



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
10B AIRLINE DRIVE  
ALBANY, NEW YORK 12235

DIVISION OF MILK CONTROL AND DAIRY SERVICES  
518-457-5731

BACKGROUND INFORMATION

JANUARY 2009

Milk Price Gouging Law,  
Section 396-rr of the State General Business Law (GBL)

The milk price gouging law applies to the retail sale of fluid milk in consumer packages. The law was enacted in June 1991 at the same time as the legislation that permitted the Commissioner to implement an Interim Milk Pricing Order. At that time farm prices had fallen considerably while retail prices, particularly in the Metropolitan New York area, decreased only a small amount.

Traditionally as a means of administering the law, the Department calculated and announced a "threshold price". It was established for two broad regions of the state for a quart, half gallon, and gallon container. The threshold price generally changed monthly, moving up or down two cents per gallon for every one cent gallon change in the farm price. The threshold price was not a maximum price and was geared to supermarkets.

The Department stopped announcing the monthly threshold price effective November 2008, but continues to look at market price factors such as a store's gross margin as a guide in assessing whether a retail fluid milk price appears "unconscionably excessive" for purposes of GBL §396-rr. In considering whether a retail price appears unconscionably excessive, the Department generally looks at a retail margin standard of \$0.58 per gallon, \$0.37 per half gallon, and \$0.26 per quart. The retail margin standard levels are revised periodically based upon inflation, but do not change monthly. The retail margin standard is intended to approximate total in-store handling costs plus net profit (before taxes) on a per unit basis. If a store's retail price has a gross margin (retail price minus net invoice price) that does not exceed the retail margin standard, the price is considered justified. If the gross margin is greater than the retail margin standard, then unit cost documentation may be necessary to justify the price, unless it is terminated. Justification should factor in the net invoice price paid for the milk item and the actual cost per unit to handle and sell it. If the justification is not accepted by the Commissioner, the case is required by statute to be referred to the Attorney General.

The law is not meant to require retailers to sell milk below cost. Milk handling practices and costs do vary considerably and a higher gross margin than the retail margin reference standard might be justified based upon each retail store's unique circumstance. If you have any questions, please call 518-457-5731.