

**CHAPTER 143. TRANSACTIONS BETWEEN DEALERS
AND PRODUCERS****CLASSIFICATION OF MILK**

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CLASSIFICATION OF MILK**§ 143.1. Milk purchased both from producers and dealers.**

(a) When a dealer purchases milk from both producers and other dealers, milk utilized in Class I shall be, as much as possible, that milk purchased from producers.

(b) In successive classes, milk purchased from producers shall, insofar as available, be considered in the highest class in which the dealer utilizes any milk.

(c) The Board may authorize a dealer to pool milk purchased from other dealers with milk purchased from producers to arrive at the blend rate on which producers shall be paid, if the dealer shall furnish the Board with proof that the milk purchased directly from producers was not adequate to supply normal Class I needs.

(d) The provisions of this section do not apply when the Board has adopted Federal Order pricing and classification systems.

Source

The provisions of this § 143.1 amended July 16, 1976, effective July 17, 1976, 6 Pa.B. 1665. Immediately preceding text appears at serial page (19541).

§ 143.2. Milk purchased outside of this Commonwealth.

A dealer who purchases milk or cream from producers in this Commonwealth and in other jurisdictions shall not place milk or cream purchased in other jurisdictions in a higher class than the milk or cream purchased from producers within this Commonwealth.

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.

Authority

The provisions of this § 143.11 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.11 amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353964).

§ 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:

(1) Payment that covers the approximate value of milk or cream purchased from the first to the 15th of each month shall be made not later than the 26th day of each month. This payment need not be accompanied by an itemized statement. This payment shall be at least the lowest announced class price for the previous month for the number of pounds purchased or received during the first 15 days of the month.

(2) Final settlement for all milk and cream purchased during any month shall be made not later than the 17th day of the following month. The final settlement shall include any balances due for the first 15-day period and shall be accompanied by a statement to each producer setting forth the information required under § 143.14 (relating to monthly statement to producers).

(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 the public business.

(b) This section may not be interpreted as prohibiting a dealer from paying its producers on a weekly basis; however, when a dealer pays on this basis, it shall also provide its producers with a monthly statement as prescribed by § 143.14. All advance payments on the weekly basis shall be at least at the lowest announced class price for the previous month for the number of pounds purchased or received during the week in question. The final settlement shall include any balances due for the initial weeks during the month and shall be accompanied by a statement to each producer setting forth the information required under § 143.14.

Authority

The provisions of this § 143.12 amended under sections 307, 608 and 704 of the Milk Marketing Law (31 P. S. §§ 700j-307, 700j-608 and 700j-704); and section 5 of the Milk Producers' and Cooperative Security Funds Act (31 P. S. § 625.5) (Repealed).

Source

The provisions of this § 143.12 amended October 17, 1980, effective October 18, 1980, 10 Pa.B. 4094; amended September 24, 1999, effective September 25, 1999, 29 Pa.B. 4952; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial pages (353964) to (353965).

Cross References

This section cited in 7 Pa. Code § 151.5 (relating to notice with respect to claims against the Milk Producers' Security Fund).

§ 143.13. Manner of payment.

(a) Dealers shall pay producers either by check, 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.

(b) The giving of a promissory note shall not constitute payment within the meaning of this section.

Authority

The provisions of this § 143.13 amended under section 307 of the Milk Marketing Law (31 P. S. § 700j-307).

Source

The provisions of this § 143.13 amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353965).

§ 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 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.

- (1) The name and address of dealer issuing statement.
- (2) The date of statement.
- (3) The period for which statement is rendered.
- (4) The name and producer number of the producer for whom statement is intended.
- (5) A report of the results of the component tests required under § 143.21 (relating to testing; notification of producer).
- (6) The percentage of milk utilized in each classification for milk purchased in this Commonwealth not regulated under a Federal milk marketing order.
- (7) The rate paid per hundredweight 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 17110.
- (8) Applicable components, component rates and total component pounds and values for milk purchased under a Federal milk marketing order.
- (9) The blend rate paid at the producer's average test.
- (10) The total pounds of milk purchased from producer.
- (11) The gross amount paid for milk.
- (12) The pounds of milk subject to State-mandated premiums and additional amounts paid as premiums, bonuses or similar payments.

