

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



**LOUISIANA ADMINISTRATIVE CODE
TITLE 7 – AGRICULTURE AND ANIMALS
Part XXXI. Milk, Milk Products and Substitutions**

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Chapter 3. Dairy Stabilization Board

§301. Definitions

A. Wherever in these rules and regulations the masculine is used, it includes the feminine and vice versa; wherever the singular is used, it includes the plural and vice versa.

Act—R.S. 3:4101 et seq., the Dairy Stabilization Law.

Administrative Cost—includes those direct additional expenses normally and customarily associated with the placement of a product into an established accounting system such as clerical assistance and computer related expenses and does not include expenses such as marketing, sales or promotional expenses.

Agent—an employee of the Department of Agriculture and Forestry or any person authorized to act on behalf of the commissioner.

Board—the Dairy Stabilization Board created by R.S. 3:4106.

Bulk Milk—milk which has not yet been placed in the container in which the product will be offered for sale to consumers, retailers, or institutions.

Cartage—the transportation of dairy products within a limited geographica area, such as delivery of dairy products from the processor to the retailer or distributor.

Commerce—any act for which a license from the board is required.

Commissioner—the commissioner of Agriculture and Forestry of the state of Louisiana.

Cost—

- a. *Cost to the Retailer*—the per unit invoice cost of the dairy products to the retailer:
 - i. less the volume discount, if any;
 - ii. plus, all costs of freight;
 - iii. plus, a markup to cover a proportionate part of the cost of doing business, direct and indirect, which markup, in the absence of proof of a different cost, shall be no less than 6 percent of the invoice cost to the retailer after adding freight charges;
- b. *Cost to the Distributor*—the per unit invoice cost of the dairy products to the distributor, including:
 - i. all freight charges not otherwise included in the invoice which shall, in the absence of proof of a different amount, be presumed to be 6 percent of the invoice cost for inbound freight and 12 percent of the invoice cost for outbound freight as applicable; and
 - ii. a markup to cover a proportionate part of the cost of doing business, direct and indirect, which markup, in the absence of proof of a different cost, shall be presumed to be no less than 3 percent of the invoice cost;
- c. *Cost to the Processor*—all the cost including the costs of raw products, ingredients and/or additives, labor (including salaries of executives and officers), receiving, cooling, processing, packaging, manufacturing, rent, interest, depreciation, power, supplies, selling, delivery, storing, maintenance of plant and equipment, advertising, transportation, all types of licenses, taxes, fees, insurance, any and all overhead expenses, and all other costs, direct and indirect, of doing business. Cost shall be allocated proportionately to each unit of product produced;
- d. to determine cost when one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, then all of

the items shall be considered as advertised, offered for sale, or sold, and the cost and price of each item shall be governed by the provisions of §301.*Cost.*a, b, and c, and other related provisions hereof.

Delinquent Account—the unpaid debt resulting from the purchase of dairy products on credit after the passage of 30 days from the end of the month in which the purchase was made.

Department—the Department of Agriculture and Forestry of the state of Louisiana.

Discount—any reduction, direct or indirect, in the price of dairy products.

Disruptive Trade Practice—any of the acts more fully defined in §317 hereof.

Distributor—a person, other than a processor, who sells dairy products to one or more retail establishments or home delivery routes. The term *distributor* includes wholesale grocers, cooperative grocery associations, and any person engaged in marketing dairy products at wholesale (the sale of goods in bulk or quantity as opposed to retail or direct sales to consumers).

Fluid Milk—homogenized milk, creamline milk, lowfat milk, fortified lowfat milk, skim milk, buttermilk, flavored milk, chocolate milk, lowfat chocolate milk, ice milk mix, half and half, breakfast cream, whipping cream, egg nog, sour cream, cottage cheese (dry or cream), creole cream cheese, yogurt, U.H.T. milk, reene, and lo-reene.

Freight—all cost of transportation of dairy products such as delivery of products to and from the retailer or distributor.

