

PROPOSED RULEMAKING

MILK MARKETING BOARD

[7 PA. CODE CH. 143]

Transactions between Dealers and Producers

The Milk Marketing Board (Board) proposes to amend Chapter 143 (relating to transactions between dealers and producers) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of the proposed rulemaking is to update several sections of the Board's regulations pertaining to payments to producers and testing of producers' milk for payment purposes to reflect changes in the way producers are paid for milk and in milk testing and electronic communication technology that have occurred since these regulations were last amended.

Summary of Proposed Amendments

The heading of § 143.11 (relating to determination of payment to producers by dealers having more than one plant) is proposed to be amended by adding "by dealers" to correct an apparent misprint in the existing regulation, which clearly deals with handlers, not producers, that receive milk at multiple plants or receiving stations. Proposed amendments to subsection (a) add "milk component" and "components" in addition to butterfat as the basis for payment to producers because producers whose milk is marketed under a Federal milk marketing order are now paid on the basis of multiple components rather than on butterfat alone. Proposed amendments to subsection (b) add a sentence to ensure that dealers who have been authorized to base payments upon aggregate utilization of all plants cannot switch back and forth between aggregate utilization and individual plant utilization without authorization from the Board.

Proposed amendments to § 143.12(a) (relating to terms of payment) add two paragraphs in recognition of the fact that Federal milk marketing order regulations will control the terms and timing of payment to producers receiving payment under Federal milk marketing orders.

Proposed amendments to § 143.13(a) (relating to manner of payment) allow payment by wire transfer or other methods, because requiring payment by check or cash only is outdated and costly. Most dealers are already direct depositing producers' checks. This proposed amendment is being made to bring the regulation in line with current industry practices.

Proposed amendments to § 143.14 (relating to monthly statement to producers) allow 1 additional day for dealers to furnish producers with monthly statements and allow producers to receive statements electronically if they have an agreement to do so filed with the purchasing dealer. It also requires inclusion of the producer number (paragraph (4)), combines current paragraphs (5)—(7) into proposed paragraph (5) to eliminate redundancy and replaces "butterfat" with "components." The remaining paragraphs have been renumbered. The proposed amendments delete the requirement of the 3.5% butterfat pay rate (proposed paragraphs (7) and (8)) since that is no longer used for producer payment and additionally require the inclusion of a listing of pounds of milk subject to State-mandated premiums (proposed paragraph (12)) and daily pick-up amounts (proposed paragraph (17)) on the monthly statement.

Proposed amendments to § 143.21 (relating to testing; notification of producer) replace "butterfat" with "components," allow notification of test results to be made available to producers through electronic or other means rather than solely by writing delivered to producers and delete the requirement that composite samples be held for 10 days since this is no longer necessary or practical.

Proposed amendments to § 143.22 (relating to acceptable test methods) replace "butterfat" with "components" and delete reference to specific testing methods, consistent with recent amendments to Chapter 144 (relating to electronic methods for testing milk for fat content), and instead refer to that chapter for approved testing methods.

Proposed amendments to § 143.23 (relating to quantity of sample) replace "aseptic" with "sanitary" because truly aseptic conditions cannot be attained in farm bulk tanks where samples are taken.

Proposed amendments to § 143.24 (relating to agitation before sampling) require a longer agitation period if specified by a bulk tank manufacturer for complete agitation.

Proposed amendments to § 143.25 (relating to calibration chart) limit this section to farm bulk milk tanks since this section is not applicable to weighing and sampling of direct load milk under § 143.29 (relating to weighing and sampling of direct load milk). The proposed amendment also allows calibration charts for cooperative members to be maintained by the cooperative rather than a milk dealer.

Proposed amendments to §§ 143.26 and 143.27 (relating to temperature of samples; and transportation of samples) delete the term "refrigeration" and instead specify the temperature range at which samples must be held and transported. The proposed amendments express this range in degrees Centigrade rather than Fahrenheit because laboratories testing milk samples have migrated to the Centigrade scale. Section 143.27(b) has been reworded to remove superfluous language and to allow a dealer to maintain samples at a designated location other than the dealer's plant.

Proposed amendments to § 143.28 (relating to off-premises testing) delete the requirement that composite samples tested off-premises be held for 10 days since this is no longer necessary or practical.

