

# PROPOSED RULEMAKING

## GAME COMMISSION

[58 PA. CODE CH. 147]

### Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 12, 2001, meeting, proposed the following amendments:

Amend § 147.701 (relating to general), by adding paragraph (10) to provide for a permit to be issued to persons who wish to assist persons who are hunting or trapping bobcats. Since bobcat hunting-trapping permits are available on a limited basis by drawing, they are difficult to obtain. A person acting as a guide for or assisting a person with a bobcat permit to take a bobcat would be hunting without a license. The creation of a bobcat guide permit would allow holders of the guide permit to fully assist bobcat hunting-trapping permit holders in the taking of bobcats.

Add Chapter 147, Subchapter T (relating to commercial wildlife pest control). Since the current Game and Wildlife Code (34 Pa.C.S.) became effective in 1987, there have been provisions for a commercial wildlife pest control permit but no corresponding regulations to clearly define the application process and activities of permitholders. These regulations can be established by adding Subchapter T.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for these proposals is the code.

These proposals were made public at the June 12, 2001, meeting of the Commission, and comments on these proposals can be sent to the Director of Information and Education of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until September 29, 2001.

#### *Proposed amendment to § 147.701*

##### 1. Introduction

In 2000, the Commission for the first time in 30 years established a season for hunting or trapping bobcats. A limited number of permits have been available in the past, and a larger number of permits will be offered for the 2002 season. To assist a permittee hunting bobcats, the Commission at its June 12, 2001, meeting proposed the establishment of a permit to allow persons to act as guides in the hunting of bobcats. Section 2901(b) of the code (relating to authority to issue permits) authorizes the Commission, as deemed necessary to properly manage the game or wildlife resources, to promulgate regulations for the issuance of any permit and to control the activities which may be performed under authority of any permit issued.

##### 2. Purpose and Authority

As is indicated in the Introduction, the addition of a bobcat guide permit would assist persons holding bobcat hunting permits by allowing them to secure the services of a permitted guide. Section 2901(b) of the code, authorizes the Commission to promulgate regulations for the issuance of any permit, and provides the authority for the proposed change.

##### 3. Regulatory Requirements

The proposed change would establish a permit and fee requirement. The fee shall be \$10 for residents and \$25 for nonresidents.

##### 4. Persons Affected

Persons wishing to guide or assist another permitted person to hunt or take bobcats will be affected by the proposal.

##### 5. Cost and Paperwork Requirements

The proposed change would result in a permit application and fee submission of \$10 for residents and \$25 for nonresidents.

#### *Proposed addition of Chapter 147, Subchapter T*

##### 1. Introduction

Section 2904(17) of the code (relating to permit fees) authorizes a fee for a commercial wildlife pest control permit. While section 2904(17) of the code has authorized a permit, no regulations have been promulgated governing wildlife pest control permit issuance. To rectify this, and deal with an increasing nuisance wildlife problem, the Commission proposed at its June 12, 2001, meeting, adding Subchapter T. Section 2901(b) of the code authorizes regulations for permits as deemed necessary to properly manage the game or wildlife resources and to control the activities which may be performed under authority of any permit issued.

##### 2. Purpose and Authority

As is indicated in the Introduction, the proposal would set out conditions upon which a person may obtain a commercial wildlife pest control permit, along with specific regulatory requirements that must be followed by each permit holder. Section 2901(b) of the code, relating to regulations for permits, provides the authority for the proposed changes.

##### 3. Regulatory Requirements

Those wishing to be issued a permit will have to file an application and pay a fee. Conviction of a code violation within 5 years of the date of the application may preclude the issuance of a permit. New agents shall successfully complete a supervised written exam. Additionally, records shall be kept and available for inspection, along with a report sent to the district wildlife conservation office each month. This proposal also outlines the method and manner of humane dispatch of nuisance wildlife along with approved methods, devices and disposal. This proposal also sets out unlawful acts under the wildlife pest control permit.

##### 4. Persons Affected

Persons holding, or wishing to obtain, a commercial wildlife pest control permit may be affected.