Frozen Dessert(s)—frozen dairy products including ice cream, fruit ice cream, nut ice cream, frozen yogurt, ice milk, malt ice milk, malt ice cream, French ice cream, milk sherbets, mellorine, olarine, sherine and the mix from which any such product is made.

Illicit Payment—the payment of anything of value by a processor or distributor or any agent of either for the privilege of doing business or with the intent or effect of influencing the recipient in a business relationship.

Institution—a school, hospital, state agency, religious organization, charitable organization, or nursing home.

Invoice—the document evidencing the sale of products which shall contain sales information including the date, quantity, description of product and the actual sale price of each product to the purchaser.

Licensee—any person licensed or required to be licensed under the Act or these rules and regulations.

Market Area—that geographic territory in which a licensee departing from a prevailing price under the circumstances described in §323.A.2.a.i or §323.B.2.b.i, actively competes for customers with the relevant competitor and where the relevant competitor is offering the price being met or that geographic territory in which consumers of the licensee's dairy products actively shop for dairy products of the licensee and the relevant competitor and where the relevant competitor is offering the price being met.

Markup—an amount added to the invoice or replacement cost of dairy products to establish a reasonable sales price.

Milk—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.

Milk Case(s)—the wood, metal, or plastic container utilized for transportation and/or delivering cartons, bottles, jugs, or other packages of dairy products.

Person—any licensee, individual, partnership, corporation, cooperative association, governmental agency, or any entity.

Price—the net amount received or to be received by the seller in legal United States currency and currency specifically does not include trading stamps.

Processor—a person who processes one or more dairy products or a person who purchases bulk milk for resale to a person who processes dairy products. The term does not include a person who purchases ice cream mix or ice milk mix whose processing activities are limited to converting such mix into a dairy product which will be sold on the premises where such processing occurs.

Quorum—with respect to the board, four members of the board.

Retailer—any person who is engaged in transferring title to dairy products to consumers at a fixed business location within the state.

Slotting Allowance—the payment of anything of value by a supplier as a mere reimbursement for actual, real and genuine additional direct administrative cost incurred by a purchaser in servicing the physical introduction of a product or products. Slotting allowance does not mean, under any circumstances, any payment which may be construed as an illicit payment as defined herein.

Supplier—processors and distributors, including wholesale grocers and cooperative grocery associations.

Volume Discount—a rate of reduction applicable to the price of dairy products, which rate is established on the basis of total purchases of dairy products from all suppliers of such products.

Volume Discount Year—the 12 months commencing on April 1 and ending on March 31.

Wholesaler—any licensee engaged in the business of making sales at wholesale (the sale of dairy products in bulk or quantity as opposed to retail or direct sales to consumers) within this state, or if any person is engaged in the business of making sales at both wholesale and at retail, wholesaler shall apply only to the wholesale portion of the business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4102 and 3:4108 (formerly R.S. 40:931.2 and R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:3 (January 1983), amended LR 20:398 (April 1994).

§303. Administration of the Affairs of the Board

A. The chairman shall preside at all meetings, provided that in the absence of the chairman, the vice-chairman shall preside.

B. The board shall meet upon the call of the chairman or the commissioner.

C. The board may conduct at least one meeting during each quarter or may meet more frequently upon call.

D. The board may, from time to time, delegate some of its responsibilities to subcommittees of the board, provided that such delegation of authority may be granted only at a meeting where a quorum is present.

E. Members of the board shall be entitled to reimbursement in accordance with rules and regulations governing state employees for expenses incurred in attending meetings of the board or its subcommittees, provided that no member shall be entitled to reimbursement except for the performances of duties specifically assigned by the commissioner.

F. Meetings of the board shall normally be held in the domicile of the board but may be held at other locations from time to time.

G. Proxies shall not be permitted.

H. No final action shall be taken by the board except at a meeting where a quorum is in attendance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4107 and 3:4108 (formerly R.S. 40:931.7 and R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:4 (January 1983), amended LR 20:399 (April 1994).