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 law.

Public Hearing

On October 12, 2006, the Board, after due notice, conducted a public hearing to receive comments on a first draft of this proposed rulemaking. Among the attendees were representatives of the United States Department of Agriculture Milk Marketing Order No. 33, QC Laboratories, Dairylea Cooperative Inc./Dairy Marketing Services LLC, the Independent Regulatory Review Commission (IRRC) and Board staff. As a result of the discussion and comments at that public hearing, the draft proposed rulemaking was revised and a final draft was circulated among interested parties to receive further comment.

Fiscal Impact

The proposed rulemaking will not have a negative fiscal impact on the regulated entities or on the Commonwealth or its political subdivisions. The proposed rulemaking may have a positive fiscal impact on the regulated entities by allowing notice of test results, monthly statements and producer payment to be done electronically rather than on paper delivered by mail.

Paperwork Requirements

The proposed rulemaking will not require additional paperwork by the regulated entities or by the Commonwealth or its political subdivisions. The proposed rulemaking may ease the paperwork requirements for regulated entities by allowing notice of test results, monthly statements and producer payment to be done electronically rather than on paper delivered by mail.

Effective Date/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. There is not a sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 6, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. 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.

Public Comment

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

LUKE BRUBAKER,
Chairperson

Fiscal Note: 47-16. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS

PAYMENT

§ 143.11. Determination of payment to producers by dealers having more than one plant.

(a) Dealers shall pay their producers on a weight and butterfat or milk component basis as determined by the components in the milk or the utilization of the milk, or both, received at each plant or receiving station.

(b) Upon written authorization from the Board, a dealer may base payments to producers upon the aggregate utilization of the milk received at several plants or receiving stations.

A dealer electing to base payments upon the aggregate utilization shall receive authorization from the Board before returning to an individual plant or receiving station utilization unless the Board revokes authorization on the Board's motion.

§ 143.12. Terms of payment.

(a) Producers shall be paid not later than the 26th day of each month and the 17th day of the following month, as follows:

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(3) If payment for milk is made under a Federal milk marketing order, payment to producers, cooperatives and producer settlement funds shall be made under the Federal milk marketing order.

(4) If a date required for payment falls on a Saturday, Sunday or State or National Holiday, the payment is due on the next day that the office of the Board is open for public business.

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§ 143.13. Manner of payment.

(a) Dealers shall pay producers either by check [or by], cash, wire transfer, money order or any other Board-approved payment device. Dealers electing to pay producers by cash shall, in all cases, obtain a dated, signed receipt from each producer. Receipts shall be made a part of the permanent records of the dealer.

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§ 143.14. Monthly statement to producers.

Dealers purchasing milk or cream from producers shall furnish producers with statements containing each of the following items[,] by not later than the [17th] 18th day of each month[:]. **Producers receiving their statements through electronic media shall have an agreement to do so on file with the purchasing dealer.**

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(4) The name and producer number of the producer for whom statement is intended.

(5) [The butterfat test for the first half of the month, or the average of fresh samples, with a minimum of two taken, evenly spaced, the first half of the month.

(6) The butterfat test for the last half of the month, or the average of fresh samples, with a minimum of two taken, evenly spaced, in the last half of the month.

(7) The average butterfat test for the month.] A report of the results of the component tests required under § 143.21 (relating to testing; notification of producer).

[(8)] (6) The percentage of milk utilized in each classification for milk purchased in this Commonwealth not regulated under a Federal milk marketing order.

[(9)] (7) The rate paid per hundredweight [for 3.5% milk] for each classification as established by applicable Official General Order, which may be obtained from the Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, Pennsylvania [17120] 17110.

[(10) Three and one-half percent blend rate per hundredweight and butterfat differential per 0.1%.]

(8) **Applicable components, component rates and total component pounds and values for milk purchased under a Federal milk marketing order.**

[(11)] (9) The blend rate paid at the producer’s average test.

[(12)] (10) The total pounds of milk purchased from producer.

[(13)] (11) The gross amount paid for milk.

[(14) Additional] (12) **The pounds of milk subject to State-mandated premiums and additional amounts paid as premiums, bonuses or similar payments.**

[(15)] (13) The gross amount due after addition of premiums, bonuses or similar payment.

