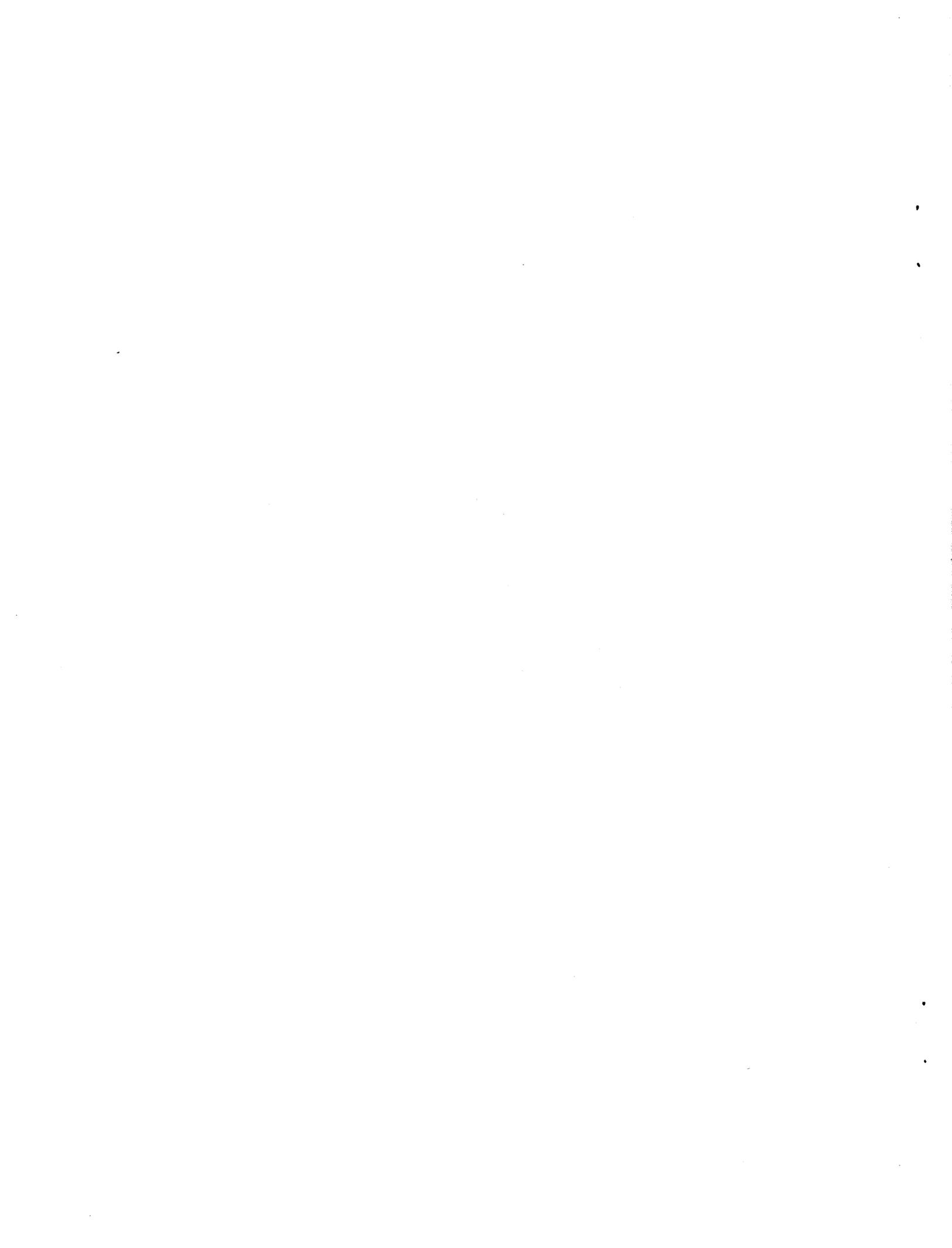


# **MILK MARKETING**

**RESEARCH MEMORANDUM NO. 466**

**LEGISLATIVE RESEARCH COMMISSION**

**November, 1993**



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**Prepared by:**

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**MEMORANDUM**

**TO:** Senator John "Eck" Rose, Senate President  
Representative Joe Clarke, House Speaker

**FROM:** Representative Herbie Deskins, Jr., Co-Chair  
Senator Rick Rand, Co-Chair  
Interim Joint Committee on Agriculture and Natural Resources

**SUBJECT:** Study Directed by Senate Concurrent Resolution 106  
of the 1992 Regular Session

**DATE:** September 23, 1993

The Interim Joint Committee on Agriculture and Natural Resources adopted the attached study Wednesday, September 22, 1993, and reports the study to the Legislative Research Commission, as directed by Senate Concurrent Resolution 106 of the 1992 Regular Session of the Kentucky General Assembly. This study was conducted by the committee's Subcommittee on Agriculture.