§305. Licenses Required and Procedure

A. Each retailer, distributor, processor or any person must be licensed by the board or the commissioner prior to and while conducting any business of buying and/or selling dairy products.

B. The board or the commissioner shall maintain a list of each retailer of dairy products. This list shall be known as the Retailer License List. Inclusion on the list shall constitute licensing of the retailer. Temporary removal from the list shall constitute suspension of the license and permanent or indefinite removal from the list shall constitute revocation of the retailer's license. The Retailer License List shall be a public record.

C. It shall be the obligation of each retailer to inform the board or commissioner, in writing, the full name, address of each location at which it sells dairy products, all applicable phone numbers, whether a corporation, partnership, sole proprietorship or other type of entity and the name, title, address and phone number of the highest

ranking officer, partner or manager, before selling any dairy products. Upon receipt of such information the board or the commissioner shall include the retailer on the Retailer License List unless the board or commissioner finds after a hearing in accordance with the Administrative Procedure Act that the retailer notwithstanding the foregoing Paragraphs is in effect a person or entity whose license has been previously suspended or revoked. The board or commissioner may include any retailer on the Retailer License List which it believes to be engaged in the business of retailing and where there is no cause not to include said retailer on the Retailer License List.

D. For licensure, each processor and distributor must:

1. complete the application form required by the board or the commissioner;
2. demonstrate compliance with all pertinent requirements of agencies of government.

E. Each license is personal to the holder thereof and may not be transferred to another for any purpose nor for any period of time.

F. Any license suspended or revoked by the board or commissioner may be re-issued after due deliberation by the board or commissioner in their discretion.

G. Each licensee is responsible for assuring that the other party or parties to any transaction of sale or purchase of dairy products is properly licensed by the board or commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4109 and R.S. 3:4108 (formerly R.S. 40:931.10 and R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:5 (January 1983), amended LR 20:399 (April 1994).

§307. Assessments

A. Pursuant to R.S. 3:4101, an assessment of \$0.03 per hundredweight is hereby levied upon the first sale of dairy products within the state of Louisiana by the processor, distributor or retailer licensee who sells such product. The assessment shall be due and payable on all sales of dairy products during the previous month.

B. Only one assessment shall be levied on any given lot of dairy products. For example, when a processor makes the first sale of a given lot of dairy products and pays the assessment due thereon, no assessment shall be due from the distributor or retailer of that lot of dairy products. However, when a distributor makes the first sale within this state of a given lot of dairy products, the distributor or retailer shall be liable for payment of the required assessment on such lot.

C. The assessment on frozen desserts shall be determined by converting the frozen desserts to milk equivalents by the following procedure: Multiply total non-fat milk solids x 5.79 and multiply total pounds fat x 12.5, add the two results. The resulting figure shall be used as a milk equivalent.

D. Assessments must be paid on or before the last day of the month following the month in which the sales occur. (For example, a report filed on December 31 should include all sales made during the month of November.) Assessments must be remitted to the board or commissioner together with the reporting form required by the board or commissioner. Each processor, distributor and retailer required under Subsection A hereof to pay the assessment must file the required report and pay the assessment on the due date.

E. Licensees whose assessments amount to \$25 or less each year may pay the total assessment for the 12 months of the year on an annual basis, provided that such licensees must file the reporting form required by the board or commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4111 and R.S. 3:4108 (formerly R.S. 40:931.13 and R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:5 (January 1983), amended LR 20:399 (April 1994).

§309. Volume Discounts Program and Procedures

A. Any licensed retailer desiring to receive a volume discount from its suppliers must first be approved by the board or commissioner to receive a volume discount. To be approved by the board or commissioner, the retailer must complete a volume discount eligibility application, on forms provided by the board or commissioner. The application must include all fluid milk purchases during the standard three-month base period and/or all frozen dessert purchases during the standard 12-month base period. The application is subject to verification by the board or commissioner.

B. Processors and distributors may grant volume discounts to a licensed retailer upon receipt of notification from the board or commissioner of the retailer's eligibility to receive a volume discount.

