

# Regulatory Analysis Form

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REVIEW COMMISSION

(1) Agency

Pennsylvania Milk Marketing Board

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

47-9

IRRC Number: 2218

(3) Short Title

Pennsylvania Over-Order Premium Pool

(4) PA Code Cite

7 Pa. Code Chapter 148

(5) Agency Contacts & Telephone Numbers

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

Secondary Contact: **Douglas L. Eberly, 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.

Currently, the Pennsylvania Milk Marketing Board (Board) places a premium above the federal order price for Class I fluid milk that is produced, processed, and sold within Pennsylvania. This premium is designated as an over-order premium and is currently at a level of \$1.40 per hundredweight of milk. Since its origin in 1988, the over-order premium has been established in response to conditions faced by all Pennsylvania producers, regardless of how their milk is ultimately utilized. This mandated over-order premium has been, and is now, paid on milk that is produced, processed, and sold as Class I fluid milk within Pennsylvania. The purpose of this regulation is to create a partial pool of forty-five percent of the over-order premium. This forty-five percent will be distributed to all qualified producers (as defined in the regulation) regardless of whether their milk is used for Class I purposes. The remaining fifty-five percent of the over-order premium will continue to be paid to the dairy farmers whose milk supplies Class I plants. The regulation contains information relative to the calculation of the over-order premium pool as well as the method of collection and distribution of the pool.

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

**There is no specific language within the Milk Marketing Law (Law) that discusses "pooling" of an**

**(9) continued**

**over-order premium. The authority for the regulation is implied throughout the Law, as follows:**

- 1. Section 301, 31 P.S. § 700j-301, authorizes the Board to "regulate the entire milk industry of this Commonwealth, including the production . . . of milk . . . including the establishment of reasonable trade practices."**
- 2. Section 801, 31 P.S. § 700j-801, states that the Board shall ascertain and maintain prices paid to producers "as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth."**
- 3. Section 803, 31 P.S. § 700j-803, directs the Board to establish minimum producer pricing through either the establishment of a minimum price or a formula for setting of minimum prices to be paid to producers by milk dealers.**
- 4. Section 804, 31 P.S. § 700j-804, prescribes the manner in which minimum producer pricing may be classified. The Board may classify milk in any reasonable manner that the Board deems advisable.**
- 5. Section 806, 31 P.S. § 700j-806, establishes the manner in which producers are to be paid by the milk dealer, including the terms and method of computing payment.**

## 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?

**Currently, the over-order premium is solely distributed to those dairy farmers who supply the Class I fluid market. The level of the over-order premium is established in a hearing and testimony is based on such issues as high production costs, drought conditions, and other factors that affect the cost of producing milk. All Pennsylvania dairy farms experience these costs regardless if their milk goes to a Class I fluid processing plant or a Class III cheese plant; the over-order premium is not established based on factors or conditions peculiar to dairy farms producing milk for the Class I market. By creating a partial pool of the over-order premium, those dairy farmers who do not supply the Class I market will still benefit from this premium, which ultimately is paid by milk consumers as a result of the over-order premium being included in minimum wholesale and retail prices set by the Board. One of the reasons a partial pool of the over-order premium, rather than a total pool, was established was to offer some incentive to dairy farmers to continue to supply the Class I fluid plants. This incentive is important to the Board since, without it, the dairy farmer may choose to supply a Class III cheese plant that is closer to his farm rather than supply a Class I fluid plant. One of the mandates of the Milk Marketing Law is to "insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth" so the incentive for a higher over-order premium to be paid to those dairy farmers supplying the Class I market is crucial.**

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

**As stated in section 11, a mandate of the Milk Marketing Law is to "insure a sufficient quantity of pure and wholesome milk to the inhabitants of the Commonwealth." Across the United States, dairy farms are disappearing at increasing rates because the dairy farmer can no longer afford to supply milk at the current low milk prices and high production costs. In 1996 there were 10,500 commercial dairy farms in Pennsylvania; by 2003 the number of commercial dairy farms had dropped to 9,500. In order to provide additional financial help to all Pennsylvania dairy farmers, the Board determined that the over-order premium currently paid solely to those dairy farmers whose milk is produced, processed, and sold as Class I fluid milk in Pennsylvania should be shared with the dairy farmers that supply the other classes of milk that are used to manufacture cheese, butter, etc., in Pennsylvania.**