##### 5. Cost and Paperwork Requirements

The proposed changes would require completion and submission of a permit application and payment of a \$25 application fee, an additional fee of \$50 will be required if the applicant passes the examination. There are also recordkeeping and reporting requirements.

#### *Effective Date*

The proposed changes will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by Commission.

*Contact Person*

For further information regarding these changes, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-135. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 147. SPECIAL PERMITS****Subchapter S. BOBCAT HUNTING-TRAPPING PERMIT****§ 147.701. General.**

This section provides for permits to be issued for the hunting and trapping of bobcat during the season established and in areas designated under § 139.4 (relating to seasons and bag limits for the license year).

\* \* \* \* \*

**(10) A bobcat guide permit will be issued as follows:**

**(i) A person who assists another person to hunt or take bobcats in any manner shall first secure a bobcat guide permit from the Commission.**

**(ii) The fee for a bobcat guide permit is \$10 for residents and \$25 for nonresidents.**

*(Editor's Note: The following subchapter is new. It is being printed in regular type to enhance readability.)*

**Subchapter T. COMMERCIAL WILDLIFE PEST CONTROL**

Sec.

- 147.721. General.
- 147.722. Definitions.
- 147.723. Application.
- 147.724. Commercial wildlife pest control examination.
- 147.725. Records and reports.
- 147.726. Operation.
- 147.727. Unlawful acts.

**§ 147.721. General.**

A commercial wildlife pest control permit is required for a person to take, harass, transport, release or dispatch designated wildlife, for another person for a fee or other consideration, that is creating a nuisance, causing damage to property or is a risk to human health or safety. This permit authorizes the agent to control designated wildlife for another at any time of the year.

**§ 147.722. Definitions.**

In addition to the definitions contained in the act and § 131.2 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Agent*—A holder of a valid commercial wildlife pest control permit or a legitimate employee.

*Humane manner*—When dispatching an animal, death shall be induced as quickly and painlessly as possible by any of the methods in § 147.727(5) (relating to unlawful acts).

*Legitimate employee*—An employee of record, one for which the employer deducts or pays taxes or other fees required by any local, state or the Federal government and is listed on the permit.

**§ 147.723. Application.**

(a) An application for examination shall be submitted on a form supplied by the Commission. A nonrefundable fee of \$25 shall be submitted with the application for new agents only. An additional \$50 shall be submitted for the permit if the examination is passed.

(b) Experience and qualifications shall be listed on the application. If applicable, the business name shall also be included.

(c) Conviction of a violation of the act within 5 years of the date of application may preclude the issuance of a permit.

**§ 147.724. Commercial wildlife pest control examination.**

(a) New agents shall be required to obtain a minimum score of 80% on a supervised written examination approved by the Director.

(b) The examination shall include the following subject matter:

- (1) Biology, life history and habits of pertinent wildlife.
- (2) Control methods, care and handling and euthanasia.
- (3) Laws and regulations.
- (4) Diseases and parasites.

**§ 147.725. Records and reports.**

(a) A record of all activities conducted under authority of the permit shall be kept on a form supplied by the Commission according to instructions on the form. The records shall be kept for 3 years and shall be the basis of any reports required by the Commission.

(b) Records shall be available for inspection during normal business hours at the request of a wildlife conservation officer.

(c) A report of activities shall be submitted, on a form supplied by the Commission, to the district wildlife conservation officer by the tenth day of each month. The report shall list the number of each species taken and the disposition of the wildlife.

**§ 147.726. Operation.**

(a) Approved methods and devices are as follows:

- (1) Foot hold traps, body gripping traps, box traps, cage traps, nets and snares.
- (2) Agents who are certified pesticide applicators may take vertebrate species with pesticides in accordance with the regulations of the Department of Agriculture. See 7 Pa. Code Chapter 128 (relating to pesticides).
- (3) Shooting with a firearm that will induce death as quickly and painlessly as possible.

(b) The agent shall have the approval of the property owner or lessee and confine all activities to that property.

(c) The permit shall be carried at all times and presented upon the request of any officer whose duty it is to enforce this part.

(d) Except as otherwise provided, it is unlawful to sell, trade, barter or transfer to another person any live or dead animal or parts taken under authority of this

permit. Furbearer pelts are excepted from this provision provided the particular species is taken during the hunting or trapping season by the holder of a valid hunting or furtaking license as required.