C. The board or commissioner will annually, on or before April 1, publish a list of all retailers eligible to receive volume discounts, including the retailer's name and address, the rate(s) of discount authorized for each such retailer, and the effective date of such volume discount. The board or commissioner shall promptly notify all processors and distributors of any retailer approved for volume discounts subsequent to publication of the annual listing.

D. The authorized rate(s) of volume discount(s) will be established on the basis of a retailer's total purchases of fluid milk and/or frozen desserts from all suppliers during the appropriate base period.

E. The standard base period for calculation of the authorized rate of volume discount for fluid milk will be the months of August, September and October of each year. The standard base period for calculation of the authorized rate of volume discount for frozen desserts will be November 1 through October 31 immediately preceding the retailer's application.

F. A retailer that has not been in operation during the entire standard base period may, with the approval of the board or commissioner, use for fluid milk, his first full three calendar month's purchases and, for frozen desserts, his first full 12 calendar month's purchases.

G. The authorized rate of volume discount on fluid milk purchases will be established by totaling the value of all fluid milk purchases from all suppliers during the approved base period and dividing said total by three.

H. The authorized rate of volume discount on frozen desserts will be established by totaling the value of all frozen dessert products purchased from all suppliers during the approved base period.

I. The authorized rate of volume discount for each retailer shall become effective on April 1 of the year following the application and shall remain in effect until the following March 31, except as provided in §309.F. Volume discount rates for a new retailer shall become effective as of his first day of business and remain in effect until he has operated for a full volume discount year.

J. The authorized rates of volume discount of fluid milk purchases shall be as follows.

Average Monthly Purchases from All Suppliers Discount Rate	Volume
\$1,000.00 to \$1,500.00	3%
\$1,500.01 to \$2,500.00	4%
\$2,500.01 to \$3,500.00	5%
\$3,500.01 to \$4,500.00	6%
\$4,500.01 and over	7%

K. The authorized rates of volume discount on frozen desserts shall be as follows.

Total Annual Purchases from All Suppliers Discount Rate	Volume
\$ 4,000.00 to \$ 6,000.00	3%
\$ 6,000.01 to \$ 8,000.00	4%
\$ 8,000.01 to \$11,000.00	5%
\$11,000.01 to \$15,000.00	6%
\$15,000.01 and over	7%

L. All applications for volume discounts must be submitted within one month after the close of the appropriate base period. One month's volume discount shall be forfeited for each month the application is late.

M. In a retail ownership transfer, the buyer may receive the volume discount rate approved for the previous owner. Alternatively, the buyer may choose to establish his own volume discount rate in accordance with these rules and regulations.

N. Accounts shall become delinquent 30 days from the end of the month in which the purchases were made, unless a good faith dispute exists between the parties concerning the amount of such account, in which case the account becomes delinquent 30 days following resolution of such good faith dispute.

O. Retailers who have delinquent accounts with any processor or distributor are not eligible to receive a volume discount from any supplier on any dairy products purchased during the period when the account was delinquent.

P. Each processor and distributor must report to the board or commissioner, no later than the tenth of each month, the name and address of each account which was delinquent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108 (formerly R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:5 (January 1983), amended LR 20:400 (April 1994).

§311. Milk Case Deposit Program and Procedure

A. Any licensed processor may adopt a milk case deposit program provided that those licensees who adopt a milk case deposit program shall:

1. give written notice providing clear, express and written detail of the program to all persons or entities to whom the program applies;
2. provide the same information in writing to the board or commissioner;
3. provide all said notices no less than 30 days before the implementation of said program;
4. apply any such program uniformly to all customers; and
5. such milk case deposits, if implemented, shall be refundable and shall be \$1 per milk case.

B. Any person or entity required to provide a deposit on milk cases under such a program shall not fail to do so and failing to do so, shall be deemed to be and is hereby declared to be an unfair trade practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 12:825 (December 1986), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:400 (April 1994).

