

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Milk Marketing Board

99 AUG -9 PM 2:41

(2) I.D. Number (Governor's Office Use)

47-5

IRRC Number: #2052

(3) Short Title

Transactions Between Dealers and Producers
Uniform System of Accounts

Harbison

(4) PA Code Cite

7 Pa. Code Sections
143.12, 143.14, and 149.24

(5) Agency Contacts & Telephone Numbers

Primary Contact:

Sally Ulrich, Chief Counsel 787-4194

Secondary Contact:

Sharon Grottola, Staff Attorney 787-4194

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The amendments to Sections 143.12 and 143.14 harmonize the following requirements with federal regulations due to be implemented on October 1, 1999: (1) dates by which milk dealers must make interim and final payments to producers and (2) the class of milk to be used as the basis for interim payments (see 64 F.R. 16229). Section 149.24 is amended to add Class IV milk, a new federal category (see 64 F.R. 16173 - 74). Section 143.12 is also amended by deleting a reference to the Board's annual promulgation of a weekly producer payment schedule. Because no dealers pay on a weekly basis, the Board promulgates no such schedule.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 608 of the Milk Marketing Law, 31 P.S. Section 700j-608, authorizes the Board to establish the basis on which payment for milk is to be made, the timing of payment, and the contents of the written statement that must accompany payment. Section 5 of the Milk Producers' Security Act, 31 P.S. Section 626.5, empowers the Board to establish the time period in which milk dealers must make final payments to producers. Section 704 of the Milk Marketing Law, 31 P.S. Section 700j-704, requires the Board to establish a uniform system of accounts.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Although there is no specific federal mandate, the following information is offered to explain the interplay between federal and state milk marketing regulation. On April 2, 1999, the Agricultural Marketing Service, United States Department of Agriculture (USDA) published in the Federal Register its final decision on federal milk marketing order reform (referred to hereinafter as "final decision."). See 64 FR 16026 et seq. This document was accompanied by substantial revisions to USDA regulations found in Title 7 of the Code of Federal Regulations, Parts 1000 to 1199, which govern milk orders. Upon approval of the new orders by the required number of producers in each federal marketing area, the USDA will publish in the Federal Register a final order implementing the orders. (continued on attachment)

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments address changes in federal milk marketing orders promulgated by the USDA (see #10). These changes are of compelling interest to Pennsylvania producers and dealers inasmuch as they have far-reaching effects on the pricing of, payment for, and classification of producer milk.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would result in conflicts between state and federal regulations in important areas of milk marketing.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Pennsylvania producers and dealers will benefit from a harmonization of
(a) payment timing requirements under state and federal regulations and
(b) classification of milk.

Attachment to:

Regulatory Analysis Form, Item (10)

Congress has directed that implementation occur by October 1, 1999. Much of Pennsylvania producer milk is priced under a federal milk marketing order; for milk not federally regulated, the Board, to the extent deemed appropriate pursuant to hearing, adopts procedures that conform with those of the USDA. The amendments achieve harmony with certain federal payment requirements and classification categories.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There are no known adverse effects.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Milk dealers who purchase milk from Pennsylvania producers will be required to comply with the regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Following notice, the Board conducted a hearing on federal order reform on June 2 and July 7, 1999. Thereafter the Board informed affected persons, including producer organizations and representatives of milk dealers, of recommendations made pursuant to that hearing for amending the regulations. The Board solicited comments on the suggested amendments, following notice, at its Sunshine meeting on August 3, 1999. The Board also solicited written comments; none, however, were received. No objections to the amendments have been raised.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Milk dealers will be required to include a Class IV category in their monthly reports. No cost estimate is available; however, since the Class IV category is established under federal milk marketing orders, compliance is largely a function of federal regulation.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Not applicable

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

<u>Not applicable</u>	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
Not applicable

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No alternatives are appropriate.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternatives are appropriate.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Harmonizing state and federal milk marketing regulations is common practice and will not disadvantage Pennsylvania.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The existing regulations that are being amended will, of course, be affected. There are no other effects.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

See #16 for hearing and meeting information. No additional hearings or meetings are contemplated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

As explained above, milk dealers will include a new Class IV category in their monthly reports to the Board.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Board hopes to achieve an effective date of October 1, 1999, thus coordinating the amendments with the implementation date of the new federal orders. A later effective date would be workable, provided it predates October 26, when the first interim payment under section 143.12 will be due.

(31) Provide the schedule for continual review of the regulation.

The regulations will be reviewed on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

99 AUG -9 PM 2: 41

2052

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

_____ Milk Marketing Board
(AGENCY)

BY: *Joseph M. Ulrich*

DOCUMENT/FISCAL NOTE NO.: 47-5

DATE OF APPROVAL

DATE OF ADOPTION: _____

8/5/99
DATE OF APPROVAL

BY: *Carey L. Minor*

~~(Deputy General Counsel
Chief Counsel,
Independent Agency
(Strike inapplicable title)~~

TITLE: CHAIRWOMAN
(EXECUTIVE OFFICER, CHAIRMAN, OR SECRETARY)

() Check if applicable.
Copy not approved.
Objections attached.

