

Regulatory Analysis Form

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(1) Agency
Pennsylvania Milk Marketing Board

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REGISTRY
NEW COMMISSION

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

IRRC Number: **2137**

(3) Short Title
Calculation of Bonding Obligation

(4) PA Code Cite
7 Pa. Code § 151.9

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Lynda J. Bowman, Executive Secretary**
787-4194

Secondary Contact: **Sharon L. Grottola, Chief Counsel**
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 proposed regulation changes the manner in which milk dealers' bonding obligations are calculated. A milk dealer's bonding obligation is calculated by dividing the amount owed for milk by that dealer during a two month period by the number of days in that two month period and then multiplying this quotient by 40. The amount arrived at is the amount of the bond the milk dealer must post in order to receive a milk dealer's license.

Under the existing regulation, the numerator of the quotient used in the bonding calculation is determined by using the highest amount owed in any month during the preceding license year and adding to that the amount owed in the succeeding month.

The proposed regulation changes in two ways the manner in which the numerator of the quotient is determined. In the proposed regulation, the two month period utilized in the quotient is the two consecutive months in the previous calendar year, rather than the previous license year, in which the sum of the amounts owed by the dealer to producers was the highest.

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

The Milk Producers' Security Act sections 7(c) and 8, 31 P.S. §§ 626.7(c) and 626.8.

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(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.

No

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

The principle purpose of the regulation is to adjust the calculation of milk dealers' bonding obligations to reflect more accurately the volume of producer purchases during a 12 month period, thus providing greater economic protection for dairy farmers.

The regulation also updates 7 Pa. Code § 151.9 by replacing a citation to the repealed Milk Producers' and Cooperative Security Funds Act with a citation to the successor act.

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

The proposed regulation is an amendment to an existing regulation setting forth the method the Board uses to calculate milk dealers' bonding obligations as required by sections 7(c) and 8 of the Milk Producers' Security Act, 31 P.S. §§ 626.7(c) and 626.8.

However, requiring milk dealers to post bonds provides economic protection to dairy farmers by providing a source of funds to ensure that the farmers will be paid for their milk.

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

The approximately 9,900 dairy farmers of the Commonwealth will benefit due to milk dealers' bonding obligations more accurately reflecting their volume of producer purchases.

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(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.)

Some milk dealers may be adversely affected due to the possibility of an increase in their bonding obligation.

At an August 3, 1999, public hearing held to receive comments on the proposed regulation, the Board's Chief of Support Services reported the results of an analysis of a random selection representing 15% of bonded milk dealers. The analysis compared bond calculations based on the proposed regulation with calculations under the existing regulation. The analysis covered two license periods: July 1, 1998 – June 30, 1999, and July 1, 1999 - June 30, 2000. For the 1998-1999 license year, 40% of the dealers in the survey would have experienced no change in their bonding obligation, 40% would have experienced bonding increases ranging from 1% - 10%, and 20% would have experienced bonding obligation decreases of less than 4%. For the 1999-2000 license year, 80% would have experienced no change in their bonding obligation, and 20% would have experienced increases of less than 4%. The negligible impact of the proposed regulation on bond for the 1999-2000 license year is owing to exceptionally high milk prices in November and December 1998; for most milk dealers, those two months would have been the basis for bonding calculations under both the existing regulation and the proposed regulation.

(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.)

Sixty-two (62) licensed milk dealers will be required to comply with the proposed regulation.

These licensed milk dealers are required to comply with the present regulation.

(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.

On August 3, 1999, the Board, after due notice, conducted a public hearing to receive comments on the proposed regulation. The attendees included representatives of the Pennsylvania Farm Bureau, the Pennsylvania Association of Milk Dealers, the Middle Atlantic Milk Marketing Agency (a group of dairy cooperatives), the Pennsylvania Farmers Union, and the Pennsylvania Food Merchants Association. The only person to offer comments was the Board's Chief of Support Services, who manages licensing and bonding, and who spoke in favor of the proposed regulation as a means of providing greater protection to dairy farmers. No objections to the proposed regulation were received.

(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.

There should be no added costs or savings to the regulated community due to legal, accounting, or consulting considerations.

As noted above, bonding obligations may increase, decrease, or remain the same depending on

milk prices and the volume of milk purchased by individual milk dealers. Under the present regulation, a milk dealer's bonding obligation may increase, decrease, or remain the same from year-to-year depending on milk prices and the volume of milk purchased by that dealer.

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.

There should be no cost or savings to local governments associated with the proposed regulation.

(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.

There should be no cost or savings to state government associated with the implementation of the proposed regulation.

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(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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
COSTS:						
Regulated Community	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
REVENUE LOSSES:						
Regulated Community	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)

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

The proposed regulation makes slight adjustments to the method used for calculating milk dealers' bonding obligations. Local and state governments would realize no savings or costs associated with the adjustments in calculating the bonding obligations. Nor do local and state governments derive any revenues from milk dealers' bonding obligations; hence, there would be no revenue losses associated with adjusting the method utilized to calculate the bonding obligation.