(e) Devices shall be tagged or labeled with the permit number, or trapper I.D. number.

(f) Devices shall be checked by the agent or property owner at least once each calendar day, but only the agent may remove an animal from a trap.

(g) Nuisance wildlife captured alive shall within 24 hours be dispatched in a humane manner or released in an area open to hunting or trapping. Nontarget animals may be released at the site of capture.

(h) Carcasses shall be disposed of by incineration or in an approved landfill in a manner consistent with the solid waste laws of the Commonwealth.

#### § 147.727. Unlawful acts.

It is unlawful to:

(1) Control any white-tailed deer, black bear, elk, wild turkey, beaver, fisher, otter or bobcat without prior approval of the district wildlife conservation officer.

(2) Control any migratory birds unless the agent has the appropriate valid United States Fish and Wildlife Service depredation permit.

(3) Control any threatened or endangered species without proper permits and approval of the Commission.

(4) Fail to list or delete an employe from the permit.

(5) Dispatch any animal by any method not defined as humane. Death shall be induced as quickly and painlessly as possible by any of the following methods:

(i) Birds shall be dispatched through the use of: inhalant anesthetics, carbon monoxide, carbon dioxide, barbiturates, gunshot, cervical dislocation or decapitation.

(ii) Furbears, small game and other small mammals shall be dispatched through the use of: inhalant anesthetics, carbon monoxide, carbon dioxide, barbiturates, gunshot or penetrating captive bolt.

(iii) Big game shall be dispatched through the use of: barbiturates, gunshot, penetrating captive bolt or chloral hydrate.

(6) Violate any other provisions of this subchapter.

[Pa.B. Doc. No. 01-1720. Filed for public inspection September 21, 2001, 9:00 a.m.]

## MILK MARKETING BOARD

[7 PA. CODE CH. 148]

### Over-Order Premium Pool

The Milk Marketing Board (Board) proposes to add Chapter 148 (relating to establishment of an over-order premium pool) to read as set forth in Annex A.

#### *Purpose of Proposed Rulemaking*

This proposed rulemaking creates a partial pool of 45% of the over-order premium. This 45% will be distributed to all qualified producers, as defined in § 148.1 (relating to definitions), regardless of whether or not their milk is used as Class I fluid milk. The current over-order pre-

mium is only paid to those producers whose milk is produced, processed and sold as Class I fluid milk in this Commonwealth.

#### *Summary of Proposed Rulemaking*

Currently, the Board places a premium above the Federal order price of Class I fluid milk that is produced, processed and sold within this Commonwealth. This premium is designated as an over-order premium and is currently at a level of \$1.40 per hundredweight of milk plus a \$.25 diesel fuel add-on, resulting in a total of \$1.65 per hundredweight of milk. This mandated over-order premium is now paid to Class I producers. The Board has determined that 45% of this over-order premium should be placed in a pool and shared with all qualified producers as defined in the proposed rulemaking. The remaining 45% of the over-order premium would continue to be paid to the Class I producers.

#### *Statutory Authority*

There is no specific language within the Milk Marketing Law (law) (31 P. S. §§ 700j-101—700j-1302) that discusses pooling of an over-order premium. The authority for the proposed rulemaking is implied throughout the law, as follows.

Section 301 of the law (31 P. S. § 700j-301) authorizes the Board to “regulate the entire milk industry of this Commonwealth, including the production . . . of milk . . . including the establishment of reasonable trade practices.”

Section 801 of the law (31 P. S. § 700j-801) states that the Board shall ascertain and maintain prices paid to producers “as will be most beneficial to the public interest, best protect the milk industry of this Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of this Commonwealth.”

Section 803 of the law (31 P. S. § 700j-803) directs the Board to establish minimum producer pricing through either the establishment of a minimum price or a formula for the setting of minimum prices to be paid to producers by milk dealers.

Section 804 of the law (31 P. S. § 700j-804) prescribes the manner in which minimum producer pricing may be classified. The Board may classify milk in any reasonable manner that the Board deems advisable.