(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 beneficiaries of this regulation are those Pennsylvania dairy farmers that currently receive little or no direct benefit from the over-order premium. This represents 50% of dairy farmers or approximately 4,700 dairy farmers. Many of these dairy farmers are members of cooperatives that use the milk for manufacturing (non-Class I) purposes. It is difficult to quantify the monetary benefits of this regulation because the level of the over-order premium does change, usually every six months. An over-order premium of \$1.40 per hundredweight generates approximately \$2,240,000 per month.**

## **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.)

**The dairy farmers currently shipping to Pennsylvania Class I fluid plants and receiving the entire value of the over-order premium will be adversely affected in that 45% of the \$2,240,000 (\$1,008,000) set forth in section 13 will be distributed to other dairy farmers in addition to this group; this group of adversely affected dairy farmers will continue to receive the unpooled 55% of the over-order premium, as well as a portion of the pooled 45%. Approximately 4,700 dairy farmers (50% of the state's total) will be adversely affected in this manner. The Pennsylvania Association of Milk Dealers has indicated that it believes its members operating Class I fluid plants will be adversely affected in that the milk dealers will have to pay higher prices, in the form of an over-price premium, to their independent producers in order to attract milk to their Class I fluid plants. However, the milk dealers recover the over-price premium from consumers because the over-price premium is built into the minimum wholesale and retail prices set by the Board. Therefore, milk dealers should see little or no adverse effect from paying an over-price premium. The price paid by consumers for packaged fluid milk may increase. The adverse effect on consumers is difficult to quantify; we can say however, that for approximately every 11.6 cent per hundredweight increase in the over-price premium the cost of a gallon of milk will increase approximately one (1) cent.**

(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.)

**The persons, groups, or entities that will be required to comply with the regulation are as follows:**

**Milk dealers (or processors) and cooperatives: approximately 50**

**These entities are required to comply with the regulation in that they will be the ones distributing the pool allotments to their dairy farmers and/or cooperative members.**

(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.

**Discussions were held with all areas of the dairy industry. Those participants included representatives from the following organizations: Pennsylvania Association of Milk Dealers; Land O' Lakes; Pennsylvania Grange; Pennsylvania Farm Bureau; Dairy Farmers of America; Dairylea Cooperative; Maryland and Virginia Milk Producers Cooperative; Pennsylvania Farmers Union; Pennsylvania Food Merchants Association; and Federal Market Administrators for Federal Order 1 and Federal Order 33.**

**These organizations were invited to participate in four workshops/meetings at the initial stages of developing the proposed regulation. Communication and input continued through and following the proposed stage, with the Board circulating a draft of a final-form regulation to the industry to receive additional comments and concerns. The Board also solicited further comments after submitting the final form of the regulation, and incorporated some of those in the version submitted after the initial version was withdrawn.**

## Regulatory Analysis Form

(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.

**The regulated community will incur de minimis on-going costs associated with calculating the producer pool distribution payment that will be made to producers supplying Pennsylvania pool plants.**

**The entire regulated community will incur a total one-time cost of less than \$50,000 to modify accounting programs.**

(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 will be no additional costs and/or savings to local governments associated with compliance, including legal, accounting, or consulting procedures, with this 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.

**The cost to administer the pool by the Board is estimated to be \$21,500 per year. This amount accounts for charge-backs from the Comptroller's and Treasurer's Offices for increased transactions involving administration of pool collections and distributions. There will be no increase in the Milk Marketing Fund (General Government Operations, Appropriation 103) since no additional staff members will be employed to operate the pool.**

## 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	FY +1	FY +2	FY +3	FY +4	FY +5
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>COSTS:</b>						
Regulated Community	\$50,000	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$21,500	\$21,500	\$21,500	\$21,500	\$21,500	\$21,500
<b>Total Costs</b>	<b>\$71,500</b>	<b>\$21,500</b>	<b>\$21,500</b>	<b>\$21,500</b>	<b>\$21,500</b>	<b>\$21,500</b>
<b>REVENUE LOSSES:</b>						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

**The \$21,500 cost to state government is based on an amount for charge-backs from the Comptroller's and Treasurer's Offices for increased transactions involving administration of pool collections and distributions. The Board will hire no additional personnel to administer the pool.**

**The cost to the regulated community is based on the estimated costs to modify accounting programs for all of the Pennsylvania pool plants. The Board does believe this to be an overestimate, and believes that for many of the Pennsylvania pool plants, the cost will be less than \$1,000, but the Board also believes that the cost to some of the larger cooperatives may be as much as \$5,000.**

