatic changes in minimum milk producer Class I prices as are justified by changing conditions, without the requirement of public hearings before each such change.

(3) Within thirty days after completion of the public hearing, the commissioner shall recommend an economic pricing formula for pricing of Class I milk designed to accomplish the objectives stated in this section. This proposed formula shall be presented to the milk producers who regularly supply milk in each marketing area, to be voted upon in separate referenda to be held not more than thirty days following the announcement by the commissioner of his recommended formula. If two-thirds or more of the producers voting in a marketing area approve the formula, it shall become the effective method of pricing milk to producers for Class I sales in that marketing area, and the prices as determined by the formula shall be the minimum prices to be paid to milk producers by processors or handlers, distributors or bulk milk handlers for milk used as Class I milk.

(4) If the economic pricing formula for Class I milk is adopted in any marketing area and the percentage change in the average of the three indices reflecting cost of production, (namely, index of prices paid by farmers in the United States; index of prices paid for 16% dairy ration in Louisiana; and index of farm wage rates in Louisiana) deviates from the percentage change in the Class I price in that marketing area, as determined by the formula, by 6.0 or more percentage points, the commissioner shall call a hearing, within thirty days, to review the operation of the formula. Within thirty days after completion of the public hearing, the commissioner shall recommend appropriate amendments to the economic pricing formula. These amendments shall be submitted to the milk producers in the marketing area to be voted upon in a referendum to be held within

thirty days following the announcement by the commissioner of his proposed amendments. If two-thirds or more of the producers voting in the marketing area approve amendments they shall be adopted and utilized in that area.

(5) If the economic pricing formula for Class I milk is adopted, and fifty percent or more of the milk producers who regularly supply milk to a milk marketing area petition, in writing, for a hearing, the commissioner shall call a public hearing within thirty days, to review the operation of the formula and to consider amendments thereto. Within thirty days following completion of the public hearing, the commissioner shall recommend appropriate amendments to the economic pricing formula. These amendments shall be submitted to the milk producers in said marketing area to be voted upon in a referendum to be held within thirty days following announcement by the commissioner of his proposed amendments. If two-thirds or more of the producers voting in the marketing area approve the amendments they shall be adopted and utilized in that area.

(6) Whenever the commissioner finds that the milk producer Class I prices resulting from the utilization of the formula do not tend to effectuate the purposes of this section, he may suspend the operation of the formula for a period of not more than ninety days and may establish during such period those minimum prices which will tend to effectuate the purposes of this section. When the period of suspension terminates, the minimum milk producer prices for Class I milk shall again be those resulting from the utilization of the formula. Once the operation of the formula has been suspended, the commissioner may not suspend the operation of the formula again until at least twelve months have elapsed since the end of the period of suspension. Nothing contained in this subparagraph shall prevent the revision of the formula during the period when its operation is suspended.

(7) If fifty percent or more of the milk producers who regularly supply milk to a milk marketing area petition in writing to rescind the economic pricing formula for Class I milk the commissioner shall, within thirty days, call a referendum and submit this proposal to the milk producers who regularly supply milk in said marketing area. If a majority of those voting in such referendum vote to rescind the economic pricing formula, its use as a method of establishing minimum prices shall be terminated.

(8) If the economic pricing formula for Class I milk provided for in this section is not adopted or is rescinded by vote of the producers in any marketing area, the commissioner shall, within thirty days following the referendum, call a public hearing to consider the establishment of minimum prices to be paid to milk producers for milk to be used as Class I milk. Within thirty days following the completion of the public hearing, the commissioner shall recommend minimum prices to be paid to milk producers for milk used as Class I milk in said marketing area. These prices shall be voted upon by milk producers regularly supplying milk in said marketing area in a referendum to be held within thirty days following the announcement by the commissioner of his recommendations. If two-thirds or more of the producers voting in a marketing area approve the prices, the

commissioner shall require payment of such appropriate minimum prices for milk in said marketing area.

(9) Upon written request of fifty percent or more of the milk producers who regularly supply milk to a milk marketing area, the commissioner shall, within thirty days, call a public hearing to review minimum prices established under the provisions of Subparagraph (8) of this section. Within thirty days following completion of the public hearing, the commissioner shall recommend appropriate adjustments to the minimum price in that area. These proposed prices shall be submitted to the milk producers in that marketing area to be voted upon in a referendum to be held within thirty days following the announcement by the commissioner of his recommendations. If two-thirds or more of the producers voting in said marketing area approve the prices, the commissioner shall require payment of such appropriate minimum prices in said marketing area.