Section 806 of the law (31 P. S. § 700j-806) establishes the manner in which producers are to be paid by the milk dealer, including the terms and method of computing payment.

#### *Public Involvement*

Discussions were held with all segments of the dairy industry. Those participants included representatives from Pennsylvania Association of Milk Dealers; Land O'Lakes; Pennsylvania Grange; Pennsylvania Farm Bureau; Dairy Farmers of America; Dairylea Cooperative; Maryland/Virginia Cooperative; Pennsylvania Farmers Union; Pennsylvania Food Merchants Association; and Federal Market Administrator—Federal Order 1.

#### *Fiscal Impact*

The administration costs of maintaining the over-order premium pool by the Board is estimated to be \$130,000 annually. This figure is based on the salaries, fringe benefits and paid leave for five current Board employees to operate the pool for 5 days per month.

*Paperwork Requirements*

Milk dealers and cooperatives already provide the information needed to perform the calculations described in the proposed rulemaking through the submission of monthly reports to the Board. The date of submission of the monthly reports will be changed to an earlier date to accommodate the timetable established in the proposed rulemaking. Additional paperwork will be required to be completed by the agency since it will have to provide each milk dealer with the information set forth in § 148.6 (relating to pool administrator's reporting requirements).

*Effective Date; Sunset Date*

The proposed rulemaking will become effective 60 days following publication in the *Pennsylvania Bulletin* as final rulemaking. There is no sunset date.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 12, 2001, a copy of this proposal was submitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed rulemaking to Sharon L. Grottola, Chief Counsel, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110, within 30 days following publication in the *Pennsylvania Bulletin*.

BEVERLY R. MINOR,  
Chairperson

**Fiscal Note:** 47-9. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 7. AGRICULTURE****PART VI. MILK MARKETING BOARD****PENNSYLVANIA OVER-ORDER PREMIUM POOL**

Sec.	
148.1.	Definitions.
148.2.	Pennsylvania over-order premium dealer's reporting requirements.
148.3.	Calculation of the contributing pool plant over-order premium value.
148.4.	Calculation of the pool.
148.5.	Collection and distribution of the pool.
148.6.	Pool administrator's reporting requirements.

**§ 148.1. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Contributing pool plant*—Pennsylvania pool plant with Pennsylvania Class I utilization.

*Distributing plant*—A plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

*Diversion*—Any transaction involving the purchase of milk or milk products from a producer in which the milk thus purchased does not enter the Pennsylvania pool

plant and is delivered to another plant. Whether milk enters the Pennsylvania pool plant will be determined on the basis of the United States Department of Agriculture guidelines.

*Over-order premium value*—The over-order premium value is an amount, over and above the applicable Federal order or Board-established minimum class price, which the Board mandates be paid to producers for all milk produced in this Commonwealth and included in the Pennsylvania Class I utilization of Pennsylvania pool plants.

*Over-order premium rate*—Hundredweight rate of the over-order premium value paid on Class I milk produced, processed and utilized in this Commonwealth.

*Pennsylvania Class I pounds*—Pennsylvania milk disposed of in the form of fluid milk products and adjusted for purchases from other dealers, shrinkage and inventory variation.

*Pennsylvania milk pool or pool*—

(i) The sum of the obligation of over-order premium from Pennsylvania pool plants.

(ii) The amount to be redistributed to Pennsylvania producers.

*Pennsylvania out-of-State diversion*—Diversion of Pennsylvania production to out-of-State plants.

*Pennsylvania pool plant*—A Pennsylvania plant that purchases and physically receives Pennsylvania producer milk, excluding producer-dealers.

*Pennsylvania producer*—A person who operates a farm located in this Commonwealth that produces milk.

*Pennsylvania production*—Milk produced by Pennsylvania producers and sold to Pennsylvania pool plants regardless of the location of plant of physical receipt.

*Pool administrator*—The pool administrator is the Board.

*Pool allotment*—The amount allotted from the pool to a Pennsylvania pool plant for payment to individual producers entitled to receive an amount due from pool payments.

*Pool payment*—The amount of the over-order premium payable to the Pennsylvania milk pool by a Pennsylvania pool plant.