[(16)] (14) Itemization of advance payments and authorized deductions.

[(17)] (15) The total deductions.

[(18)] (16) The net amount due and paid.

(17) **A listing of the amount of milk picked up each day.**

TESTING

§ 143.21. Testing; notification of producer.

(a) A milk dealer buying or receiving milk from a producer on the basis of, or with reference to, the amount or percentage of [**butterfat**] **components** contained in [**such**] **the** milk shall, within [**five**] **5** days after the end of each sampling period, test composite samples and within [**two**] **2** days thereafter notify the producer of the result of [**such**] **the** test, stating the period of time during which samples were taken.

(b) Notice to the producer shall be in writing delivered to the producer **or made available to the producer electronically through Internet access, e-mail, automated telephone dial-in or any other method approved by the Board.**

(c) For the purposes of implementing the [**Milk Marketing Law**] **act** regarding “Composite Samples,” it may be interpreted that “Fresh Samples” may be used for the determination of [**butterfat**] **component** content for payment to producers, providing that not less than two random representative fresh milk samples, evenly spaced, shall be taken and tested in each [**one-half**] **1/2** month period, or a total of not less than four random representative fresh milk samples, and not less than four butterfat tests in each calendar month. [**Producers shall be notified of the results of such tests, stating the sampling period, within two days after the end of each period.**

(d) **After composite samples have been tested, their residues shall be held intact under refrigeration at a temperature of between 32°F and 40°F for a period of not less than 10 days.]**

§ 143.22. Acceptable test methods.

For the purposes of implementing the act regarding tests as to the amount [**of**] **or** percentage of [**butterfat**] **components** contained in milk or cream, the term [**“Babcock Test”**] **“test”** as used in the act shall include all [**butterfat-testing methods, including the Gerber Method, Automated Light Scattering Method, and Infra-Red Method, having prior approval of the Board**] **component-testing methods referenced in Chapter 144 (relating to electronic methods for testing milk for fat content)** and performed in accordance with the standards established by the Association of Official Agricultural Chemists in that organization’s current edition of Official Methods of Analysis[**, which may be obtained from the Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17120**].

§ 143.23. Quantity of sample.

(a) At least a 35 milliliter sample shall be taken under [**aseptic**] **sanitary** conditions from each lot of milk for use by the plant or laboratory in all quality and composition determinations.

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§ 143.24. Agitation before sampling.

Before any sample is taken from a farm bulk milk tank for testing purposes, the milk shall be agitated for a minimum of 5 minutes, unless a longer period of time is specified by the buyer of the milk or his agent **or the manufacturer of the bulk tank.**

§ 143.25. Calibration chart.

(a) A calibration chart **for a farm bulk milk tank** shall be posted in the milk house of the producer, and an exact reproduction of the chart shall be maintained as part of the records of the dealer **or the cooperative for their producer members.**

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§ 143.26. [Refrigeration] Temperature of samples.

Composite and fresh samples shall be maintained [**under refrigeration**] at a temperature of between [**32°F**] **0.0°C** and [**40°F**] **4.4°C**. When daily additions to composites are made, composite samples shall not be unrefrigerated for more than 30 minutes.

§ 143.27. Transportation of samples.

(a) Milk samples may be transported in bulk tank trucks provided the facilities for transporting the samples [**are refrigerated and**] maintain a temperature of between [**32°F**] **0.0°C** and [**40°F**] **4.4°C** at all times when samples are contained therein.

(b) The daily fresh samples shall[**, upon return of the tank truck from the producer’s farm to the dealer’s plants,**] be transferred to the composite sample bottle or maintained at the dealer’s plant [**under refrigeration**] **or designated sample storage location** at a temperature between [**32°F**] **0.0°C** and [**40°F**] **4.4°C** for testing if fresh sampling method for payment is used.

§ 143.28. Off-premises testing.

Composite and fresh samples may be tested off the premises of the milk dealer by a recognized laboratory if the **[following conditions are complied with:]** samples are transported at a temperature of between 0.0°C and 4.4°C.

[(1) Samples shall be transported under refrigeration at a temperature of between 32°F and 40°F.

(2) After testing, the residues of the composite samples shall be kept under refrigeration at a temperature of between 32°F and 40°F for a period of not less than ten days.]

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