

PROPOSED RULEMAKING

MILK MARKETING BOARD

[7 PA. CODE CH. 143]

Producer Receipt for Farm Bulk Tank Milk

The Milk Marketing Board (Board) proposes to amend § 143.46 (relating to producer receipt for farm bulk tank milk) to read as set forth in Annex A.

Purpose of Proposed Amendment

Currently § 143.46 requires persons who pick up bulk milk from farms to prepare a bill of lading or a similar document in triplicate, with one copy to be left at the farm at the time of pick-up, another to be retained by the milk hauler and the original to be retained by the purchasing milk dealer or cooperative. The Board has interpreted this regulation to require the use of carbon paper or similar carbonless forms which make three exact copies of the bill of lading at the time it is created. Milk dealers, cooperatives and milk haulers have asked the Board to relax this requirement to allow the use of new technology that will allow them to more efficiently record and retain the required information. The purpose of this amendment is to allow for use of other, more efficient means of preparing the bill of lading for bulk milk picked up from farms, as long as certain information, in a form approved by the Board, is left with the producer at the time the milk is picked up and also retained by the hauler and purchaser.

Summary of Proposed Amendment

The word "tank" has been removed from both the heading of the section and subsection (a) because on some large farms, the milk is cooled and loaded directly onto tanker trailers during milking, rather than being stored in bulk tanks on the farm for later pick-up. This change makes it clear that this regulation applies to all bulk milk picked up from farms, not just milk in bulk tanks.

The amendment eliminates the need for hard copies to be made out in triplicate, as long as the required information is in a form approved by the Board and the same information is left with the producer and retained by the hauler and purchaser. The amendment also allows the milk volume to be measured in metric units rather than only pounds or gallons (see subsection (a)(3)); allows for an electronic or equivalent signature of the weigher/sampler picking up the milk (see subsection (a)(5)); and adds the "Temperature of the milk at the time of pick-up" as part of the required information (new subsection (a)(6)).

The amendment also adds the words "or cooperatives" to the regulation in recognition of the fact that much of the milk is picked up from farms by trucks either owned or hired by cooperatives. Finally, the amendment adds a provision to protect the dairy producer in the event of a discrepancy between the quantity of milk recorded for the producer's records and that recorded for retention by the hauler or purchaser, in which case the producer is to be paid based upon the highest quantity of milk recorded that can be correlated back to the calibration chart.

Statutory Authority

Section 307 of the Milk Marketing Law (law) (31 P. S. § 700j-307) provides the Board with the authority to adopt and enforce regulations necessary or appropriate to carry out the provisions of the law.

Meeting with Interested Parties

On November 20, 2007, the Board, at the request of interested parties, held a meeting to receive comments and suggestions as to how this regulation could be changed to better serve the industry. Among the attendees were representatives of Land O'Lakes, Inc., Maryland and Virginia Milk Producers Cooperative, Dairy Marketing Services, LLC, Dairylea Cooperative, Pennsylvania Association of Milk Dealers, Pennsylvania Farm Bureau, Barefoot Trucking, Inc., and Board's field staff. Based upon the suggestions of participants at this meeting, Board staff drafted a proposed amendment which was circulated by means of e-mail to the interested parties. One of the parties suggested a minor change, which was agreed to by the other parties, and which has been incorporated into the proposed amendment.

Fiscal Impact

The Board believes that adoption of this amendment will save time and eliminate the need for unnecessary paperwork for milk haulers, milk cooperatives and milk dealers, and thus will have a positive fiscal impact on these businesses.

Paperwork Requirements

There are no paperwork requirements.

Effective Date; Sunset Date

The proposed amendment will become effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking. There is no sunset date.

Regulatory review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), a copy of this proposal was submitted on July 1, 2008, 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 amendment, 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.

If IRRC has objections to any portion of the proposed amendment, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the Regulatory Review criteria which have not been met by that portion. The Regulatory Review Act (71 P. S. §§ 745.1—745.12a) specifies detailed procedures for review by the Board, the General Assembly and the Governor of objections raised before final publication of the regulation.

Public Comment

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

RICHARD KRIEBEL,
Chairperson

Fiscal Note: 47-13. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PROCEDURES

MISCELLANEOUS PROVISIONS

§ 143.46. Producer receipt for farm bulk [tank] milk.