§313. Investigative Hearing Procedure

A. Upon the belief that the Act or these rules and regulations may have been or will be violated, the board or commissioner may take the deposition of any person, firm or corporation for the purpose of investigating alleged violations or potential violations of the Act or these rules and regulations subject to the following conditions:

1. the deponent shall receive no less than five business days' notice of the date, time and place of the deposition. The place of said deposition shall be designated by the board or commissioner and shall be either in East Baton Rouge Parish or in the parish of domicile or principal place of business of deponent. In the event the deponent is not domiciled in Louisiana and has no principle place of business in Louisiana, the deposition may be noticed for and taken in East Baton Rouge Parish;

2. the subject of inquiry of the deposition shall be contained in the notice and the inquiry shall be limited to the subject or subjects noticed, said limitation being the same as those of a civil discovery deposition conducted in accordance with Louisiana law;

3. the notice shall advise deponent of the right to be represented by counsel and to be accompanied by counsel;

4. the notice shall advise of the potential uses of such deposition;

5. the notice shall advise of the right to read and sign the deposition;

6. the notice shall advise of the right to obtain a copy of such deposition upon payment of costs.

B. The board or commissioner may issue subpoenas and subpoenas duces tecum in connection with said deposition. The scope of same being governed by Louisiana law related to the scope of discovery deposition subpoenas.

C. In the event that any person, firm or corporation fails or refuses to comply with any subpoena issued hereunder, the board or commissioner may compel such compliance by civil action commenced in the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108 (formerly R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:8 (January 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:401 (April 1994).

§315. Violations

- A. No person shall violate any provision of the Act or these rules and regulations.
- B. No person shall engage in any disruptive trade practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4109, R.S. 3:4116 and R.S. 3:4108 (formerly R.S. 40:931.10, R.S. 40:931.18 and R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:8 (January 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:401 (April 1994).

§317. Disruptive Trade Practices

A. Disruptive trade practices are any act or acts by any person in commerce where the effect of such act or acts may tend to substantially lessen competition or tend to create a monopoly in the sale of dairy products; or which tend to injure, reduce, prevent, or destroy competition in the sale of dairy products.

B. The following acts are, but not by way of limitation, disruptive trade practices.

1. It shall be prohibited for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of dairy products of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such dairy products are sold for use, consumption, or resale within the state of Louisiana.

2. No person engaged in the processing, production, manufacture, distribution or sale of dairy products shall discriminate between different sections, communities, cities, or localities in the state by selling such dairy products at a lower rate in one section, community, city, or locality, than is charged for the dairy product by such person in another section, community, city or locality, after making due allowance for the difference, if any, in the grade or quality of the dairy product and in the actual cost of transportation of the dairy product from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, where the effect of such discrimination may tend to harm competition. All sales so made shall be prima facie evidence of the unfair discrimination prohibited hereby.

3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to either directly or indirectly, pay or grant, or to receive or accept, anything of value as a commission, brokerage, any other compensation, any allowance or any discount other than the volume discount established herein and slotting allowance as defined herein, except for the actual cost of services rendered in connection with the sale or purchase of dairy products.

4. It shall be unlawful for any person engaged in commerce to pay anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any dairy products manufactured, sold, or offered for sale by such person.

5. It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of dairy products bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of any services or facilities connected with the processing, handling, sale or offering for sale of such dairy product so purchased upon terms not accorded to all purchasers on proportionally equal terms.

6. It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this Section.

7. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates against competitors of the purchaser and to sell, or contract to sell, dairy products in any part of Louisiana at prices lower than those exacted by said person elsewhere in Louisiana.

8. The granting or offering to grant of any discount, rebate or allowance, except the volume discount established herein and slotting allowance as defined herein.

9. The granting or offering to grant of any volume discount different from or in excess of the volume discount authorized herein is a disruptive trade practice, unfair method of competition and unfair or deceptive act or practice and is hereby prohibited with respect to the sale of dairy products.