## 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
Over-order premium pool	\$0	\$0	\$0	\$0

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

**The benefits of the regulation lie in the fact that a state-mandated over-order premium will be more equitably distributed among the dairy farmers it is meant to help. Pennsylvania's family farms are the cornerstones of many rural communities. A host of other businesses exist to service the dairy farm community. By more equitably distributing the over-order premium, the Board will provide the opportunity to remain viable for some dairy farms that might otherwise go out of business, thereby helping to maintain the economic health of many rural communities.**

**The Board believes that the costs associated with changes Pennsylvania pool plants will make to accounting programs will be incurred very early, easily within the first year, in the implementation of the over-order premium pool. The Board also believes that these costs are outweighed by the benefits of the regulation, particularly as economic conditions continue to force more dairy farms out of business. Pennsylvania pool plants could not operate without dairy farms providing them raw milk.**

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

**The only alternative to this regulation would be to continue to distribute the over-order premium solely to those dairy farmers whose milk is produced, processed, and sold as Class I fluid milk in Pennsylvania. There would be no additional cost to this alternative.**

**As noted, this alternative has been dismissed because the over-order premium is established based on conditions common to all dairy farmers in Pennsylvania, not just those serving the Class I market. The Board believes that this state-mandated premium should be more equitably distributed among the state's dairy farmers.**

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

**Alternative regulatory schemes considered involved the entity responsible for distribution of the producer pool distribution payments. If monthly checks were generated and distributed to each individual dairy farmer, including members of cooperatives, approximately 9,000 checks per month would have been prepared and mailed by the Board. The costs associated with this alternative would have been much greater than the costs incurred by the milk dealers and**

**(23) continued**

**cooperatives since mailings to their dairy farmers and/or cooperative members already occur on a monthly basis; therefore, there would be little in the way of additional costs to the milk dealers.**



## 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?

**Not all states have an agency similar to the Milk Marketing Board nor do they set over-order premiums for their dairy farmers. The Board's mandated over-order premium does have an indirect effect on the surrounding states in that the milk dealers in those states pay voluntary premiums in order to acquire milk, which while not generally being the same as the Board's over-order premium do tend at times to track it. The over-order premium has been in effect in Pennsylvania since 1988 and has not had an adverse effect on competition. The calculation of the over-order premium will remain the same. The distribution of the over-order premium will be expanded by the proposed regulation.**

(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. There is no current regulation that addresses the partial pooling of the over-order premium.**

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

**Informational meetings were held with the regulated community prior to preparation of the proposed form of the regulation. Subsequent to that time, Board staff met with representatives of various organizations affected by the regulation while preparing the final form of the regulation. No further public hearings or further information meetings with the industry will be held.**

## 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 information needed to perform the calculations described in the regulation is already reported and recorded on a monthly basis by milk dealers and cooperatives. Additional paperwork will be required to be completed by the agency since it will have to provide each of the approximately 50 Pennsylvania pool plants with the information set forth in section 148.8 of the regulation.**

**There will be a one time requirement for Pennsylvania pool plants to complete an application for a Commonwealth Automated Clearing House account so that payments to and from the Pennsylvania pool plants may be processed by the Comptroller and Treasurer.**

(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 regulation addresses the needs of dairy farmers who are not currently receiving the direct benefit of the over-order premium but face the same adverse conditions as dairy farmers who currently receive the over-order premium.**

(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 expects this regulation will become effective no later than with milk delivered to Pennsylvania pool plants beginning September 1, 2003. Reports on Form PMMB-62 for milk delivered in September 2003 will be due by October 25, 2003. The first producer pool distribution payment would then be received by dairy farmers by November 17, 2003.**

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

**This regulation will be reviewed on an ongoing basis to ensure that the intent of the regulation is being met.**

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FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

#2218

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LEGISLATIVE REFERENCE BUREAU  
REVIEW COMMISSION

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

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

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

Milk Marketing Board  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 47 - 9

DATE OF ADOPTION February 14, 2003

BY Lynda J. Berman

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY Dayla C. [Signature]

February 14, 2003  
DATE OF APPROVAL

~~XXXXXX XXXXXX XXXXXX~~  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General  
Approval or objection within 30 days after  
submission.

PENNSYLVANIA MILK MARKETING BOARD  
7 PA CODE, CHAPTER 148  
PENNSYLVANIA OVER-ORDER PREMIUM POOL

The Pennsylvania Milk Marketing Board (Board) establishes 7 Pa. Code § 148 (relating to establishment of an over-order premium pool) to read as set forth in Annex A, under authority of sections 301, 801, 803, 804, and 806 of the Pennsylvania Milk Marketing Law (31 P.S. §§ 700j-301, 700j-801, 700j-803, 700j-804, and 700j-806).