* Bonding obligations may increase, decrease, or remain the same depending on milk prices and the volume of milk purchased by individual dealers. Under the present regulation, a milk dealer's

bonding obligation may increase, decrease, or remain the same from year-to-year depending on milk prices and the volume of milk purchased by that dealer.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

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.

There are negligible costs associated with adjusting the method utilized to calculate milk dealers' bonding obligations. As noted above, individual milk dealers may see an increase, decrease, or no change in their bonding obligation depending on the price of milk and the volume of milk purchased; however, the same situation holds under the present method of calculating bonding obligations.

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

A regulation is necessary to calculate and implement the bonding obligations as provided by sections 7(c) and 8 of the Milk Producers' Security Act, 31 P.S. §§ 626.7(c) and 626.8.

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

The present regulatory scheme was considered and rejected because the proposed regulation more accurately reflects the volume of producer purchases during a 12 month period and provides greater economic protection to dairy farmers.

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?

No

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

No

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

A public hearing was held on August 3, 1999. Attendees included representatives of the Pennsylvania Farm Bureau, the Pennsylvania Association of Milk Dealers, the Middle Atlantic Milk Marketing Agency (a group of dairy cooperatives), the Pennsylvania Farmers Union, and the Pennsylvania Food Merchants Association. The only person to offer comments was the Board's Chief of Support Services, who manages licensing and bonding, and who spoke in favor of the proposed regulation as a means of providing greater protection to dairy farmers. No objections to the proposed regulation were received.

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.

The proposed regulation will not change existing reporting, record keeping, or other paperwork requirements. The proposed regulation will merely change the calculation utilized by Board staff to determine milk dealers' bonding obligations.

(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.

The proposed regulation adjusts the method utilized to determine milk dealers' bonding obligations to more accurately reflect the volume of producer purchases during a 12 month period, thus providing greater economic protection to dairy farmers.

(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?

It is anticipated that the regulation would be effective with the 2002-2003 license year, which begins July 1, 2001. Milk dealer license applications for the 2002-2003 license year are due by June 15, 2002.

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

The effect and effectiveness of the regulation will be reviewed annually as license applications are received by the Board. It is anticipated that the dairy industry will also be reviewing the effect and effectiveness of the regulation annually.

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FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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REVIEW COMMISSION

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

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[Signature]
BY: _____
(DEPUTY ATTORNEY GENERAL)

Milk Marketing Board
(AGENCY)

[Signature]
BY: _____

OCT 01 1999

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO.: 47-7

DATE OF ADOPTION:

9/9/99

DATE OF APPROVAL

[Signature]
BY: _____

~~(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.

NOTICE OF PROPOSED RULEMAKING
MILK MARKETING BOARD
(7 Pa. Code, Chapter 151)

Calculation of Bonding Obligation

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p>_____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. _____</p> <p>DATE OF ADOPTION _____</p> <p>BY _____</p> <p>TITLE _____</p> <p>EXECUTIVE OFFICER CHAIRMAN OR SECRETARY</p>	<p>Copy below is hereby approved as to form and legality Executive or Independent Agencies</p> <p>BY <u>Sharon L. Suttale</u></p> <p><u>4-8-02</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel - Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
<p>DATE OF APPROVAL _____</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>		

NOTICE OF PROPOSED RULEMAKING
MILK MARKETING BOARD
(7 Pa. Code, Chapter 151)

Calculation of Bonding Obligation

The Pennsylvania Milk Marketing Board (Board) amends 7 Pa. Code § 151.9 (relating to number of days for bond in lieu of payment to Security Fund) to read as set forth in Annex A, under authority of section 14 of the Milk Producers' Security Act (31 P.S. § 626.14).

Notice of proposed rulemaking was published at 30 Pa.B. 4253 (August 12, 2000) with an invitation to submit written comments within 30 days. The Board received no public comments. The Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs Committee offered no comments, suggestions, or objections to the amendment. The Independent Regulatory Review Commission (IRRC) did offer comments, which are discussed fully below.

In final Rulemaking, the Board considered IRRC's comments and suggestions. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation.

Purpose

The principal purpose of the amendments is to adjust the calculation of milk dealers' bonding obligations to reflect more accurately the volume of producer purchases during a 12-month period - thus providing greater economic protection for dairy farmers. The amendments also update the regulation by replacing a citation to the repealed Milk Producers' and Cooperative Security Funds Act with a citation to the successor act.

