

CHAPTER 55

SCHOOL MILK PURCHASE REGULATIONS

Authority

Unless otherwise expressly noted, all provisions of this Chapter 55 were adopted by the Secretary, State Board of Agriculture, pursuant to the authority delegated at N.J.S.A. 18A:18-5.1 and in accordance with the Administrative Procedure Act of 1968 and were filed and became effective June 1, 1972, as R.1972 d.103. See: 4 N.J.R. 86(b), 4 N.J.R. 116(b).

Chapter Expiration Date

Chapter 55, School Milk Purchase Regulations, expires on July 1, 2006.

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SUBCHAPTER 1. DEFINITIONS

2:55-1.1 Definitions

"Agreement" means the agreement required by N.J.S.A. 18A:18-5.

"Board" means board of education of any school district in the State of New Jersey.

"Fresh milk" means all milk sold to "boards" which is intended for direct consumption and shall include whole milk, skim milk, low fat milk, buttermilk, flavored milk, cream and mixtures of milk and cream, all of which products are considered in the trade as "fluid milk".

"New Jersey Association of Producers" means an association of milk producers qualified to do business in the State of New Jersey and whose membership includes milk producers (dairy farmers) living in the State of New Jersey.

"Secretary" means Secretary of Agriculture of the State of New Jersey.

"Vendor" means any licensed milk dealer, subdealer or producer dealer who sells or offers to sell fresh milk to any "board" as defined in this Section.

"Year" means the contract or school year during which fresh milk is offered to be sold or sold to a "board" as defined in this Section.

SUBCHAPTER 2. REPORTS

2:55-2.1 Reports by boards

(a) Each board, which has not previously filed such, shall file with the secretary within 15 days after the effective date of this Chapter a copy of the agreement which was executed by the vendor for the current year. Such copy may be a carbon copy, a photocopy or a certified copy of the original on file in the office of the board.

(b) For all contracts entered into from and after the effective date of this Chapter, each board shall file a copy of the agreement with the Secretary before the effective date of the contract or within 15 days after the agreement is signed, whichever occurs first.

2:55-2.2 Reports by vendors

(a) Each vendor shall file with the Secretary within 15 days after the effective date of this Chapter a list of all schools being served during the current year and a list of the boards with whom he has entered into contract for the supply of fresh milk.

(b) For all contracts entered into from and after the effective date of this Chapter all vendors shall notify the Secretary of such contract before the effective date of the contract or within 15 days after the contract is awarded, whichever occurs first.

(c) All vendors shall file verified monthly reports of purchases of milk from New Jersey producers or associations of producers and sales of milk to schools. Such reports shall be filed to reach the Office of the Secretary on or before the tenth of the month following the month for which the report is prepared. Such reports shall be on forms prescribed and furnished by the Secretary.

2:55-2.3 Reports by associations

(a) Associations of producers, other than vendors, shall determine the amount of milk received from New Jersey producers and shall report sales of such milk to vendors each month.

(b) Such report shall be in addition to any other reports required to be filed by the Milk Control Act of the State of New Jersey.

SUBCHAPTER 3. ALLOCATION OF MILK FROM NEW JERSEY PRODUCERS
2:55-3.1 Computations

(a) In determining whether a vendor complied with the requirement to purchase milk from New Jersey producers or associations of producers, the following computations shall be made for each month during the year:

1. Compute the total milk sold to all boards subject to the provisions of N.J.S.A. 18A:18-5.1, by each vendor;
2. Combine into one total all milk sold by each dealer (vendor) and his subdealers (vendors) to boards during the month;
3. Compute the total milk purchased from New Jersey producers during the month by adding:
 - i. The total milk received directly from such producers;
 - ii. New Jersey-produced milk received from associations of producers; and
 - iii. New Jersey-produced milk received from other dealers.
4. Subtract the pounds of fresh milk sold to all boards from the pounds of milk purchased from New Jersey producers. Any plus amount represents the maximum amount that could be transferred to other vendors during the month for use in meeting the requirements of the Act for the purchase of New Jersey milk, but any such amount may not be credited against transfers to other dealers in subsequent months.

2:55-3.2 Allocation to associations

(a) Any milk received by an association of producers during the month may not be credited against transfers or diversions of milk to other dealers or vendors during subsequent months and an association of producers may not substitute milk produced in another state for New Jersey produced milk assigned to a specific dealer.

(b) This provision shall not, however, prevent a dealer receiving such milk from transferring it to a vendor pursuant to N.J.A.C. 2:55-3.1(a)4.

SUBCHAPTER 4. PROOF OF UNAVAILABILITY OF MILK
2:55-4.1 Burden of proof

(a) The burden of proving that milk was not available from New Jersey producers in filling a school contract may be met in either of the following ways:

1. By demonstrating that the total sales of milk to New Jersey school boards by all vendors was in excess of the total milk produced by New Jersey producers; or
2. By advising the Secretary in writing on a month-by-month basis that such milk was not available from any source and detailing the efforts made throughout the month to acquire such milk.

2:55-4.2 Responsibility of Secretary

(a) Upon receipt of a report pursuant to N.J.A.C. 2:55-4.1(a)2 the Secretary shall verify that such milk was not available and determine that an equivalent amount cannot be obtained during subsequent months in the contract period and shall notify the vendor of his finding.

(b) A finding by the Secretary that the milk was available shall void the offer of proof by the vendor.

(c) The requirement to pay reasonable handling charges above the Class I price shall not be considered by the Secretary in determining unavailability of milk.

SUBCHAPTER 5. EFFECT OF DEALER'S FAILURE TO ACQUIRE NEW JERSEY-PRODUCED MILK
2:55-5.1 Scope

The failure of a dealer (vendor) to acquire enough New Jersey-produced milk to fulfill all contracts held by the dealer and his subdealers (vendors) shall make both the dealer and the subdealers subject to the sanctions included in N.J.S.A. 18A:18-5.1.