*Producer-dealer*—A person who does the following:

(i) Operates a dairy farm and a distributing or manufacturing plant in this Commonwealth.

(ii) Receives milk solely from its own farm production and may receive bulk milk from other dealers.

(iii) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from milk dealers (this limitation does not apply if the producer-dealer's own farm production is less than 150,000 pounds during the month).

(iv) Provides proof satisfactory to the pool administrator that the care and management of the dairy animals and other resources necessary to produce all milk handled (excluding receipts from subparagraph (ii)) and the processing and packaging operations are the producer-dealer's own enterprise and at its own risk.

*Qualified pounds*—Grade A milk produced in this Commonwealth and physically received at a pool plant from a Pennsylvania producer, less Pennsylvania production transferred to nonpool plants, and excluding milk re-

ceived from a producer-dealer. Transfers will be allocated to Pennsylvania or out-of-State production based upon the percentage of physical producer receipts at a pool plant. For example, if 50,000 pounds of milk is transferred to nonpool plants, and a pool plant physically receives 1 million pounds of producer milk, half of which is Pennsylvania production, then 25,000 pounds would be considered a Pennsylvania produced transfer. Any non-Class I milk depooled from a Federal milk marketing order at the dealer's or producer's election during any month is disqualified for that month and 1 additional month. For example, if non-Class I milk is depooled for 3 months, that amount of milk for the depooling producer or dealer is disqualified from the pool for 6 months.

*Qualified producer*—A Pennsylvania producer whose Grade A milk is purchased or processed as fluid or manufactured products by a Pennsylvania pool plant, excluding diversions to out-of-State distributing plant and receipts from producer-dealers.

*Redistribution rate*—The premium rate due to qualified producers, calculated by dividing the pool by the qualified pounds, and rounding to the fourth decimal place using the uniform method of increasing the fourth decimal place by one if the next decimal place is five or more or making no change if the next decimal place is less than five. Example: \$1.05655 becomes \$1.0566 and \$1.05654 becomes \$1.0565.

**§ 148.2. Pennsylvania over-order premium dealer's reporting requirements.**

By the 9th day after the end of each month, each Pennsylvania pool plant shall file with the Board information contained in forms prescribed and furnished by the Board.

**§ 148.3. Calculation of the contributing pool plant over-order premium value.**

The pool administrator shall calculate the over-order premium value for each contributing pool plant in the following manner:

(1) Divide the Pennsylvania production by the total producer purchases net of non-Class I Diversions to arrive

at the percentage of Pennsylvania purchases. This percentage may not exceed 100%.

(2) Multiply the over-order premium rate times the Pennsylvania class I utilization times the percentage of Pennsylvania purchases to arrive at the contributing pool plant over-order premium value.

*Example*

Where

- A = 300,000 pounds Pennsylvania production
- B = 700,000 pounds total producer purchases
- C = 100,000 pounds non-Class I diversions
- D = Percentage of Pennsylvania purchases
- E = \$1.00/cwt over-order premium rate
- F = 400,000 pounds Pennsylvania Class I utilization
- G = Contributing pool plant over-order premium value

$$\frac{A}{(B - C)} = D \frac{300,000}{(700,000 - 100,000)} = 50\%$$

$$E \times F \times D = G \quad \$1.00/\text{cwt} \times 400,000 \times 50\% = \$2,000$$

**§ 148.4. Calculation of the pool.**

The pool administrator shall calculate the plant pool obligation for each contributing pool plant, pool and the redistribution rate in the following manner.

(1) Multiply the contributing pool plant over-order premium value calculated in § 148.3 (relating to calculation of the contributing pool plant by over-order premium value) for each contributing pool plant by 45% to arrive at the plant pool obligation. The remaining 55% of the over-order premium value is the directly distributed over-order premium value.

(2) The sum of all plant pool obligations from all contributing pool plants is the pool.

(3) Divide the pool by the hundredweights of all qualified pounds for all Pennsylvania pool plants to arrive at the redistribution rate.