() Check if applicable. No
Attorney General approval or
objection within 30 days after
submission.

MILK MARKETING BOARD

[7 PA. CODE CHS. 143 and 149]

Transactions Between Dealers and Producers Uniform System of Accounts

The Milk Marketing Board amends 7 Pa. Code §§ 143.12 (relating to terms of payment), 143.14 (relating to monthly statement to producers), and 149.24 (relating to separating expenditures for raw product into controlled and non-controlled amounts) to read as set forth in Annex A.

On April 2, 1999, the Agricultural Marketing Service, United States Department of Agriculture (USDA) published in the *Federal Register* its final decision on federal milk marketing order reform (referred to hereinafter as "final decision."). See 64 FR 16026 *et seq.* This document was accompanied by substantial revisions to USDA regulations found in Title 7 of the Code of Federal Regulations, Parts 1000 to 1199, which govern milk orders. Upon approval of the new orders by the required number of producers in each federal marketing area, the USDA will publish in the *Federal Register* a final order implementing the orders. Congress has directed that implementation occur by October 1, 1999.

On June 2 and July 7, 1999, the Board conducted a hearing to receive evidence concerning the impact of federal order reform on the Board's official general orders governing producer and resale pricing in Pennsylvania. The Board order based on the hearing, Official General Order (OGO) A-903, was issued on August 3, 1999; the effective date of the order is September 1, 1999, inasmuch as prices for producer milk regulated under the new federal orders are expected to be announced on September 23. (Should Congress delay implementation of the final decision beyond October 1, OGO A-903 provides for an alternative effective date of thirty days before the new implementation date.)

The June 2/July 7 hearing also addressed the need to harmonize certain regulatory provisions with federal practice under the final decision. The amendments to §§ 143.12, 143.14, and 149.24 achieve harmony with federal requirements governing payments to producers and classification of milk (see 64 F.R. 16173 - 74 and 16229). Existing § 143.12 requires that advance payments to producers, whether made monthly or weekly, be at least the applicable Class II price for the previous month. The final decision mandates that these payments be at least the lowest announced class price. The final decision also changes the timing for advance and final payments from, respectively, the last day of the month to the 26th day and the 18th day of the month to the 17th day. The amendments to sections 143.12 and 143.14 reflect these changes. The list in section 149.24 of categories of milk not price-controlled by the Board is amended to include the new federal Class IV classification.

An additional amendment, unrelated to federal order reform, is being made to section 143.12(b). Because no milk dealers pay on a weekly basis, the Board does not annually promulgate a weekly payment schedule. Reference to that schedule has therefore been deleted.

Public notice of intention to amend the regulations under the procedures in sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) (CDL) has been omitted under section 204(3) of the CDL because the Board finds that these procedures are impracticable and unnecessary under the circumstances. Because the new federal orders are due to be implemented on October 1, it would be impracticable to submit the amendments to the procedures associated with proposed rulemaking. Amended section 143.12 requires that producers receive interim payments by the 26th day of each month. That requirement would govern October producer payments. Accordingly the amendment must be effective before October 26, 1999. Although federal regulations do not govern all milk produced in Pennsylvania, maintenance of uniform timing and minimum payment provisions will ensure that Pennsylvania producers continue to receive payment for both federally regulated and state-regulated milk on a stable and predictable basis.

Proposed rulemaking is also unnecessary under the circumstances. Milk dealer and producer organizations received notice of and participated in the amendatory process. As noted heretofore, testimony at the June 2/July 7 hearing addressed the need to amend the regulations. Thereafter the Board provided for comment by the milk industry during its Sunshine meeting on August 3, and also solicited written comments (none were received). No objections to the amendments have been raised.

Statutory Authority

Section 608 of the Milk Marketing Law, 31 P.S. § 700j-608, authorizes the Board to establish the basis on which payment for milk is to be made, the timing of payment, and the contents of the written statement that must accompany payment. Section 5 of the Milk Producers' Security Act, 31 P.S. § 626.5, empowers the Board to establish the time period in which milk dealers must make final payments to producers. Section 704 of the Milk Marketing Law, 31 P.S. § 700j-704, requires the Board to establish a uniform system of accounts.

Fiscal Impact and Paperwork Requirements

These amendments will have no fiscal impact on the Commonwealth or its political subdivisions, nor will they create new paperwork requirements for these entities. The addition of a Class IV category in section 149.24 will create a modest change in reporting requirements for milk dealers.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on August 9, 1999, a copy of these amendments was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpeople of the Senate and House Committees on Agriculture and Rural Affairs. At the same time the amendments were submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506).