- (13) The gross amount due after addition of premiums, bonuses or similar payment.
- (14) Itemization of advance payments and authorized deductions.
- (15) The total deductions.
- (16) The net amount due and paid.
- (17) A listing of the amount of milk picked up each day.

Authority

The provisions of this § 143.14 amended under sections 307, 608 and 704 of the Milk Marketing Law (31 P.S. §§ 700j-307, 700j-608 and 700j-704); and section 5 of the Milk Producers' and Cooperative Security Funds Act (31 P.S. § 625.5).

Source

The provisions of this § 143.14 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended September 24, 1999, effective September 25, 1999, 29 Pa.B. 4952; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial pages (353965) to (353966).

Cross References

This section cited in 7 Pa. Code § 143.12 (relating to terms of payment).

§ 143.15. Cooperative communication of over-order premium.

(a) Cooperatives shall show by line item on their monthly statements to dairy farmers marketing milk through the cooperative the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

(b) For the purpose of this section, “the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid” shall be calculated monthly by each cooperative by:

(1) deriving an over-order premium rate by dividing the total Pennsylvania over-order premium paid to the cooperative by the total cooperative Pennsylvania member pounds marketed,

(2) multiplying the rate derived in subsection (b) paragraph (1) by the Pennsylvania member pounds marketed.

(c) The amount calculated in subsection (b) shall be expressed on dairy farmer monthly statements in cents/hundredweight. When the result of the calculation in subsection (b)(1) falls between cents, the rate reported to dairy farmers shall be rounded down to the lower cent.

(d) If a cooperative is not paid an over-order premium during a month, the cooperative shall disclose on its monthly statement that no over-order premium was received.

(e) Other than setting forth the calculation of value in subsection (b), nothing in this section shall require reduction or alteration of amounts, content or format of information about cooperative premium programs on the monthly statements to dairy farmers.

Authority

The provisions of this § 143.15 added under sections 103, 301, 307 and 608 of the Milk Marketing Law (31 P.S. §§ 700j-103, 700j-301, 700j-307 and 700j-608).

Source

The provisions of this § 143.15 adopted May 28, 2021, effective 120 days after publication, 51 Pa.B. 2963.

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 components contained in the milk shall, within 5 days after the end of each sampling period, test composite samples and within 2 days thereafter notify the producer of the result of 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 act regarding “Composite Samples,” it may be interpreted that “Fresh Samples” may be used for the determination of 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 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.

Authority

The provisions of this § 143.21 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.21 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended through October 3, 1980, effective October 4, 1980, 10 Pa.B. 3916; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial pages (363966) to (353967).

Cross References

This section cited in 7 Pa. Code § 143.14 (relating to monthly statement to producers).

§ 143.22. Acceptable test methods.

For the purposes of implementing the act regarding tests as to the amount or percentage of components contained in milk or cream, the term “test” as used in the act shall include all 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.

Authority

The provisions of this § 143.22 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.22 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353967).

§ 143.23. Quantity of sample.

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

(b) The samples must be held, unless used for testing purposes the same day of pick-up, until the next set of samples is collected.

Authority

The provisions of this § 143.23 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.23 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended through October 3, 1980, effective October 4, 1980, 10 Pa.B. 3916; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial pages (353467) to (353468).

§ 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.

Authority

The provisions of this § 143.24 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.24 amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353968).

§ 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.

(b) The chart shall show the name and address of the manufacturer, the serial number of the tank, the serial number of the measuring rod together with the tank capacity, the name or number of the producer and the date of calibration.

Authority

The provisions of this § 143.25 amended under section 307 of the Milk Marketing Law (31 P. S. § 700j-307).

Source

The provisions of this § 143.25 amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353968).

§ 143.26. Temperature of samples.

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

Authority

The provisions of this § 143.26 amended under section 307 of the Milk Marketing Law (31 P. S. § 700j-307).

Source

The provisions of this § 143.26 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended through October 3, 1980, effective October 4, 1980, 10 Pa.B. 3916; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353968).

§ 143.27. Transportation of samples.

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

(b) The daily fresh samples shall be transferred to the composite sample bottle or maintained at the dealer's plant or designated sample storage location at a temperature between 0.0°C and 4.4°C for testing if fresh sampling method for payment is used.

Authority

The provisions of this § 143.27 amended under section 307 of the Milk Marketing Law (31 P. S. § 700j-307).

Source

The provisions of this § 143.27 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended through October 3, 1980, effective October 4, 1980, 10 Pa.B. 3916; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial page (353968).