Notice of proposed rulemaking was published at 31 Pa. B. 5367 (September 22, 2001) with an invitation to submit written comments within 30 days. During the public comment period, the Board received numerous comments, with a great deal of input from milk producers and milk dealers. The Board also received comments from the Chairmen of the Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs Committee, as well as from other members of the Legislature. Finally, the Independent Regulatory Review Commission (IRRC) also offered comments. All of these comments are discussed fully below.

With few exceptions, the comments the Board received from milk producers and milk dealers during the public comment period fell into two broad categories: comments to the effect that the Board did not have the authority to pool any portion of the over-order premium and/or it was a bad policy decision to pool any portion of the over-order premium (milk dealers and independent milk producers made up the bulk of these comments) and comments to the effect that 90% - 100% of the over-order premium should be pooled, rather than 45% (the bulk of these comments came from some, but not all, cooperatives and members of cooperatives). The Board received very few comments regarding the technical aspects of the proposed regulation. Therefore, after the Board finalized a draft of the final form regulation, we solicited further comments from the industry regarding technical aspects of the regulation. Many of those additional comments were relied on in formulating the final form regulation as it was submitted on November 18, 2002, primarily in aiding with clarity issues regarding the method for calculating and distributing the pool.

After submitting the final form of the regulation on November 18, 2002, the Board identified some additional changes that needed to be made. The Board determined that the best way to make the changes would be to withdraw the regulation and resubmit it with the changes. Therefore, the Board formally requested yet again that interested parties offer comments regarding technical aspects of the regulation. We did incorporate some of these suggestions into the regulation and address some others below. The Board withdrew the initial final form regulation on February 14, 2003, and resubmitted the present version of the final form regulation the same day.

The final form regulation does differ from the proposed-form regulation in that some sections have been moved and the regulation has been reorganized. The majority

of these changes were made based on the comments we received when the initial draft final form regulation was circulated to the industry in September 2002. As noted above, the changes were made to improve clarity, as well as readability. In addition, a section regarding payment dates was added, a section regarding payment method was added, and the date for payment of pool allotments to Pennsylvania pool plants was changed, to conform with Federal Milk Marketing Order payment dates and procedures. The payment date changes were made based on comments received after circulating the draft final form of the regulation.

Section 148.10 (relating to payment method) was added due to the implementation of SAP accounting programs by the Commonwealth, which require that vendors and payees be established in the Commonwealth vendor file prior to processing a payment. This section provides for the establishment of Automated Clearing House accounts. This section is also only applicable to transactions involving the Commonwealth. Section 148.10 does not apply to transactions between Pennsylvania pool plants and producers.

In final Rulemaking, the Board carefully considered all of the comments and suggestions offered by all the commentators. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation.

#### *Purpose*

The purpose of this regulation is to create a partial pool of forty-five percent (45%) of the over-order premium. This forty-five percent will be distributed to all Pennsylvania producers whose milk is purchased by a Pennsylvania pool plant (as defined in the regulation), providing a more equitable distribution of the over-order premium, which is established based on conditions common to all milk producers in Pennsylvania. The current over-order premium is only paid to those producers whose milk is produced, processed, and sold as Class I fluid milk in Pennsylvania.

#### *Comments*

In considering and responding to comments, the Board considered one overarching theme: the over-order premium has been implemented since 1988 to address conditions such as drought, fuel cost, cost of production, or marketing conditions, affecting all milk producers in Pennsylvania, not just producers of milk for the Class I market. The over-order premium is not meant to address conditions peculiar to producers of milk for the Class I market. The over-order premium is applied to Class I fluid milk products solely because the Board establishes minimum wholesale and retail prices for Class I products, providing a mechanism to allow for the collection of the premium through the Board-established minimum prices. The amount of the over-order premium is included in the minimum wholesale prices that milk dealers charge retailers and in the minimum retail prices that retailers charge milk consumers. So, in effect, the milk consumer pays the over-order premium to the retailer, who pays it to the milk dealer, who

pays it to the milk producer. Milk dealers and retailers serve as a conduit of the money from the consumer to the producer. The over-order premium is the farmers' premium; it is not the milk dealers' premium.