Comments

IRRC offered three recommendations related to subsection (a). First, IRRC recommended that the citation to the Act be removed from the final-form regulation; the Board believes it is necessary to leave the citation in the final-form regulation so that it is clear that this regulation addressed the bonding obligation contained in the Act. Second, IRRC noted that there is no need to quote statutory language in the regulation; the Board removed the quote from section 7(c) of the Act in the final-form regulation. Finally, IRRC recommended that, for greater clarity and readability, the final-form regulation should be written in the active voice; the Board has followed this recommendation as well, and the final-form regulation has been written in the active voice.

IRRC also questioned the meanings of "a purchase subject to minimum pricing fixed by the Board" and "a purchase not subject to minimum pricing fixed by the Board" in subsections (b)(1) and (b)(2). A "purchase subject to minimum pricing fixed by the Board" is a transaction between a milk dealer and a Pennsylvania producer. A "purchase not subject to minimum pricing fixed by the Board" is any other transaction between a milk dealer and a producer. This is such a longstanding and well-settled distinction within the dairy industry, based on decades of enforcement and interpretation of the Milk Marketing Law, that the Board does not think it is necessary to clarify the distinction in the final-form regulation.

Paperwork Estimates

Amended § 151.9 will not substantially alter paperwork, accounting, or reporting requirements already in place.

Effective Date

This final-form regulation will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(1)), the Board submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 4253 (August 12, 2000) to IRRC and to the Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs Committee.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with other documentation. In addition to submitting the final-form regulation, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing this final-form regulation, the Board has considered the comments received from IRRC.

Contact Person

The official responsible for information on these final-form regulations is Lynda J. Bowman, Executive Secretary, Pennsylvania Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4194.

Findings

The Board finds that:

(1) Public notice of the intention to adopt these final-form regulations was given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The regulation is necessary and appropriate for the administration of the act.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 7 Pa. Code Chapter 151, are amended by amending § 151.9 to read as set forth in Annex A.

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

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

(d) The order shall take effect upon publication in the Pennsylvania Bulletin.

Beverly R. Minor
Chairperson

Annex A

TITLE 7. AGRICULTURE
PART VI. MILK MARKETING BOARD
CHAPTER 151. SECURITY FUNDS, BONDING AND ALTERNATIVE
SECURITY

§ 151.9. [Number of days for bond in lieu of payment to Security Fund]
Calculation of bonding obligation.

[For the purpose of section 9(d) of the Milk Producers' and Cooperative Security Funds Act (31 P.S. § 625.9(d) (Repealed), the highest aggregate amount owed for milk by a dealer or handler to producers means the highest amount owed for milk in any 1 month during the preceding licensing year plus the amount owed for milk in the next succeeding month divided by the number of days in those 2 months and multiplied by 40.] ~~(a) Under~~ FOR THE PURPOSE OF sections 7(c) and 8 of the Milk Producers' Security Act (the Act), the bond a milk dealer must file before the beginning of each license year is based on "the highest aggregate amount owed by the dealer to producers for a 40-day period during the preceding 12 months." the Board SHALL USE THE FOLLOWING METHOD TO ~~will ascertain the highest aggregate amount owed BY THE DEALER TO PRODUCERS FOR A 40-DAY PERIOD DURING THE PRECEDING 12 MONTHS for the applicable period by:~~

(1) Reviewing the amount owed by the milk dealer to all its producers for each month in the preceding calendar year.

(2) Identifying the 2 consecutive months in which the sum of the amounts owed was the highest.

(3) Dividing the sum of the amounts owed from paragraph (2) by the total number of days in the 2 consecutive months.

(4) Multiplying the quotient from paragraph (3) by 40.

(b) As used in sections 7(c) and 8 of the Act and in subsection (a), "amount owed" has the following meanings:

(1) For a purchase subject to minimum pricing fixed by the Board, "amount owed" means the amount the milk dealer was required to pay the producer under the applicable Board order, even though the actual amount paid exceeded the Board-established minimum price.

(2) For a purchase not subject to minimum pricing fixed by the Board, "amount owed" means the actual amount the milk dealer lawfully paid the producer.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

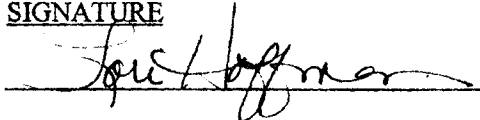
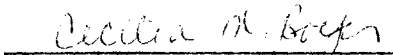

I. D. NUMBER: 47-7
SUBJECT: 7 Pa. Code section 151.9 Calculation of bonding obligation
AGENCY: Milk Marketing Board

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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
4/10/02		<u>HOUSE COMMITTEE</u> Agriculture & Rural Affairs
4/10		<u>SENATE COMMITTEE</u> Agriculture & Rural Affairs
4/10/02		<u>INDEPENDENT REGULATORY REVIEW COMMISSION</u>
_____	_____	<u>ATTORNEY GENERAL</u>
_____	_____	<u>LEGISLATIVE REFERENCE BUREAU</u>