(10) Classifications for milk other than Class I, and minimum prices to be paid to milk producers for milk to be used in such classifications shall be established by the commissioner, subject to the approval of the producers in accordance with the following procedures:

(a) Upon written request of fifty percent or more of the milk producers who regularly supply milk to a milk marketing area, the commissioner shall call a public hearing within thirty days to consider the establishment of appropriate classifications and minimum prices for milk other than Class I.

(b) Within thirty days following the completion of the public hearing, the commissioner shall recommend appropriate classifications and minimum prices to be paid to milk producers for sale of milk other than Class I in said marketing area. In establishing the minimum prices, the commissioner shall take into consideration the competitive prices paid to producers in other states or regions for milk other than Class I milk, the cost of alternative supplies from other states or regions of milk for similar use and classification; and other appropriate factors affecting the production and sale of milk in the area.

(c) These proposed classifications and minimum prices shall be voted upon by milk producers regularly supplying milk in said marketing area in a referendum to be held within thirty days following the announcement by the commissioner of his recommendations. If two-thirds of the producers voting in a marketing area approve the classifications and the minimum prices, the commissioner shall adopt the classifications and shall require payment of minimum prices in said marketing area.

(11) In any public hearing held pursuant to this section, all interested persons shall be given reasonable opportunity to be heard.

If fifty percent or more of the milk producers who regularly supply milk to a marketing area petition in writing to terminate the marketing order in its entirety, the commissioner, shall, within thirty days, call a referendum and submit this proposal to the milk producers who regularly supply milk in the marketing area. If two-thirds of those voting in such referendum vote to terminate the order in its

entirety, its use shall be terminated effective the last day of the month in which the referendum is conducted.

C. Each production stabilization plan shall contain such additional provisions as are required in order to achieve the objectives of this subpart, including, but not limited to provisions relating to the following:

- (1) Records to be kept by processors;
- (2) Reports to be submitted by processors;
- (3) The provision of marketing services to dairy farmers who are not members of a cooperative and the financing of such activities;
- (4) The establishment and transfer of individual bases in accordance with any reasonable plan including, but not limited to, a Class I base plan;
- (5) A provision for increasing in all production marketing areas of the prices established pursuant to this section to the level of the prices established pursuant to a federal milk marketing order having in its marketing area one or more parishes of the State of Louisiana.

D. The commissioner is hereby authorized to cooperate with the Secretary of Agriculture of the United States in the manner provided in 7 U.S.C. 610(i) and in other appropriate ways.

E. Whenever the commissioner finds that any production stabilization plan or any provision thereof obstructs or does not tend to effectuate the purposes of this subpart, he shall suspend the operation of such plan or such provision thereof, provided, however, that the commissioner's powers of suspension are limited by the terms of Subsection B(6) of this section. However, the commissioner is prohibited from taking any suspensive action involving one or more provisions of the production stabilization plan if the effect thereof will be to render such plan so ineffective as not to be a production stabilization plan within the meaning of this subpart. If the commissioner suspends a production stabilization plan in its entirety, such suspension shall not become effective unless approved by a majority of the affected dairy farmers who vote in a referendum arranged by the commissioner.

F. The commissioner shall take such measures as are reasonably necessary to assure that changes in bulk milk prices and changes in the prices established by the board occur simultaneously.

G. Each production stabilization plan adopted pursuant to this section shall be considered a "rule" as that term is defined in R.S. 49:951(6); and the adoption, amendment, and judicial review of such plans shall be in accordance with the provisions of the Administrative Procedure Act (R.S. 49:951 et seq.) relating to rules and rule-making. The revision of any provision of a production stabilization plan shall be accomplished only by the amendment of such plan. Any suspensive action taken by the commissioner pursuant to Subsection F of this section and any action taken by the commissioner pursuant to the third paragraph of Subsection B of this section shall be deemed an "emergency rule" as that term is used in R.S.

49:953(B), but the commissioner shall not be required to find that any such action is required by an imminent peril to the public health, safety, or welfare.

H. Nothing contained in this subpart shall be construed to prevent a cooperative association engaged in making collective sales or marketing of milk or milk products for its dairy farmer members from blending the net proceeds of all of its sales and making distribution thereof to its producers in accordance with the membership-marketing contract between the association and its dairy farmer members, provided that no sale of milk by a cooperative association to a processor, distributor, retailer or consumer shall be made at less than the applicable minimum prices established pursuant to this subpart.