§ 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 samples are transported at a temperature of between 0.0°C and 4.4°C.

Authority

The provisions of this § 143.28 amended under section 307 of the Milk Marketing Law (31 P. S. § 700j-307).

Source

The provisions of this § 143.28 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended through October 3, 1980, effective October 4, 1980, 10 Pa.B. 3916; amended January 11, 2013, effective January 12, 2013, 43 Pa.B. 216. Immediately preceding text appears at serial pages (353968) to (353969).

§ 143.29. Weighing and sampling of direct load milk.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Bulk milk tanker or tanker—

(i) A mobile bulk container used to transport milk or fluid milk products in bulk from a dairy farm, or to or from a dairy processing plant which is designed to be towed by a motor vehicle.

(ii) The term includes equipment and accessories related to the mobile bulk container.

*Bureau—*The Bureau of Ride and Measurement Standards, of the Department.

*Department—*The Department of Agriculture of the Commonwealth.

*Direct load milk—*Producer milk that is loaded directly from the farm milking parlor into a bulk milk tanker and is not weighed or sampled, or both, by means of an onfarm bulk tank.

*Milk Sanitation Division—*The Bureau of Food Safety and Laboratory Services, Milk Sanitation Division, of the Department.

(b) *General.*

(1) For purposes of payment to producers, direct load milk shall be weighed and sampled in accordance with the provisions of this section.

(2) Sampling and weighing of direct load milk shall take place as close as practicable to the farm and shall take place in this Commonwealth or in a state with a reciprocal agreement for recognition of direct load weighing and sampling methods.

(3) An in-line temperature recorder and indicating thermometer must be located between the chiller and the bulk milk tanker to record the temperature of the milk.

(4) Direct load milk shall be weighed and sampled by a weigher/sampler certified by the Board for direct load milk pickup.

(5) This section does not replace or supersede the requirements, standards and procedures for weighing and sampling of milk established by the Bureau or the Milk Sanitation Division.

(c) *Weighing.* Direct load milk weight shall be established by type-approved scales of appropriate size and location, tested and approved by the Bureau or by a mass flow meter certified to be in compliance with National Institute of Standards Technology Handbook 44 and tested and approved by the Bureau.

(1) *Weighing by scales.*

(i) Scale weight shall be certified by a person licensed as a public weighmaster by the Bureau.

(ii) Snow, ice, mud and other debris shall be removed from the bulk milk tanker before weighing on scales.

(iii) Weighing methods must comply with 3 Pa.C.S. Chapter 41 (relating to Consolidated Weights and Measures Act).

(iv) The weighmaster shall complete and provide to the weigher/sampler, at the time of weighing, a weigh slip approved by the Bureau. Weigh slips with the weighmaster's license number shall be deemed to be completed by the weighmaster, in accordance with 3 Pa.C.S. § 4153 (relating to preparation of weighmaster's certificate).

(A) A licensed public weighmaster may not enter on a weighmaster's certificate issued by the weighmaster weight values which the weighmaster has not personally determined. The weighmaster may not make entries on a weighmaster's certificate issued by another person.

(B) A weighmaster's certificate shall be prepared to show clearly what weights were actually determined.

(C) If the certificate form provides for the entry of gross, tare and net weights in any case in which only the gross, the tare or the net weight is determined by the weighmaster, the weighmaster shall strike through or otherwise cancel the printed entries for the weights not determined or computed.

(D) If gross and tare weights are shown on a weighmaster's certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each weight and the date of each determination.

(v) A standard empty weight may be established for a tanker that is regularly used to haul direct load milk from a producer.

(A) The standard empty weight shall be established at least every month.

(B) The producer shall maintain a record for each tanker. A copy of the record shall be kept with each tanker and available on demand with the following information:

(I) The tanker serial number.