10. Any advertisement, offer to sell, or sale of any dairy products by any processor, distributor or retailer at less than cost as defined herein plus any state, parish, or municipal sales tax that is then payable under any existing law or ordinance, is a disruptive trade practice, unfair competition and contrary to and violative of public policy as tending to deceive purchasers or prospective purchasers, or tending to substantially lessen competition.

11. Giving or receiving or offering to give or receive, directly or indirectly, anything of apparent, present or prospective value with the intent or effect of influencing the recipient in the business relationship.

12. The selling or offering to sell dairy products by a retailer, distributor, or processor who is not licensed by the board or commissioner is prohibited.

13. The sale to or purchase from a person whose license has been suspended or revoked is prohibited.

14. The granting of a volume discount to any retailer without notification from the board or commissioner of the retailer's eligibility for such discount is prohibited.

15. The extending to or receiving of further credit by any licensee where the account is delinquent.

16. The filing of any false information of any kind with or the making of any false statements of any kind to the board or commissioner, or any agent of either is prohibited.

17. The failing or refusing to maintain or permit an examination of financial or other records when the request of the commissioner, board or any agent of either to audit is made for valid purposes is prohibited.

18. The failing or refusing to provide any report required by the board or commissioner is prohibited.

19. The use by a retailer, processor, or distributor of equipment furnished by a frozen dessert processor or distributor for the storage or display of frozen desserts other than those frozen desserts sold to such retailer by such frozen dessert processor or distributor which provides the equipment is prohibited. The storage or display of products other than frozen desserts received from such processor or distributor, in such storage or display cabinet by a retailer shall constitute prima facie evidence of a violation of this regulation.

20. The advertising of lowfat milk (milk with a milk fat content of not less than 1/2 of 1 percent nor more than 2 percent) in any form of mass media without clearly stating the percentage of milk fat contained in said product is prohibited.

21. The failing by a processor or distributor to provide an invoice to a purchaser of dairy products at the time of delivery is prohibited. Mailing of said invoice on the date of delivery shall satisfy the requirement of providing an invoice as required herein.

22. The selling or the offering to sell dairy products under terms or prices which result in said sale being below cost as defined herein is prohibited.

23. Combined sales at less than cumulated costs where one or more of the items in combination is a dairy product is prohibited.

24. The furnishing, giving, lending, selling, or renting, by a processor or distributor or the accepting, receiving, buying, or renting by a retailer of any signs or display materials advertising and containing the name or product of any retailer is prohibited.

25. Donating dairy products except as provided in §321.A.4.

26. The using, shipping, lending, borrowing, possessing, giving away, throwing away, donating or disposing of in any manner, of milk cases belonging to another licensee is prohibited without written authority from the director of the board.

27. The providing of a fluid milk dispenser to any retailer, except under the following conditions.

a. The processor or distributor has been engaged in selling dispenser milk to the retailer for at least 60 days prior to the date on which the dispenser is furnished.

b. The dispenser is replacing the retailer's dispenser which is undergoing repair and the period during which the dispenser is furnished does not exceed 30 days.

c. The processor or distributor must report to the board or commissioner within 10 days after the date on which the dispenser is furnished to the retailer the make and serial number of the dispenser, the name and address of the retailer and the date on which the dispenser was installed.

28. The failure of the purchaser, licensee, to assume all responsibility for product losses except where a portion of the price is dedicated to the seller for assuming that loss, sometimes referred to as a "full service" sale or except in the case of manufacturing or processing defects.

29. Utilization of coupons in connection with the marketing of dairy products without the prior written approval of the director of the Dairy Stabilization Board. When submitted for approval, the coupons shall be reviewed to determine if said coupons are in compliance with the Act and these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108 (formerly R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:5 (January 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:401 (April 1994).

§319. Mandatory Obligations of Licensees

A. The omission by a licensee of any of the following requirements constitutes a violation of these rules and regulations and failure to comply with same can result in suspension or revocation of license, in addition to any other penalty provided by law or these rules and regulations.