*Example*

Where

G <sup>a</sup> = \$2,000	Contributing pool plant over-order premium value (Dairy A)
G <sup>b</sup> = \$3,000	Contributing pool plant over-order premium value (Dairy B)
G <sup>c</sup> = \$0	Contributing pool plant over-order premium value (Dairy C)
I <sup>a</sup> =	Plant pool obligation (Dairy A)
I <sup>b</sup> =	Plant pool obligation (Dairy B)
I <sup>c</sup> =	Plant pool obligation (Dairy C)
J <sup>a</sup> =	Directly distributed over order premium value (Dairy A)
J <sup>b</sup> =	Directly distributed over-order premium value (Dairy B)
J <sup>c</sup> =	Directly distributed over-order premium value (Dairy C)
A <sup>a</sup> = 300,000 pounds	Pennsylvania production (Dairy A)
A <sup>b</sup> = 500,000 pounds	Pennsylvania production (Dairy B)
A <sup>c</sup> = 50,000 pounds	Pennsylvania production (Dairy C)
K <sup>a</sup> = 50,000 pounds	Pennsylvania out-of-State diversion (Dairy A)
K <sup>b</sup> = 200,000 pounds	Pennsylvania out-of-State diversion (Dairy B)

$K^c = 0$  pounds Pennsylvania out-of-State diversion (Dairy C)  
 $L^a = 100,000$  pounds Federally depooled milk (Dairy A)  
 $M^a =$  Qualified pounds (Dairy A)  
 $M^b =$  Qualified pounds (Dairy B)  
 $M^c = 192,857$  pounds Qualified pounds (Dairy C)  
 $N =$  Pennsylvania milk pool  
 $O =$  Redistribution rate

(i)	<i>Dairy A</i>		
	$G^a \times 45\% = I^a$	$\$2,000 \times 45\% =$	\$900
	$G^a - I^a = J^a$	$\$2,000 - \$900 =$	\$1,100
	<i>Dairy B</i>		
	$G^b \times 45\% = I^b$	$\$3,000 \times 45\% =$	\$1,350
	$G^b - I^b = J^b$	$\$3,000 - \$1,350 =$	\$1,650
	<i>Dairy C</i>		
	$G^c \times 45\% = I^c$	$\$0 \times 45\% =$	\$0
	$G^c - I^c = J^c$	$\$0 - \$0 =$	\$0
(ii)	N	Pennsylvania milk pool	<u>\$2,250</u>
(iii)	<i>Dairy A</i>		
	$A^a - (K^a + L) = M^a$	$300,000 - (50,000 + 100,000) =$	150,000
	<i>Dairy B</i>		
	$A^b - K^b = M^b$	$500,000 - 200,000 =$	300,000
	<i>Dairy C</i>		
	$M^c$	192,857	<u>192,857</u>
			<u>642,857</u>
	$\frac{N}{(M^a + M^b + M^c)/100} = O$	$\frac{\$2,250}{642,857/100} =$	\$0.3500/Hundredweight

**§ 148.5. Collection and distribution of the pool.**

The pool administrator shall calculate the pool allotment and pool payment for each plant in the following manner:

(1) Multiply the redistribution rate times hundredweights of the qualified pounds at each Pennsylvania pool plant to arrive at the pool allotment for each plant.

*Example*

Where

$M^a = 150,000$  pounds Qualified pounds (Dairy A)  
 $M^b = 300,000$  pounds Qualified pounds (Dairy B)  
 $M^c = 192,857$  pounds Qualified pounds (Dairy C)  
 $O = \$0.3500/cwt$  Redistribution Rate  
 $P =$  Pool allotment

*Dairy A*

$M^a \times O = P^a \quad (150,000/100) \times \$0.3500 = \$525$

*Dairy B*

$M^b \times O = P^b \quad (300,000/100) \times \$0.3500 = \$1,050$

*Dairy C*

$M^c \times O = P^c \quad (192,857/100) \times \$0.3500 = \frac{\$675}{\$2,250}$

(2) For contributing pool plants:

(i) Add the pool allotment to the directly distributed over-order premium value to arrive at the amount to be distributed among qualified producers.

(ii) Subtract the amount to be distributed among qualified producers from the contributing plant over-order premium value calculated in § 148.3 (relating to calculation of the contributing pool plant over-order premium value) to arrive at the pool payment.