- (II) The manufacturer's rated capacity of the tanker.
 - (III) The date the tanker was put into service hauling direct load milk of the producer.
 - (IV) The date and location of the scale where the standard empty weight was last established
 - (V) Whether the tanker was equipped with a spare tire when the standard empty weight was last established.
- (C) After the standard empty weight is established, the tanker must be equipped with the same spare tire, or not be equipped with a spare tire, whichever was the case when the standard empty weight was last established.
- (D) If tires are changed, maintenance is performed that may affect the weight of the tanker or other equipment or utensils are attached to the tanker, the standard empty weight of the tanker must be established before the tanker is placed back into service.
- (vi) A tanker for which a standard empty weight has not been established shall be weighed before each loading.
- (A) The empty tanker weight may be established by unhooking the tanker on the scales and weighing the tanker alone.
 - (B) A tractor and empty tanker combination may be weighed together if either of the following occur:
 - (I) The tractor and tanker will remain coupled until after the milk is loaded onto the tanker at the farm and the tractor and loaded tanker combination is reweighed.
 - (II) The tractor and loaded tanker combination is weighed at or near a dairy in this Commonwealth before unloading at the dairy, and the tractor and empty tanker combination is reweighed after unloading at or near the dairy where unloaded.
- (vii) To establish milk weight, subtract the weight of the empty tanker or combination from the weight of the loaded tanker or combination.
- (A) The loaded tanker weight may be established by unhooking the tanker on the scales and weighing the tanker alone.
 - (B) If a loaded tanker will not be unhooked from the tractor when weighing the loaded tanker, the weight of the tractor shall be established independently before hooking on to the loaded tanker. The tractor weight shall be added to the empty weight of the tanker to establish the empty weight of the combination.
- (viii) When a tractor is weighed, either alone or in combination with an empty or loaded tanker, the weigher/sampler shall account for the weight of the fuel as follows:
- (A) If the tractor has traveled 15 miles or more between weighing empty and weighing loaded, the weigher/sampler shall account for the

weight of the fuel consumed by subtracting 20 pounds from the empty weight of the tractor for every 15 miles traveled.

(B) If the tractor has been refueled between weighing empty and weighing loaded, the weigher/sampler shall account for the additional weight of the fuel by adding 7.15 pounds to the weight of the tractor for every gallon of fuel added.

(2) *Meter weight.*

(i) Only a food grade, 3-A approved, volumetric flow meter capable of direct pound computations approved by the Board and by the Milk Sanitation Division may be used for establishing milk weight.

(ii) A meter shall be installed by an installer or repair person registered by the Bureau.

(iii) Meters must be National Type Evaluation Program approved, tested and approved by the Bureau and certified for custody transfer.

(iv) The Bureau will annually inspect, test and approve these meters.

(v) The meter shall be positioned at a stationary point between the chiller and the milk tanker.

(vi) The weigher/sampler shall permanently record on paper:

(A) The manufacturer's rated capacity of the tanker.

(B) The date and time the milk tanker began and ended filling.

(C) The meter weight of the milk that entered the milk tanker.

(D) The date that the meter was last verified for accuracy.

(3) *Other weighing or measuring devices, or both.* Other weighing or measuring devices, or both, may be approved on a case-by-case basis by the Bureau and the Board.

(d) *Sampling.*

(1) Samples must comply with §§ 143.23, 143.26 and 143.27 (relating to quantity of sample; refrigeration of samples; and transportation of samples).

(2) Samples shall only be taken after agitation sufficient to ensure that the milk is in a homogenous condition by one of the following methods:

(i) *In-tanker agitation.*

(A) Agitation by a mechanical device placed inside the tanker may be used if the agitation method and equipment are approved by the Board.

(B) Sampling takes place immediately when the agitator is turned off.

(ii) *Over-the-road agitation.*

(A) Agitation by the normal movement of the milk inside the tanker during transport over the road may be used only when the tanker is filled to no more than 97% of the tanker manufacturer's rated volumetric capacity.

(B) A sensor, metering device or other measurement strategy, coupled with an automatic shut-off or alarm system, shall be used to ensure that the tanker is filled to not more than 97% of its rated capacity.

(C) Agitation must take place in not less than a 3-mile trip during which at least three stops and starts shall have occurred.

(D) Sampling shall take place without delay, but less than 5 minutes after the tanker has stopped, and the sample shall be taken from the hatch in accordance with the guidelines of the Milk Sanitation Division.

(iii) *Other agitation methods.* Other agitation methods, such as air agitation, may be used if the agitation method has been certified as effective in at least five repeatable trials and if the method is approved by the Milk Sanitation Division. The Board will provide testing and certification of other agitation methods on a case-by-case basis.

(3) *Other sampling methods.* Other sampling methods, including in-line sampling devices, may be approved by the Board on a case-by-case basis.