Whenever pursuant to the provisions of this subpart the commissioner is required to determine the approval or disapproval of dairy farmers with respect to the issuance of marketing orders, amendments thereto or suspension thereof, the commissioner shall consider the approval or disapproval or the vote by a cooperative association of dairy farmers as the approval or disapproval or vote of the dairy farmers who are members of such cooperative association and eligible to vote in the referendum. The commissioner shall establish reasonable and appropriate rules for determining the eligibility of a producer or producers to vote in any referendum.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4105. Sales of dairy products not subject to price regulation

Sales of all dairy products covered by this Subpart by retailers, distributors, and processors shall not be subject to price regulation; in no event shall the Dairy Stabilization Board have power or authority to regulate or establish wholesale or retail prices; provided that any such sales shall be subject to the condition of open market competition in compliance with the disruptive trade practice provisions of this Subpart.

Added by Acts 1974, No. 31, §1. Amended by Acts 1976, No. 695, §1; Acts 1985, No. 75, §1.

§4106. Dairy Stabilization Board

A. There is hereby created the Dairy Stabilization Board to be composed of eight members as follows: the governor shall appoint two milk producers, one wholesale grocer, one processor, one retailer, and three consumers. No consumer member shall be engaged in producing, processing, or selling dairy products nor have a personal economic interest in any person who is so engaged.

B. The term of office of the board members first appointed by the governor shall be as follows: two members, one year, ending August 1, 1977; two members, two years, ending on August 1, 1978; and four members, three years ending on August 1, 1979. The terms of all members appointed upon the expiration of the term of each of the first members appointed, and the term of the wholesale grocer, shall be for three years. In making the initial appointments, the governor shall,

consistent with this Section, designate the term of office to be served by each appointee. Vacancies shall be filled in the manner of original appointment.

Added by Acts 1974, No. 31, §1. Amended by Acts 1976, No. 695, §1; Acts 1977, No. 142, §1; Acts 1985, No. 75, §1.

§4107. Compensation, officers, quorum, staff

A. The members of the board shall receive a per diem of thirty dollars for each day spent in attending hearings held by the board and thirty dollars per day for each day spent in attending meetings of the board or in performing such duties as may be required of them by law or by the directives or instructions of the board, and they shall also receive reimbursement for expenses incurred in attending such hearings or meetings or in performing such duties; provided, however, that no member shall receive per diem and expenses for more than twelve days per calendar year spent in attending meetings of the board. In applying the foregoing limitation, days spent in attending hearings held by the board or in performing such duties as may be required of them by law or by the directives or instructions of the board are not to be counted. The members of the board shall elect a chairman, a vice-chairman, and a secretary at the first meeting of the board and annually thereafter at the first meeting held by the board after August 1 of each year. The date, time, and place of the first meeting shall be fixed by the governor.

Four members of the board shall constitute a quorum. However, hearings may be held by such smaller number of board members as the board may determine. For good cause, the board may designate a hearing officer for adjudicatory proceedings, who shall conduct the hearing and who shall, at the conclusion of the hearing, present the entire record of the proceeding to the board for disposition.

B. The board shall employ a director and assistant director who shall be appointed by the board, subject to the approval of the commissioner. The director and assistant director shall be in the unclassified service. The board shall employ such other assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board, and shall determine their qualifications, duties, and compensation. The board shall employ a licensed attorney of the state of Louisiana as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing and other technical services, whenever it determines that such services are needed.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1; Acts 1986, No. 447, §1, eff. July 1, 1986.

§4108. Disruptive trade practices

A. Unfair methods of competition, unfair or deceptive acts or practices and disruptive trade practices are hereby declared unlawful with respect to the sale of milk and milk products.

B. The board is hereby empowered and directed to prevent persons, partnerships and corporations from using unfair methods of competition, unfair or deceptive acts or

practices and disruptive trade practices in the sale of milk and milk products, and the board, after notice and hearing, shall promulgate rules and regulations implementing the policy and purposes of this Subpart and defining with specificity acts and practices in the sale of milk and milk products which are unfair methods of competition, unfair or deceptive acts or practices and disruptive trade practices and providing for the investigation of complaints thereunder and the enforcement thereof. Such rules and regulations so promulgated shall not be in derogation of or inconsistent with the provisions of Parts IV, VI and VIII of Chapter 1 of Title 51 of the Louisiana Revised Statutes of 1950.