(a) Pick-up of farm bulk [tank] milk shall be supported by a bill of lading or similar document [**made out in triplicate**] **either by Board-approved electronic media or paper document** and containing the following information:

* * * * *

(3) Pounds or gallons **or similar metric equivalent** of milk.

* * * * *

(5) Signature [**of the person picking up the milk**], **or electronic equivalent**, together with the certificate number of the **weigher/sampler picking up the milk**.

(6) Temperature of the milk at the time of pick-up.

(b) [**One copy of the document**] The information required by subsection (a) shall be left with each producer [; **one copy**] **at the time of pick-up. The same information** shall be retained by the milk hauler for [**a period of**] 90 days; and the [**original**] **same information** shall be retained by the purchasing milk dealer **or cooperative** for [**a period of**] 90 days. **In the event that the quantity of milk recorded and left with the producer at the time of pick-up differs from either the hauler information or the information retained by the dealer or cooperative, the producer shall be paid based on the highest quantity of milk recorded that can be correlated back to the calibration chart.**

[Pa.B. Doc. No. 08-1292. Filed for public inspection July 11, 2008, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

**[58 PA. CODE CH. 443a]
Trusteeship**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and specific authority contained in 4 Pa.C.S. § 1102(1), (3), (5), (8) and (11) (relating to legislative intent) and § 1202(a)(1) and (b)(12), (14) and (15) proposes to adopt Chapter 443a (relating to trusteeship) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking adds a new chapter outlining the circumstances under which the Board may appoint a trustee and the obligations, powers and duties of the trustee.

Explanation of Chapter 443a

Section 443a.1 (relating to definitions) defines the terms "trustee" and "trusteeship action" which are used in this chapter.

Section 443a.2 (relating to appointment of trustees) provides that the Board may appoint a trustee in the event of the expiration, revocation or suspension of a slot machine licensee's license or a principal's license when the principal controls the slot machine licensee. It also gives the Board the discretion to appoint one or multiple trustees.

Section 443a.3 (relating to qualifications of trustees) requires trustees to obtain a principal license and authorizes the Board to issue a trustee a temporary principal license under § 435a.8 (relating to temporary credentials for principals and key employees).

Section 443a.4 (relating to bonding of trustees) requires a trustee to obtain a performance bond payable to the Board. The cost of that bond is to be paid by the former or suspended licensee.

Section 443a.5 (relating to effect of the trusteeship on slot machine and principal licensees) bars the former or suspended licensee from exercising any control over the licensed facility or being involved in the financial matters of the licensed facility without prior approval of the trustee and the Board during the period of the trusteeship.

Section 443a.6 (relating to powers and duties of trustees) sets forth the powers and duties of a trustee that the Board may include in the order appointing the trustee. These powers and duties are typical of what would be necessary to allow a trustee to continue the operation of a licensed facility and allow the Board to maintain effective oversight of the trustee. While the Board anticipates that most or all of these powers and duties will be included in an order appointing a trustee, the Board also recognizes that each trusteeship action will be unique. Therefore, the powers and duties of any trustee will be tailored by the Board order to fit the particular circumstances of the specific proceeding.

Section 443a.7 (relating to compensation of trustees and payment of costs associated with the trusteeship) establishes that the compensation of a trustee will be set by the Board and that all expenses related to the trusteeship will be reviewed and approved by the Board. Payment of all costs approved by the Board will be the responsibility of the former or suspended licensee.

Section 443a.8 (relating to required reports of the trustees) requires a trustee to file periodic reports with the Board as required by the Board's order. While these reports may contain confidential or proprietary information, this section also provides that copies or portions of these reports may be sent to creditors and that the Board may make summaries of these reports available to the public and post them on the Board's web site.

Section 443a.9 (relating to review of actions of the trustees) allows creditors or parties in interest to file a petition with the Board using the procedures established in § 493a.4 (relating to petitions generally) if they are aggrieved by an alleged breach of a delegated power or duty by the trustee. The petition must provide the relevant facts and the reason why the trustee's actions constitute a breach of the trustee's duties. The Board will review these petitions and take whatever action is determined to be appropriate.

Section 443a.10 (relating to disposition of net earnings during the period of trusteeship) requires that the trustee establish an account into which all net earnings will be deposited during the trusteeship. No payments may be made from this account without prior approval of the Board. This section also allows the former or suspended licensee to petition the Board for payment of all or a portion of the net earnings.