Authority

The provisions of this § 143.29 amended under section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Source

The provisions of this § 143.29 adopted December 3, 2010, effective December 4, 2010, 40 Pa.B. 6936.

TERMINATION OF DEALER—PRODUCER CONTRACT

§ 143.31. Written notice required.

(a) No dealer shall terminate its contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer except by giving such producer at least a 90-day written notice before termination. No producer shall terminate its contract or purchasing agreement or ordinary continuance of a previous course of dealing with a dealer except by giving such dealer at least a 28-day written notice before termination. The period of notice shall begin when the producer or dealer receives the notice. The dealer shall specify in such notice the reasons for termination, shall include the list of agencies and organizations required by section (j), and shall pay in full the producer whose contract has been terminated by the 20th day of the month following actual termination. If a dealer petitions for a shorter notice period under subsections (c), (d), (e) and (f), the notice to the producer must inform the producer that the dealer is petitioning for the shorter notice period, this notice must be provided simultaneously to the Board, and this notice shall be sent by certified mail return receipt requested to affected producers and the Board with notice effective no later than on the first date of attempted delivery. If a dealer petitions for a shorter notice period under subsections (c), (d), (e) or (f), the Board shall notify the dealer and affected producers by certified mail return receipt requested within 10 business days of receiving from the dealer the information required by the respective clause its decision to either approve or disapprove the petition.

(b) Repetitions of the causes set forth in § 143.44 (relating to rejection of producer's milk) may, however, cause termination of the contract without the requisite notice.

(c) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day written notice if the dealer is in financial distress. "Financial distress" means an Ohlson O-score of 0.5 and higher. The dealer's Ohlson O-score shall be calculated as follows:

$$O = -1.32 - 0.407 \log(TA_t/GNP) + 6.03 TL_t/TA_t - 1.43 WC_t/TA_t + 0.0757 CL_t/CA_t - 1.72X - 2.37 NI_t/TA_t - 1.83 FFO_t/TL_t + 0.285Y - 0.521 (NI_t - NI_{t-1}) / (|NI_t| + |NI_{t-1}|)$$

Where

TA = total assets

GNP = Gross National Product price index level found at (<https://fred.stlouisfed.org/series/A001RG3A086NBEA>)

TL = total liabilities

WC = working capital = (current assets) - (current liabilities)

CL = current liabilities

CA = current assets

X = 1 if $TL > TA$, 0 otherwise

NI = net income after taxes

FFO = cash flow from operating activities

Y = 1 if a net loss for the last 2 years, 0 otherwise

t = most recent year data

t-1 = prior year data

The Board shall complete its computation and review of the Ohlson O-score, and notify the dealer and affected producers, within 10 business days of receiving the necessary documentation from a dealer. "Necessary documentation" is the Balance Sheet and Statement of Operations found in the Milk Dealer's Financial Statement (PMMB-60), and the Statement of Cash Flows prepared annually with the dealer's financial statements.

(d) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day written notice if the dealer's Ohlson O-score is between -1.0 and 0.5 if any three of the following five solvency ratio conditions are met:

(1) Quick ratio less than or equal to 0.6, where quick ratio = (cash on hand + accounts receivable)/current liabilities.

(2) Current ratio less than 1.0, where current ratio = current assets/current liabilities.

(3) Current liabilities/total equity greater than 2/3.

(4) Total liabilities/total equity greater than 1.0.

(5) Fixed assets/total equity greater than 3/4.

(e) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day

written notice if the dealer has raw milk volumes for which there are insufficient customer sales. Raw milk volumes for which there are insufficient customer sales shall be determined as follows:

