

# Regulatory Analysis Form

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REVIEW COMMISSION



(1) Agency  
**Pennsylvania Milk Marketing Board**

(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.**

### **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.

**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.**

## **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.)

**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.**

## 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
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
<b>Total Savings</b>	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
<b>COSTS:</b>						
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
<b>Total Costs</b>	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)	\$ not known (*)
<b>REVENUE LOSSES:</b>						
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
<b>Total Revenue Losses</b>	\$ 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.

### Regulatory Analysis Form

(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 2001-2002 license year, which begins July 1, 2001. Milk dealer license applications for the 2001-2002 license year are due by June 15, 2001.**

(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.**



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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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.

*[Signature]*  
DEPUTY ATTORNEY GENERAL

Milk Marketing Board  
(AGENCY)

BY: *[Signature]*

OCT 01 1999.

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO.: 47-7

DATE OF ADOPTION:

9/9/99

DATE OF APPROVAL

BY: *[Signature]*

~~(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

The Pennsylvania Milk Marketing Board (Board) proposes to amend 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.

***Purpose of proposed amendments***

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. (Note: The Board recognizes that other provisions in Chapter 151 have been superseded or otherwise affected by statutory changes and is preparing a comprehensive amendatory package. Section 151.9 has been given priority so that the adjusted bond calculation is in place for the 2000 - 01 license year.)

***Summary of proposed amendments***

Section 7(c) of the Milk Producers' Security Act, 31 P.S. §§ 626.7(c), provides that a milk dealer's bonding obligation is based on "the highest aggregate amount owed by the dealer to producers for a 40-day period during the preceding 12 months." Under the existing regulation, the Board uses the highest amount owed in any month during the preceding license year, adds the amount owed in the succeeding month, divides the sum by the number of days in those two months, and multiplies the quotient by 40. This methodology is not entirely satisfactory inasmuch as the highest volume month may be succeeded by one of the lowest volume months.

Under the amendments, the Board would use the two consecutive months in which the sum of the amounts owed was the highest and then perform the division and multiplication operations described above. The two consecutive months would be drawn from the preceding calendar year instead of the preceding license year. The license year for milk dealers runs from July 1 - June 30. License renewal applications, accompanied by bond calculations, must be mailed several weeks before a new license year begins. It is therefore not possible to base the bond calculation on the preceding license year. Using the preceding calendar year allows time for the auditing and administrative work associated with license renewal.

The amendments also add a subsection (b), which sets out the two meanings of "amount owed." The amount owed for milk regulated by the Board is the Board-established minimum price, even though the dealer may have paid the producer a higher price--for example, a quality premium. The amount owed for milk not regulated by the Board is the actual amount the milk dealer lawfully paid the producer. For example, if the milk is priced under a federal milk marketing order, the federal minimum price is the lawful price.

### ***Statutory authority***

Section 8 of the Milk Producers' Security Act requires milk dealers to file bonds before the beginning of each license year. Section 7(c) provides that the bond be based on the highest amount a dealer owed for milk for a 40-day period during the preceding 12 months.

### ***Public hearing***

On August 3, 1999, the Board, after due notice, conducted a public hearing to receive comments on the proposed amendments. 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 chief of the Board's Support Services Division, who manages licensing and bonding. She spoke in favor of the amendments as a means of providing greater protection to dairy farmers. No objections to the amendments were received.

### ***Fiscal impact***

Use of the two highest consecutive months may result in higher bonding obligations for some milk dealers. The exact dollar impact will not be known until bonds are calculated for the 2000-01 license year. As part of her testimony at the August 3 hearing, however, 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 amendments with calculations under the existing regulations. The analysis covered two license periods: July 1, 1998 - June 30, 1999, and July 1, 1999 - June 30, 2000. For the 1998-99 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 decreases of less than 4%. For the 1999-00 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 amendments on bonds for the 1999-00 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 amended regulation.

### ***Paperwork requirements***

None.

***Effective date; sunset date***

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

***Regulatory review***

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), a copy of this proposal was submitted on August 4, 2000 to the Independent Regulatory Review Commission (IRRC) and to the chairpeople of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendments, the Board has provided IRRC and the committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

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

***Public Comment***

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

Beverly R. Minor  
*Chairwoman*

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 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 will ascertain the highest aggregate amount owed 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

2000 AUG -4 AM 10:11

I.D. NUMBER: 47-7

SUBJECT: 7 Pa. Code sec. 151.9 Calculation of Bonding Obligation

AGENCY: Pennsylvania Milk Marketing Board

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/4/00	<i>C. Daly</i>	HOUSE COMMITTEE ON Agriculture and Rural Affairs
8/4/00	<i>D. Sellers</i>	SENATE COMMITTEE ON Agriculture and Rural Affairs
8/4	<i>Jessica Vulliamy</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
8/4/00	<i>Andrew D. Noon</i>	LEGISLATIVE REFERENCE BUREAU