C. The adoption, issuance, amendment or repeal of any rule or regulation provided for in this Section shall be accomplished in accord with the provisions of the Administrative Procedure Act, R.S. 49:951, et seq.

D. No handler, processor or distributor shall refuse to accept or discontinue to receive milk from a milk producer as a result of such producer's affiliation with a cooperative association or as a result of activities engaged in by such cooperative association or efforts to organize a producer association; provided this provision shall not apply to milk which is not produced in compliance with sanitary requirements of the Louisiana Health and Human Resources Administration.

E. Nothing contained herein shall prohibit the donation of ice cream and/or frozen desserts to nonprofit charitable groups, organizations, institutions or any other such entities.

F. The dock method of distribution is defined as the distribution of milk and milk products at the processor's plant to distributors and retailers. The dock method of distribution of milk and milk products shall not be unlawful as it applies to the provisions of this Subpart.

Added by Acts 1974, No. 31, §1. Amended by Acts 1976, No. 695, §1; Acts 1985, No. 75, §1.

§4109. Licenses

A. It shall be unlawful for a processor to buy bulk milk without being licensed as a processor by the commissioner if such processor:

- (1) Operates a processing plant located within the State of Louisiana; or
- (2) Sells dairy products to a retailer or a distributor for resale in the State of Louisiana; or
- (3) Sells dairy products to consumers within the State of Louisiana.

B. It shall be unlawful for a processor to sell dairy products without being licensed as a processor by the board if such processor:

- (1) Operates a processing plant located within the State of Louisiana; or
- (2) Sells dairy products to a retailer or a distributor for resale in the State of Louisiana; or
- (3) Sells dairy products to consumers within the State of Louisiana.

C. A separate processor license shall be obtained for each processing plant that is located within the State of Louisiana and for each plant from which dairy products are sold to a retailer or a distributor for resale in the State of Louisiana or to consumers within the State of Louisiana.

D. It shall be unlawful for a distributor to sell dairy products within the State of Louisiana without being licensed as a distributor by the board.

E. Each retailer now holding a retailer license issued by the Louisiana Milk Commission is hereby declared to be a retailer licensee of the board. It shall be unlawful for any retailer not so licensed to sell dairy products without being licensed as a retailer by the board. A separate retailer license shall be obtained for each retail establishment or unit.

F. The licenses application of each processor, distributor and retailer required by this Subpart to be licensed by the board or by the commissioner shall be submitted prior to November 1, 1976, or prior to engaging in the business for which the license is required by this Section. Licenses shall remain in effect until suspended or revoked. Such licenses shall be in addition to any other licenses required by law and may not be assigned or transferred. No person licensed by the board or by the commissioner shall be required to pay a license fee.

G. Licenses issued by the board, including retailer licenses may be suspended or revoked by the board on or after October 1, 1976, upon compliance with the requirements of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 if the licensee has failed to comply with this Subpart or with the regulations issued by the board. Licenses issued to processors by the commissioner may be suspended or revoked by the commissioner upon compliance with the requirements of Chapter 13 of Title 49 of the Louisiana Revised Statutes if the licensee has failed to comply with this Subpart or with the regulations or the applicable production stabilization plan issued by the commissioner. The commissioner may, if requested by a licensee, permit the payment of a penalty in an amount to be set by the commissioner in lieu of a license suspension. The board may, if requested by a licensee, permit the payment of a penalty in an amount to be set by the board in lieu of a license suspension.

Added by Acts 1974, No. 31, §1. Amended by Acts 1976, No. 695, §1; Acts 1985, No. 75, §1.

§4110. Access to records

Any authorized representative of the board or of the commissioner shall have access to, and may enter at all reasonable hours, all places of business operated by licensees where bulk milk or dairy products are purchased, stored, processed, manufactured, or sold, or where the licensee maintains books, papers, accounts, records, or other documents related to such activities. The board or the commissioner may subpoena, and any authorized representative of the board or the commissioner may inspect, copy, or audit, any of such books, papers, records, accounts, or documents, all for the purpose of determining whether the licensee is complying with the provisions of this subpart, and with regulations or stabilization plans issued by the board or the commissioner. The authority granted hereinabove shall also extend to books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained through utilization of the authority granted hereinabove in this section shall be treated as confidential

and shall be used only for the administration of this subpart; provided, that such information may be divulged by a person when called upon to testify in any adjudicatory proceeding before the board or the commissioner or in any court proceeding, and provided further, that nothing contained in this subpart shall prevent the use of any information procured by the board or the commissioner in the compiling and dissemination of general statistical data, containing information procured from a number of licensees, and compiled in such manner as not to reveal individual information of any licensee.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4111. Assessments