(iii) Pool payments shall be received by the pool administrator on or before the 18th day after the end of the month. If the 18th day falls on a weekend or State-recognized holiday, payment may be received on the next business day following the weekend or State-recognized holiday.

(iv) Contributing pool plant operators shall divide the amount to be distributed among qualified producers by the hundredweights of all Pennsylvania production less Federally depooled milk to arrive at the plant distribution rate.

(v) Multiply the plant distribution rate by the hundredweights of milk from each Pennsylvania producer or producer group to arrive at the net over-order premium value payable to each producer or producer group. No distribution of any over-order premium value shall be made to any producer or producer group for any portion of milk depooled under a Federal Milk Marketing Order.

(vi) Contributing pool plant operators shall make payment of the contributing pool plant over-order premium value with the final payment.

*Example*

Where

- J<sup>a</sup> = \$1,100 Directly distributed over-order premium value (Dairy A)
- P<sup>a</sup> = \$525 Pool allotment (Dairy A)
- G<sup>a</sup> = \$2,000 Contributing pool plant over-order premium value (Dairy A)
- Q<sup>a</sup> = Amount to be distributed among qualified producers
- R<sup>a</sup> = Pool payment
- A<sup>a</sup> = 300,000 pounds Pennsylvania production
- L<sup>a</sup> = 100,000 pounds Federally de-pooled milk (Dairy A)
- S<sup>a</sup> = Plant distribution rate per hundredweight

*Dairy A*

- To derive the amount to be distributed among qualified producers

$$J^a + P^a = Q^a \quad \$1,100 + \$525 = \$1,625$$

- To derive the pool payment

$$G^a - Q^a = R^a \quad \$2,000 - \$1,625 = \$375$$

- To derive the plant distribution rate per hundredweight

$$\frac{Q^a}{(A^a - L^a)/100} = S^a \quad \frac{\$1,625}{(300,000 - 100,000/100)} =$$

\$0.5417/Hundredweight

(3) For all Pennsylvania pool plants other than contributing pool plants:

- (i) The pool allotment is the amount to be distributed among qualified producers.
- (ii) Divide the amount to be distributed among qualified producers by the hundredweights of all Pennsylvania production to arrive at the plant distribution rate.
- (iii) Multiply the plant distribution rate by the hundredweights of milk from each Pennsylvania producer or producer group to arrive at the net over-order premium value payable to each producer or producer group.

(4) On or before the 22nd day after the end of the month, the State Treasurer shall make payment of the pool allotment to each Pennsylvania pool plant receiving pool payments for redistribution to their qualified producers.

(5) Pennsylvania pool plants receiving pool allotments shall distribute those funds to their qualified producers by the date of the advance payment for the following month. Checks forwarding pool payments to qualified producers shall include a line item that identifies the pool portion of the check.

**§ 148.6. Pool administrator's reporting requirements.**

(a) By the 16th day after the end of each month, the pool administrator shall advise each Pennsylvania pool plant of the following information as it pertains to them. If the 16th falls on a weekend or State-recognized holiday, the pool administrator shall advise the Pennsylvania pool

plant of the following information on the last business day prior to the weekend or State-recognized holiday:

- (1) Pennsylvania production.
  - (2) Total pounds received.
  - (3) Class I pounds—utilization.
  - (4) Nonclass I diversions.
  - (5) Diversions to out-of-State plants.
  - (6) Over-order premium rate.
  - (7) Over-order premium obligation.
  - (8) Percentage to pool (currently 45%).
  - (9) Amount of premium pooled.
  - (10) Qualified pounds.
  - (11) Total pool amount.
  - (12) Total qualified pounds.
  - (13) Redistribution rate.
  - (14) Pool payment.
  - (15) Amount Pennsylvania pool plant will receive out of pool.
  - (16) Any adjustments from previous months.
  - (17) Pennsylvania pool plant distribution rate per hundredweight
- (b) This information will be generated from the PMMB 62, Milk Dealers Monthly Report, submitted by the Pennsylvania pool plants.