Section 443a.11 (relating to payments following a bulk sale) mandates that in the event of the sale or other disposition of all of the property subject to the trusteeship, the Board will conduct a hearing to determine the distribution of the assets remaining after all obligations to this Commonwealth, political subdivisions, and other funds set forth in the Act have been satisfied.

Section 443a.12 (relating to discontinuation of trusteeship) specifies the circumstances under which a trusteeship may be discontinued.

Affected Parties

This proposed rulemaking will affect any slot machine licensee or principal that controls a slot machine licensee whose license has expired or has been suspended or revoked.

Fiscal Impact

Commonwealth

There will be no new costs or savings to the Board or other Commonwealth agencies as a result of this proposed rulemaking.

Political Subdivisions

This proposed rulemaking will have no direct fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Affected slot machine or principal licensees will be responsible for paying all of the costs associated with the trusteeship. The amount of these costs will vary depending on the size of the licensed facility and the length of the trusteeship.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

The trustees will have to complete applications for a principal license, will have to apply for and obtain a performance bond and will have to submit periodic reports to the Board as ordered by the Board.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-87.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 25, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-87. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart C. SLOT MACHINE LICENSING

CHAPTER 443a. TRUSTEESHIP

- Sec.
- 443a.1. Definitions.
- 443a.2. Appointment of trustees.
- 443a.3. Qualifications of trustees.
- 443a.4. Bonding of trustees.
- 443a.5. Effect of the trusteeship on slot machine and principal licensees.
- 443a.6. Powers and duties of trustees.
- 443a.7. Compensation of trustees and payment of costs associated with the trusteeship.
- 443a.8. Required reports of the trustees.
- 443a.9. Review of actions of the trustees.
- 443a.10. Disposition of net earnings during the period of trusteeship.
- 443a.11. Payments following a bulk sale.
- 443a.12. Discontinuation of trusteeship.

§ 443a.1. Definitions.

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

Trustee—A fiduciary appointed by the Board for the purpose of preserving the viability of a licensed gaming entity, and the integrity of gaming in this Commonwealth.

Trusteeship action—An action brought before the Board for the appointment of a trustee.

§ 443a.2. Appointment of trustees.

(a) Upon the revocation or suspension of a slot machine license or a principal license of an individual who the Board has determined controls a slot machine licensee, the Board may appoint trustees to act on behalf of the interests of the Commonwealth and the Board to assure compliance with the act, this part and any conditions imposed upon the slot machine license under § 423a.6 (relating to license, permit, registration and certification issuance and statement of conditions).

(b) Upon the expiration of a slot machine license or a principal license of an individual who the Board has determined controls a slot machine licensee, the Board

may appoint a trustee who shall have all of the power and duties granted by the Board until the slot machine or principal license is renewed or until the Board approves a change in ownership of the slot machine license.

(c) The Board will have the power to appoint and remove one or more trustees as necessary.

§ 443a.3. Qualifications of trustees.

(a) Trustees shall be required to file an application for and obtain a principal license.

(b) The Board may appoint a trustee and award the trustee a temporary principal credential under § 435a.8 (relating to temporary credentials for principals and key employees) when necessary.

§ 443a.4. Bonding of trustees.

(a) Before assuming duties, a trustee shall execute and file a bond for the faithful performance of the trustee's duties.

(b) The bond required under subsection (a) must be payable to the Board with sureties and in the amount and form required by Board order.

(c) The cost of the bond required under subsection (a) shall be paid by the former or suspended licensee.

§ 443a.5. Effect of the trusteeship on slot machine and principal licensees.

After the adoption of a trusteeship action, the former or suspended slot machine or principal licensee may not exercise any of its privileges, collect or receive any debts and pay out, sell, assign or transfer any of its property to anyone without prior approval of the appointed trustee and the Board.

§ 443a.6. Powers and duties of trustees.

(a) The Board's order appointing trustees will set forth the powers, duties and responsibilities of the trustees which may include:

(1) Maintaining and operating the licensed facility in a manner that complies with the act, this part, the slot machine licensee's statement of conditions and the Board's order appointing the trustees.

(2) Maintaining and operating the licensed facility consistent with the measures generally taken in the ordinary course of business including:

(i) Entering into contracts.