- (1) Identify sales reductions or customer losses experienced within any 90-day rolling period.
- (2) Document weekly average sales history in pounds for the customer(s) decreased volume or for the lost customer(s) based on a 26-week rolling average, or a lesser time period if such customer was a customer for less than 26 weeks or was a school(s) and the school contract was lost during the school year.
- (3) Affirm that good faith efforts were made to replace the lost sales.
- (4) If the lost sales calculated according to paragraph (2) amount to at least 40,000 pounds or 3% of raw milk receipts, whichever is less, of raw milk per week and the dealer has made the affirmation required by paragraph (3), the Board shall approve the 28 day written notice based on the dealer having raw milk volumes for which there are insufficient customer sales.
- (5) The Board shall determine if a dealer has raw milk volumes for which there are insufficient customer sales, and notify the dealer and affected producers, within 10 business days of receiving the necessary documentation from a dealer.
- (f) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day notice if the dealer has raw milk volumes for which there is insufficient plant output due to a verifiable catastrophic event affecting a milk plant's ability to handle, process or sell/deliver historical volumes of packaged milk products, which is reasonably expected to last beyond 28-days. Raw milk volumes for which there is insufficient plant output shall be determined as follows:
 - (1) Identify catastrophic events including mechanical failure; weather-related damage; infrastructure-related damage; shut down or slow down of plant operations; government-imposed plant shutdown, partial or otherwise; or other similar catastrophic circumstance.
 - (2) Document weekly average plant output as measured by sales in pounds of packaged milk products prior to catastrophic event based on a 26-week rolling average.
 - (3) Document weekly average raw milk receipts in pounds prior to catastrophic event based on a 26-week rolling average.
 - (4) Document reasons, nature and extent (estimated in pounds) of reduced ability to handle, process or sell/deliver historical output of packaged milk products.
 - (5) Affirm that good faith efforts have been made to return to historical plant output documented under paragraph (2).
 - (6) Affirm that despite good faith efforts the reduction in output will last beyond 28-days.

(7) If the reduction in plant output documented in paragraph (4) amounts to at least 40,000 pounds or 3% of historical raw milk receipts in paragraph (3), whichever is less, of raw milk per week and the dealer has made the affirmations required in paragraphs (5) and (6), the Board shall approve the 28-day written notice based on the dealer having raw milk volumes for which there is insufficient plant capacity due to a catastrophic event.

(8) The Board shall determine if a dealer has raw milk volumes for which there is insufficient output due to catastrophic event and notify the dealer and affected producers within 10 business days of receiving the information required by this subsection.

(g) Any 28-day notice period as provided by this section shall commence on the day the 28-day notice is approved by the Board.

(h) If a contract between a cooperative and a member of the cooperative provides for the amount of notice required to terminate the contract, this section shall not apply.

(i) Notwithstanding subsection (a), a producer and dealer may contract for either more or less than a 90-day notice period to terminate a contract or purchasing agreement. Subsection (a) shall apply when the contract, purchasing agreement or ordinary continuance of a previous course of dealing between a producer and dealer does not contain a termination provision.

(j) The Board shall maintain and make available on its web site a current list of government agencies and nonprofit organizations which are available to assist producers who receive a termination notice. The termination notice shall not be considered received by the producer unless it includes this list.

Authority

The provisions of this § 143.31 amended under sections 301 and 307 of the Milk Marketing Law (31 P.S. §§ 700j-301 and 700j-307).

Source

The provisions of this § 143.31 amended September 29, 1978, effective September 30, 1978, 8 Pa.B. 2671; amended July 30, 2021, effective July 31, 2021, 51 Pa.B. 4223. Immediately preceding text appears at serial page (365388).

Cross References

This section cited in 7 Pa. Code § 143.33 (relating to individual variations).

§ 143.32. [Reserved].

Authority

The provisions of this § 143.32 deleted under sections 301 and 307 of the Milk Marketing Law (31 P.S. §§ 700j-301 and 700j-307).

Source

The provisions of this § 143.32 reserved July 30, 2021, effective July 31, 2021, 51 Pa.B. 4223. Immediately preceding text appears at serial pages (365388) to (365389).

§ 143.33. Individual variations.

Nothing in § 143.31 (relating to written notice required) shall prohibit a contract or agreement providing for a longer period of notice, or severing a relation between dealer and producer by mutual agreement on shorter period of notice.

Authority

The provisions of this § 143.33 amended under sections 301 and 307 of the Milk Marketing Law (31 P.S. §§ 700j-301 and 700j-307).

Source

The provisions of this § 143.33 amended July 30, 2021, effective July 31, 2021, 51 Pa.B. 4223. Immediately preceding text appears at serial page (365389).

MISCELLANEOUS PROVISIONS**§ 143.41. Uniform milk production.**

A dealer and his producers may establish a system of level or uniform milk production in accordance with the requirements of the dealer, and pursuant to the terms and conditions prescribed by the Board, if the milk dealer first shall make a formal application to the Board and receive written authorization to do so.

§ 143.42. Transportation deductions.