B. Each licensee must maintain all records including financial records pertaining to all transactions subject to the Act in accordance with standards generally prevailing in industry for a period of not less than two years. Said records shall be kept in a manner that permits prompt access to all such records and shall be kept in a manner that facilitates the determination by audit of, which costs are allocable to which products and, shall include but not be limited to the following records:

1. expenses incurred and paid;
2. expenses accrued;
3. depreciation schedules;
4. production schedules; and
5. documentation of circumstances relating to price changes for purposes of meeting competition.

C. In order to enforce the provisions of the Act and these rules and regulations, the commissioner may from time to time audit the books and records of licensees, and each licensee shall permit access to his financial records, during normal business hours, for such audit.

D. Each licensee shall submit such additional reports concerning the sale of dairy products as may from time to time be required by the board or commissioner.

E. The monthly assessment report of sales of dairy products required under §307 shall be submitted timely.

F. The monthly assessment on sales of dairy products required by R.S. 3:4111 and §307 of these rules and regulations shall be paid timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108 (formerly R.S. 40:931.8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Dairy Stabilization Board, LR 9:7 (January 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:403 (April 1994).

§321. Trade Practices Declared Not Disruptive

A. The following acts are specifically declared as not constituting disruptive trade practices and are not prohibited:

1. the giving of advertising novelties unless the nature or value of the advertising novelty is such that the giving of such advertising novelty constitutes an illicit payment;

2. normal social activities of any person or the entertainment of any customer unless the expenditure involved in such entertainment is excessive or unreasonable;
3. the giving of samples of dairy products to consumers if the following requirements are observed:
 - a. in the case of fluid milk products, the quantity must be limited to 3 fluid ounces;
 - b. in the case of frozen desserts, the quantity must be limited to 1 fluid ounce;
 - c. the retailer on whose premises such sampling activity takes place must have been in operation at that location for at least 60 days prior to the date on which such activity takes place;
 - d. prior to engaging in sampling activities on the premises of a retailer, the processor or distributor shall notify the board or commissioner of the planned sampling activity. If such notification is by mail, it shall be given at least 10 days prior to the date of the planned sampling activity, and if such notification is by telephone, it shall be given at least three days prior to such activity;
 - e. notwithstanding the above provisions, processors may give homogenized milk, lowfat milk, skim milk, or chocolate milk in half-pint containers or a frozen dessert sample weighing no more than 3 fluid ounces to persons participating in plant tours, if such products are consumed on the premises where given;
 - f. the giving of such sampling by a processor or distributor shall not extend over a period of more than two consecutive days for each retailer and shall not occur more frequently than once per calendar quarter; provided that the giving of such samples during the month of December shall not be used in determining whether there has been compliance with the provisions of this Subsection limiting frequency of sampling demonstrations to one per calendar quarter;
 - g. the prohibition contained herein shall not apply to trade shows or other activities designated by the board or commissioner in writing;
4. the donation of dairy products not directly or indirectly related to the sale of dairy products to nonprofit and charitable entities;
5. a cooperative association returning to its members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association, provided same is not in the form of a discount or allowance and distributed not more frequently than quarterly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:403 (April 1994).

§323. Burdens and Presumptions

A. Sales below Cost

1. Upon proof being made at any adjudicatory hearing that a licensee has advertised, offered to sell, or sold dairy products at less than cost as defined herein plus applicable taxes, the licensee shall be presumed in violation of the regulations proscribing sales below cost.
2. The licensee may rebut that presumption by proving that:
 - a. such advertisement, offer to sell, or sale was not for the proscribed purpose, did not have a proscribed effect or was otherwise lawful, such as that it was made in good faith to meet an equally low price of a competitor when all of the following circumstances were present:
 - i. the advertisement, offer to sell, or sale was limited to that customer, group of customers or that market area to which the price was available from competitors;
 - ii. the advertisement, offer to sell, or sale occurred only while the competitive circumstances justifying such sale below cost existed; and
 - iii. the advertisement, offer to sell, or sale is reported in advance in writing to the board or commissioner, or, if advance notification is not possible, within 72 hours thereafter;

b. such advertisement, offer to sell, or sale was necessary in response to actual or imminent deterioration of dairy products, seasonal obsolescence of dairy products, distress sales under court process, final liquidation sales or sales in good faith in discontinuance of a business or in discontinuance of a dairy product, and provided that the price at which the dairy product is advertised, offered, or sold is reported in advance to the board or commissioner, or, if advance notification is not possible, within 72 hours thereafter.