(ii) Borrowing money.

(iii) Pledging, mortgaging or otherwise encumbering the property as security for the repayment of the trustee's loans; provided, however, that power shall be subject to any provisions and restrictions in any existing credit documents.

(iv) Hiring, firing and disciplining employees.

(3) Exercising the rights and obligations of the former or suspended licensee.

(4) Taking possession of all of the property of the former or suspended licensee, including its books, records and papers.

(5) Establishing accounts with financial institutions, which are not affiliated, owned, or otherwise influenced by the former or suspended licensee, to carry out the business of the former or suspended licensee.

(6) Meeting with the former or suspended licensee.

(7) Meeting with principals and key employees at the licensed facility.

(8) Meeting with the independent audit committee, if there is one.

(9) Meeting with the Board's Executive Director and keeping the Board's Executive Director apprised of actions taken and the trustee's plans and goals for the future.

(10) Hiring legal counsel, accountants, or other consultants or assistants, with approval of the Board, as necessary to carry out the trustee's duties and responsibilities.

(11) Settling or compromising with any debtor or creditor of the former or suspended licensee, including any taxing authority.

(12) Reviewing outstanding agreements to which the former or suspended licensee is a party and advising the Board as to which, if any, of the agreements should be the subject of scrutiny, examination or investigation by the Board.

(13) Obtaining Board approval prior to any sale, change of ownership, change of control, financial status, restructuring, transfer of assets, or execution of contract outside of the ordinary course of business.

(14) Obtaining Board approval for any payments outside of those in the ordinary course of business.

§ 443a.7. Compensation of trustees and payment of costs associated with the trusteeship.

(a) The Board will establish the compensation of the trustees.

(b) The Board will review and approve reasonable costs and expenses of trustees, the legal counsel, accountants, or other consultants or assistants hired by the trustees under § 443a.6(a)(9) (relating to powers and duties of trustees) and other persons the Board may appoint in connection with the trusteeship action.

(c) The costs in subsections (a) and (b) shall be paid by the former or suspended licensee.

§ 443a.8. Required reports of the trustees.

(a) Trustees shall file reports with regard to the administration of the trusteeship with the Board in the form and at intervals as the Board orders.

(b) The Board may direct that copies or portions of the trustees' reports be mailed to creditors or other parties in interest and make summaries of the reports available to the public and post them on the Board's web site (www.pgcb.state.pa.us).

§ 443a.9. Review of actions of the trustees.

(a) A creditor or party in interest aggrieved by any alleged breach of a delegated power or duty of a trustee in the discharge of the trustee's duties may request a review of the trustee's action or inaction by filing a petition in accordance with § 493a.4 (relating to petitions generally).

(b) The petition must set forth in detail the pertinent facts and the reasons why the facts constitute the alleged breach.

(c) The Board will review any petition filed under this section and take whatever action, if any, it deems appropriate.

§ 443a.10. Disposition of net earnings during the period of trusteeship.

(a) During the period of trusteeship, net earnings shall be deposited in an account maintained for that purpose.

(b) Payment of net earnings during the period of trusteeship may not be made by the trustees without the prior approval of the Board.

(c) A suspended or former principal or slot machine licensee may request payment of all or a portion of the net earnings during the period of trusteeship by filing a petition in accordance with § 493a.4 (relating to petitions generally). The suspended or former principal or slot machine licensee shall have the burden of demonstrating good cause for the payment of the net earnings requested.

§ 443a.11. Payments following a bulk sale.

Following the sale, assignment, conveyance or other disposition in bulk of all the property subject to a trusteeship and the payment of all obligations to the Commonwealth and political subdivisions and other funds set forth in the act, the Board will conduct a hearing to determine the distribution of the remaining assets.

§ 443a.12. Discontinuation of trusteeship.

(a) The Board may direct the discontinuation of a trusteeship when:

(1) The Board determines that the cause for which the trusteeship action was instituted no longer exists.

(2) The trustee has, with the prior approval of the Board, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former principal or slot machine licensee relating to the slot machine license.

(b) Upon the discontinuation of the trusteeship with the approval of the Board, trustees shall take steps as may be necessary to affect an orderly transfer of the property of the former or suspended principal or slot machine licensee.

[Pa.B. Doc. No. 08-1293. Filed for public inspection July 11, 2008, 9:00 a.m.]