Under section 5.1(d) of the Regulatory Review Act, this final-omitted regulation was approved by the Senate and House Committees on Agriculture and Rural Affairs on, respectively, _____, 1999, and _____, 1999, and by IRRC on _____, 1999.

Additional Information

Persons may submit inquiries about these amendments to Sally A. Ulrich, Chief Counsel, Pennsylvania Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, PA 17110, (717) 787-4194.

Findings

The Board finds that:

(1) Public notice of intention to amend the final-omitted regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under section 204(3) of the CDL because the Board has, for good cause, found that the procedures in sections 201 and 202 are impracticable and unnecessary under the circumstances inasmuch as the amendments harmonize certain state practices with federal practices due to be implemented on October 1, 1999, and inasmuch as affected persons had the opportunity to participate in the amendatory process and had no objections to the amendments set out in Annex A.

(2) Amending the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the Board's authorizing statutes.

The Board, acting under its authorizing statutes, orders that:

(a) The Board's regulations at 7 Pa. Code Chapters 143 and 149 are amended by amending sections 143.12, 143.14, and 149.24 to read as set forth in Annex A.

(b) The chairwoman of the Board shall submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The chairwoman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be effective on October 1, 1999.

BEVERLY R. MINOR
Chairwoman

Annex A

**TITLE 7. AGRICULTURE
PART VI. MILK MARKETING BOARD
CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS
CHAPTER 149. UNIFORM SYSTEM OF ACCOUNTS**

§ 143.12. Terms of payment.

(a) Producers shall be paid not later than the [last] 26th day of each month and the [18th| 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 [last] 26th day of each month. Such payment need not be accompanied by an itemized statement. Such payment shall be at least the [applicable Class II] 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 [18th| 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 of this title (relating to monthly statement to producers).

(b) The provisions of this section shall not be interpreted as prohibiting a dealer from paying its producers on a weekly basis; however, where a dealer pays on such a basis, it shall also provide its producers with a monthly statement as prescribed by § 143.14 of this title (relating to monthly statement to producers). [When a dealer elects to pay on a weekly basis, it shall make payments in accordance with a weekly payment schedule which will be promulgated by the Board on an annual basis.] All advance payments on the weekly basis shall be at least at the [applicable Class II] 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 of this title (relating to monthly statement to producers).

§ 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| 17th day of each month.

§ 149.24. Separating expenditures for raw product into controlled and non-controlled amounts.

(a) From the milk dealer's monthly report, the product and butterfat pounds sold or utilized shall be determined for each producer payment category, as follows:

Controlled, Class I

Controlled, Class II

Non-controlled, Class I

Non-controlled, Class II

Non-controlled, Class III

Non-controlled, Class IV



**COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD**

SECRETARY

August 9, 1999

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

Independent Regulatory Review Commission
14th Floor - Harristown 2
333 Market Street
Harrisburg, PA 17120

Re: FINAL RULEMAKING - PROPOSED RULEMAKING OMITTED
Milk Marketing Board
7 Pa. Code Chapters 143 and 149
Transactions Between Dealers and Producers
Uniform System of Accounts
I.D. #47-5

Dear Commissioners:

Enclosed is a copy of the above-referenced document and an accompanying regulatory analysis form. Copies of these materials have been submitted to the majority and minority chairpeople of the House and Senate Agriculture and Rural Affairs Committees and to the Office of Attorney General.

Very truly yours,


Lynda J. Bowman

Enclosures



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE 717 787-4374

HAND DELIVERY

August 9, 1999

Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

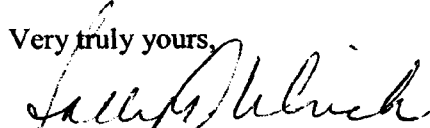
Re: Milk Marketing Board Contact Person

Dear Mr. Nyce:

Please be advised that I am the contact person designated to receive Commission documents associated with regulatory review.

Telephone: 787-4194
Fax: 783-6492
E-mail: sulrich@agric.state.pa.us

Very truly yours,


Sally A. Ulrich
Chief Counsel

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I. D. NUMBER: 47-5

SUBJECT: Transactions Between Dealers and Producers
Uniform System of Accounts
AGENCY: Milk Marketing Board

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

59 AUG -9 PM 2:42
REG. DIV. 107

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>8/9/55</u>	<u><i>[Signature]</i></u>	<u>HOUSE COMMITTEE</u>
<u>8/9</u>	<u><i>[Signature]</i></u>	<u>Agriculture & Rural Affairs</u> <u>SENATE COMMITTEE</u>
<u>8/9</u>	<u><i>[Signature]</i></u>	<u>Agriculture & Rural Affairs</u> <u>INDEPENDENT REGULATORY</u> <u>REVIEW COMMISSION</u>
<u>8/9</u>	<u><i>[Signature]</i></u>	<u>ATTORNEY GENERAL</u>
<u> </u>	<u> </u>	<u>LEGISLATIVE REFERENCE</u> <u>BUREAU</u>