(a) —

(1) When a dealer provides the service of transporting the producer's milk from the producer's farm to a dealer's plant of first receipt, the dealer may make reasonable deduction from the payment to the producer for such service based upon the dealer's actual cost of transportation, a record of which shall be kept by the dealer. Such deductions shall not exceed 25¢ per hundredweight of milk transported.

(2) If a dealer is already deducting less than 25¢ per hundredweight for such transportation service on the effective date of this Chapter, he shall thereafter, not increase that deduction, unless such increase is authorized under subsection (b).

(b) The Board may by permit authorize a dealer to deduct in excess of 25¢ per hundredweight or increase his present transportation deduction charge for the transportation service if the dealer presents a written petition to the Board requesting the same and furnishes evidence that the services rendered, the conditions under which the transportation is effected and the costs incurred by the dealer in transporting milk on a particular route warrant an additional deduction.

(c) A dealer shall be deemed to have violated the provisions of this section if he engages in such violation directly or through an agent, employe, subsidiary, or affiliated company or corporation.

§ 143.43. Distressed or surplus milk.

Fluid milk dealers may request an allowance on bulk sales of surplus or distressed milk to other licenses solely engaged in the manufacture of dairy products if the selling dealer obtains written authorization in advance from the Board and provides the Board with information required on detailed forms.

§ 143.44. Rejection of producer's milk.

(a) No handler under the act or person holding any license, permit or certificate issued by the Board shall return any milk to a producer or reject any milk of a producer for any cause except:

- (1) Inferior quality of the milk.
- (2) Noncompliance with the regulations of other governmental health or sanitation agencies.

(b) The return or rejection of the milk shall be supported by a signed statement to the producer setting forth the reasons for which the milk was returned or rejected. A copy of the statement shall be retained by the rejecting handler as a part of his permanent records.

(c) In the case of bulk tank pick-up, the signed statement shall be delivered to the producer in person at the time of rejection or, in the event neither the producer nor his representative is available at the time, it shall be posted in a conspicuous place in the milk house.

(d) In the case of can pick-up, the signed statement shall be delivered to the producer with the returned or rejected milk.

Cross References

This section cited in 7 Pa. Code § 143.31 (relating to written notice required).

Notes of Decisions

Due to the inferior quality of high bacteria milk, dealers may opt to return it to the producers. *Eastern Milk Producers Cooperative Association v. Milk Marketing Board*, 479 A.2d 29 (Pa. Cmwlth. 1984).

§ 143.45. Deductions or assessments from producers.

Deductions of any kind from payments due a producer shall be made only upon written authorization from a producer. A copy of the authorization shall be retained by the milk dealer as part of his permanent records.

§ 143.46. Producer receipt for farm bulk milk.

(a) Pick-up of farm bulk milk shall be supported by a bill of lading or similar document either by Board-approved electronic media or paper document and containing the following information:

- (1) Date of pick-up and time.
- (2) Name or number of a producer.
- (3) Pounds or gallons or similar metric equivalent of milk.
- (4) Milk hauler's license number assigned by the Board.

- (5) Signature, 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 pickup.
- (b) The information required by subsection (a) shall be left with each producer at the time of pick-up. The same information shall be retained by the milk hauler for 90 days; and the same information shall be retained by the purchasing milk dealer or cooperative for 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.
- (c) For direct load milk weighed and sampled under § 143.29 (relating to weighing and sampling of direct load milk), the following provisions apply:
- (1) In addition to the information required in subsection (a), the bill of lading or similar document must also contain:
- (i) When milk weight is established by scales, a copy of the weigh slip required under § 143.29(c) (1)(iv).
- (ii) When milk weight is established by a flow meter, a copy of the information required under § 143.29(c)(2)(vi).
- (iii) The method of sampling.
- (iv) The method of agitation, if applicable.
- (2) If weighing and sampling was done at the farm, the information shall be left with the producer at the time of pick-up. If weighing or sampling was done at a distant location, the information shall be provided to the producer within 24 hours of pick-up, or at the time the next tanker is picked up, whichever is earlier.

Source

The provisions of this § 143.46 amended October 11, 1974, effective October 12, 1974, 4 Pa.B. 2170; amended January 16, 2009, effective January 17, 2009, 39 Pa.B. 308; amended December 3, 2010, effective December 4, 2010, 40 Pa.B. 6936. Immediately preceding text appears at serial pages (340269) to (340270).

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