[Pa.B. Doc. No. 01-1721. Filed for public inspection September 21, 2001, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Advance Notice of Proposed Rulemaking Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Doc. No. L-00950102

Public Meeting held  
September 7, 2001

*Commissioners Present:* Glen R. Thomas, Chairperson;  
Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr.;  
Terrance J. Fitzpatrick

**Order**

*By the Commission:*

This Order closes our *Advance Notice of Proposed Rulemaking Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. L-00950102.

*Procedural History*

An Advance Notice of Proposed Rulemaking in Universal Service was adopted at public meeting on March 20, 1995, at L-00950102. The rulemaking was designed to develop procedures for evaluating the evolution of the definition of "basic universal services" and it scheduled a public forum to solicit input regarding cost studies and

related allocation issues. It was published in the *Pennsylvania Bulletin* at 25 Pa.B. 1521 with a 30-day comment period that ended on May 22, 1995. Subsequently, a decision was made to hold the rulemaking process in abeyance pending a Global Settlement conference that began in October, 1998 and ended March 1, 1999. With the initiation of the Global Settlement, the issues relating to a Universal Service Fund (USF), including the size and structure of the fund, and its interplay with access and toll rate reduction, rate caps, and rate rebalancing, were bundled with the myriad of other complex telecommunications issues the parties were seeking to resolve. Ultimately, after settlement talks were completed, two joint petitions were filed before this Commission on March 18, 1999, at Docket Nos. P-00991648 and P-00991649. Both of the petitions to resolve these complex telecommunications issues contained proposals for a USF.

Our Global Order was issued on September 30, 1999, and addressed a multitude of issues presented in the two competing petitions, including the issue of how and when to establish a Pennsylvania USF. The Global Order closed two cases related to the instant rulemaking, specifically, *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications in the Commonwealth*, at I-00940035, and *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, at L-00950105. However, the instant proceeding at L-00950102 remained open.

Ultimately, as the Global Order directed, a Pennsylvania USF was established in March, 2000, and it is expected to run through December 31, 2003. Regulations pertaining to the USF were finalized in a separate proceeding at L-00000148 (*Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§ 63.161—63.172*). The regulations are now codified at 52 Pa. Code §§ 63.161—63.171, et seq.

*Discussion:*

The rulemaking at L-00950102 can now be closed because the new USF regulations published and effective June 30, 2001, cover these issues of concern in L-00950102 regarding the evolving definition of what constitutes basic universal services. Section 63.162 of the new regulations states in pertinent part:

Basic universal service—An evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.

In our revised final rulemaking order at L-00000148, entered March 23, 2001, the Commission stated:

We note that we have defined basic universal service as 'an evolving set of telephone services, as defined

by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.' By order entered April 10, 1995, I-00940035 and L-00950102, the Commission has specifically defined basic universal service to consist of the following service components: 1) single party, voice grade, incoming and outgoing access to the public switched network and usage within a local calling area; 2) touch tone capability; 3) annual local directory; 4) access to operator services; 5) access to directory assistance; 6) access to telecommunications relay service and other services designed for persons with disabilities; and 7) access to emergency services.<sup>1</sup>

31 Pa.B. at 3405.

Our regulatory definition of "basic universal service" expressly recognizes the Commission's authority to revise that definition by order. The definition is currently as set forth in our Order of April 10, 1995, at L-00000148. The regulation at § 63.162 (relating to definitions), provides flexibility for the Commission to revise by future order the definition of what constitutes basic universal service by future orders. Consequently, there is no need at this time for an open rulemaking for developing procedures for evaluating the evolution of the definition nor the need for a public forum to solicit input regarding cost study and related allocation issues; *Therefore:*

*It Is Ordered:*

1. That the *Advance Notice of Proposed Rulemaking Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. L-00950102, shall be marked closed.

2. That a copy of this Order shall be served upon the Pennsylvania Telephone Association, all jurisdictional telecommunications utilities, the Office of Trial Staff, Office of Consumer Advocate, and the Office of Small Business Advocate and published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 01-1722. Filed for public inspection September 21, 2001, 9:00 a.m.]

<sup>1</sup>In *Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth: Declaratory Order, Advance Notice of Proposed Rulemaking, Scheduling of Public Forum*. Order entered April 10, 1995. Docket Nos. I-00940035 and L-00950102.