HD/RR/dlh  
Attachment



MEMORANDUM  
ON MILK MARKETING

Subcommittee on Agriculture

Interim Joint Committee on Agriculture and Natural Resources



Senate Concurrent Resolution 106 of the 1992 Regular Session of the Kentucky General Assembly directed the Interim Joint Committee on Agriculture and Natural Resources to study (a) ways to stabilize milk prices paid to Kentucky dairy producers and (b) ways to reduce the financial risk to Kentucky dairy producers when milk buyers become insolvent. The study resolution directed the committee to report the study to the Legislative Research Commission by September 1, 1993. The committee assigned the study to the Subcommittee on Agriculture.

The Subcommittee on Agriculture met four times to conduct the study. At the first meeting, April 28, 1993, an expert on milk pricing from the University of Kentucky College of Agriculture explained the federal milk marketing order system and the federal milk price support system. At the second meeting, June 23, 1993, representatives from an interstate milk marketing cooperative, two statewide farm organizations, and a university professor of animal sciences addressed the study issues. At the third meeting, August 25, 1993, the report was deferred until the next meeting, in order to include a bill draft requiring milk buyers to submit an annual financial statement and a surety bond. At the fourth meeting, September 22, 1993, the subcommittee adopted its study report and recommended it to the full committee, which adopted the report and forwarded it to the Legislative Research Commission on that same date.

The speakers warned the subcommittee about the difficulties involved when individual states attempt to regulate the price of milk. The marketing of milk crosses multiple state boundaries and is therefore protected from state regulation by the Interstate Commerce Clause of the U.S. Constitution. In fact, a Kentucky Milk Marketing and Antimonopoly law was declared unconstitutional by Kentucky's highest court in 1985. The law had prohibited a retailer of milk or

milk products from selling below cost. [Kentucky Milk Marketing and Antimonopoly Commission, et. seq. v. The Kroger Company, 691 S. W. 2d 893 (Ky. 1985).]

In testimony before the subcommittee on the other issue of the study, protecting milk producers from nonpayment because of financial failure of the buyer of the milk (producer security), the members were informed that milk producers throughout the country had lost several million dollars in recent years because of the bankruptcies of milk processors. Several methods of protecting milk producers were presented to the subcommittee:

- (1) Establishment of a national program, through an amendment of the federal Packers and Stockyards Act, to include dairying and to set up a statutory trust at the time of the sale of the milk, which allows the milk seller to be "first in line" to claim the assets of the bankrupt processor. This federal law already protects the livestock producer in the sale of livestock to a meat packer in the event of failure to pay, as well as the sale of live poultry to a live poultry dealer in the event of failure to pay.
- (2) Establishment of an indemnity fund similar to the checkoff for the Kentucky grain indemnity insurance fund.
- (3) Requiring processors to submit financial information to the state.
- (4) Auditing of milk processors by the state.
- (5) Requiring a surety bond from the processor.

No recommendations are made based upon the testimony received. However, a draft bill is appended which would require milk buyers to submit a financial statement and a surety bond each year to the state Department of Agriculture.

## **APPENDIX**



AN ACT relating to milk.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

As used in this Act the following definitions shall apply:

(1) "Buyer" means any person, partnership, corporation, association, organization, company, bargaining agent, or agent thereof who receives milk from milk producers and pays the producers for it on the basis of volume, or weight, and test, except it does not include persons who buy milk for their own consumption.

(2) "License to buy" means the license issued to buyers of milk purchased from milk producers or their agents on the basis of volume, or weight, and test.

(3) " Milk" means milk from cows.

(4) " Producer" means any person, partnership, corporation, association, organization, or company keeping milk cows for the production of milk for sale to a milk buyer.

SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) Each buyer of milk licensed to buy by the director of the Agricultural Experiment Station, College of Agriculture, University of Kentucky, under the authority of KRS 260.775 to 260.845 shall submit each year to the Commissioner of the Department of Agriculture a certified, audited financial statement prepared by a certified public accountant within one hundred twenty (120) days

of the licensee's year end. Each buyer shall submit only one certified, audited financial statement each year regardless of the number of buying locations. The certified audited statement shall verify the licensee's ability to meet the minimum liquidity requirement of current assets to current liabilities of a ratio of one and two-tenths to one (1.2 to 1.0).

(2) Each buyer of milk licensed to buy by the director of the Agricultural Experiment Station under the authority of KRS 260.775 to 260.845 shall execute and deliver to the Commissioner of the Department of Agriculture a surety bond executed by the buyer of milk as principal and by a surety company qualified and authorized to do business in Kentucky as surety. Each buyer shall submit only one bond each year regardless of the number of buying locations. The surety bond shall be delivered to the Commissioner at the same time as the license fee is submitted to the director of the Agricultural Experiment Station. The bond shall be an amount equal to seventy-five percent (75%) of the highest aggregate amount owed by the buyer to producers in a forty (40)-day period during the preceding twelve (12) months.

(3) The Commissioner of the Department of Agriculture shall issue administrative regulations to implement this Act.