3. In the event a representative of the board or of the commissioner has a reasonable basis upon which to believe that a licensee may be selling dairy products below costs and said licensee denies access, fails to produce or produces records which will not permit a determination of the cost of production then, in that event, the cost of the dairy products for the relevant period shall be presumed to be in excess of the selling price. This presumption shall be rebuttable but the burden of rebutting same shall be upon the licensee.

B. Price Discrimination

1. Upon proof being made at any adjudicatory hearing that there has been discrimination in price, services, facilities furnished, or any other proscribed discrimination, the licensee shall be presumed to be in violation of the rules and regulations proscribing discrimination.

2. The licensee may rebut that presumption by proving that:

a. the discrimination in price, services, or facilities was necessary in response to actual or imminent deterioration of dairy products, seasonal obsolescence of dairy products, distress sales under court process, final liquidation sales or sales in good faith in discontinuance of a business or in discontinuance of a dairy product; or

b. the discrimination in price, services, or facilities was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor and all of the following circumstances were present:

i. the discrimination in price, services, or facilities was limited to that customer, group of customers or that market area to which the price was available from competitors;

ii. the discrimination in price, services, or facilities occurred only while the competitive circumstances justifying such discrimination existed; and

iii. the discrimination in price, services or facilities is reported in advance in writing to the board or commissioner, or, if advance notification is not possible, within 72 hours thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:404 (April 1994).

§325. Cease and Desist Order; Suspension/Revocation of License; Hearing Required; Penalties; Amount; Stipulated Resolutions; Service

A. Upon probable cause the board or commissioner may issue a cease and desist order to any licensee, describing with particularity the acts or omissions which the board or commissioner believes to constitute a violation of the Act or these rules or regulations and ordering such licensee to take the necessary and sufficient steps to establish immediate compliance.

B. Upon a finding of any violation of the Act or these rules and regulations by a licensee which violation occurred after the receipt of a relevant cease and desist order the board or commissioner may and should assess a penalty which is treble the normal penalty for any such offense.

C. The board or commissioner may suspend or revoke the license of any licensee found to have violated any provisions of the Act or these rules and regulations.

D. No license shall be suspended or revoked unless the licensee is given an adjudicatory hearing noticed and conducted in accordance with the Administrative Procedure Act (R.S. 49:950-49:970).

E. The board or commissioner may, in lieu of suspension or revocation of any license, impose a penalty in accordance with R.S. 3:4109(G) as a result of any violation of the Act or these rules and regulations which is sustained at such hearing. No penalty may be imposed until such time as an adjudicatory hearing in accordance with the Administrative Procedure Act is held.

F. Each day on which a violation occurs shall be considered a separate offense.

G. The foregoing shall not limit any stipulated resolution of any alleged violation.

H. All notices including notices of adjudicatory hearings and services of the subpoenas shall be served upon the agent for service of process, an officer, the principal owner, a manager or an employee of the entity to be noticed or served and, once served in accordance herewith said notice or service, shall be valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108, R.S. 3:4109 and R.S. 3:4116.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:404 (April 1994).

§327. Confidentiality

A. Neither the board, the commissioner, nor any agent nor representative of either shall disclose any financial or business information of any licensee which is acquired or collected in the enforcement of the Act or these rules and regulations, except as provided by R.S. 3:4110.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108 and R.S. 3:4110.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:405 (April 1994).

§329. Delegation of Authority and Duties

A. The commissioner may, from time to time, in accordance with the authority granted to him under R.S. 36:901(B), delegate to the board any of the authority and/or duties reserved to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4108.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Dairy Stabilization Board, LR 20:405 (April 1994).