A. In order to obtain funds for the administration and enforcement of the regulations and production stabilization plans issued by him pursuant to this Subpart and for the administration and enforcement of that portion of this Subpart for which he is made responsible, the commissioner shall, commencing on August 1, 1974, assess each processor licensed by the commissioner pursuant to this Subpart one and one-half cents per hundredweight on all milk purchased under any production stabilization plan and shall assess each dairy farmer one and one-half cents per hundredweight on all milk sold to a processor regulated by any production stabilization plan.

B. In order to obtain funds for the administration and enforcement of the regulations issued by the board pursuant to this Subpart and for the administration and enforcement of that portion of this Subpart for which the board is made responsible, the board shall, commencing on October 1, 1976, assess each processor licensed by it three cents per hundredweight on all milk equivalents used in the processing of dairy products.

C. All assessments authorized in this Section shall be payable monthly on or before the last day of the month following the month during which they accrue.

D. In the event any processor refuses or fails to obtain a license or refuses or fails to pay this assessment, the commissioner may collect same from the licensed buyer of said dairy products as the agent for said processors or as a user of said products.

E. Assessments on each dairy farmer and each processor shall be deposited in the state treasury.

Added by Acts 1974, No. 31, §1. Amended by Acts 1976, No. 695, §1; Acts 1980, No. 331, §1; Acts 1985, No. 75, §1; Acts 1992, No. 984, §2.

§4112. REPEALED BY ACTS 1992, No. 984, §18.

§4113. Regulation of vertical integration

The commissioner shall be authorized to promulgate rules and regulations to control vertical integration which is the entry of food chain stores into the dairy processing business. In addition to such rules and regulations vertical integration shall be subject to all provisions of this subpart and the antitrust and restraint of trade laws of this state.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4114. Modification of commissioner or board action

A. Any person subject to an order, directive, rule, regulation or other result of the commissioner's action or the board's action may file a written petition with the administrative agency, stating that such order, directive, rule, regulation or other result of commissioner or board action, or any provision thereof, or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the agency, but no later than fifteen days after the date on which such petition is filed. After such hearing, the agency shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law. Such ruling shall be made no later than fifteen days after the date on which the hearing ends.

B. The Nineteenth Judicial District Court has jurisdiction to review such ruling, provided a suit for such purpose is filed within twenty days from the date of the entry of such ruling. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commissioner or to the board with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires.

C. No suit of any kind may be filed against the commissioner or the board at any place other than the parish of East Baton Rouge. In suits against the commissioner, all service shall be made on the commissioner or on any employee of the commissioner located at the commissioner's main office. In suits against the board, all service shall be made on the director or on any board employee located at the board's main office.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4115. REPEALED BY ACTS 1992, No. 984, §18.

§4116. Penalties for violation

A. Violation of this sub-part shall be a misdemeanor, punishable by a fine not to exceed five hundred dollars in the discretion of the court. Each day's violation shall constitute a separate offense. In addition to the penalties herein provided, violation of this sub-part may be enjoined at the suit of any person aggrieved or about to be aggrieved thereby, or at the suit of the commissioner or the board. No showing of irreparable injury shall be required in any suit for a temporary restraining order, preliminary injunction or permanent injunction filed by the commissioner or the board.

B. In addition to the penalties provided in this sub-part, any person who shall be injured in business or property by reason of any other person's violation of any of the provisions of this sub-part may intervene in the suit for injunction instituted pursuant to this paragraph against such other person, or may sue in a separate action such other person in the courts of competent jurisdiction, and shall recover three times the actual damages sustained as a result of such violation,

together with the costs of the suit and reasonable attorneys fees. In addition to the above remedy any such person may in such courts and places sue to enjoin the violation of any of the provisions of this sub-part.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.

§4117. Construction

The authority of the commissioner to regulate bulk milk and of the board to regulate dairy products moving in interstate commerce shall be construed to be as great as, but not to exceed, the limits imposed by the United States Constitution.

Added by Acts 1974, No. 31, §1; Acts 1985, No. 75, §1.