That being said, the Board chose to pool 45% of the premium rather than 100% of the premium. Land O' Lakes, Inc., Pennsylvania Farm Bureau, Dairy Farmers of America (Midwest Area Council), Allied Federated Coops, Inc., Maryland & Virginia Milk Producers Cooperative, Capital Associates, Inc., and 238 Pennsylvania milk producers suggested that either 90% or 100% of the over-order premium should be pooled. The Board chose to pool 45% of the over-order premium as a compromise. One segment of the industry was (and remains) adamantly opposed to pooling any portion of the over-order premium while the other segment favored 90% - 100% pooling. The Board recognizes that the over-order premium has been implemented to address conditions affecting all dairy farmers; however, in order to provide some wider level of distribution of the over-order premium, it was necessary to compromise at 45%.

The Board received comments opposed to pooling any portion of the over-order premium from the Pennsylvania Association of Milk Dealers, Lehigh Valley Dairies, Ritchey's Dairy, Inc., Wengert's Dairy, Turner Dairy Farms, Marburger Farm Dairy, Inc., Turkey Hill Dairy, Schneider Valley Farms Dairy, Pocono Mountain Dairies, Dairylea Cooperative, Dairy Farmers of America (Northeast Area Council), Dairy Marketing Services, the Pennsylvania State Grange, and five Pennsylvania milk producers. One comment common to many of the commentators opposed to pooling is that pooling some portion of the over-order premium would result in producers who ship to milk dealers with high Class I utilization receiving smaller over-order premium payments. This is true. However, the Board emphasizes that the purpose of the over-order premium was never to subsidize producers shipping to Class I plants; the purpose of the over-order premium is to address conditions facing all Pennsylvania milk producers and pooling a portion of the over-order premium will allow a more equitable distribution of this state-mandated premium. A related concern raised by several of the commentators was that, if a portion of the premium is pooled, Class I milk dealers would have difficulty attracting raw milk to their plants and/or would have to pay higher voluntary premiums to attract raw milk to their plants. Class I milk dealers can attract raw milk to their plants by paying voluntary premiums. Such voluntary premiums are recouped by the milk dealers through an over-price premium, which is added to the minimum wholesale and retail prices for packaged fluid milk products.

Several of the commentators opposed to pooling also noted that cooperatives that operate in many states would spread premium dollars to their entire membership with some of the premium going to out-of-state milk producers. Most cooperatives do reblend receipts to their membership. The initial final form of the regulation included §§148.7(d) and (e), which required a line item on all producers' checks showing the Pennsylvania Milk Marketing Board premium, labeled as such. The Board removed this requirement for cooperatives for two main reasons: first, adding this line item to producer checks would have caused cooperatives to incur higher costs, and second, because of cooperative reblending of receipts, the line item would be essentially meaningless. The milk

producer cooperatives are owned and operated by milk producers and the Board believes that if cooperatives are paying the pooled over-order premium to out-of-state producers, the members of the cooperative will address that situation with their cooperative. We also removed the line item requirement as it pertained to milk dealers because the Board's over-order premium orders already require such a line item on producer checks from the milk dealers and we saw no reason to maintain this redundant requirement in the resubmitted final form regulation.

Some commentators opposed to pooling also noted that Class I milk supplies for consumers may not be sufficient to meet demand. The Board is at a loss to explain how this could occur, since forty percent of Pennsylvania's production is exported out of state. In any event, part of the reason for compromising at a partial pool of 45%, rather than pooling 90% or 100% of the over-order premium, was to provide some incentive to producers to continue to supply Class I plants. With the payment of voluntary premiums, there should be sufficient milk available to satisfy Class I demand.

Many commentators also expressed the opinion that the Board did not have the authority to pool any portion of the over-order premium. The Board solicited comments and legal memoranda on this issue before beginning the current process of promulgating the regulation. After reviewing the memoranda from various parties and doing its own research, the Board came to the conclusion that we do have the authority to pool the over-order premium. The Board also notes that the proposed regulation has been approved for form and legality by the Attorney General. Other commentators expressed displeasure at being included in the pool. It is a necessary consequence of the Board's goal, to equitably distribute the over-order premium as widely as possible, that the Board include as much milk and as many producers as possible in the over-order premium pool.

Lehigh Valley Dairies and IRRC questioned the dates in § 148.2 (relating to reporting requirements). Based on these concerns, the Board changed the reporting date to the 25<sup>th</sup> day after the end of each month, which is when milk dealers currently file reports. This section was also changed to note that the PMMB-62 must be received by the Board by the 25<sup>th</sup>; reports received after the 25<sup>th</sup>, but postmarked before the 25<sup>th</sup>, will be considered untimely filed. The change of the reporting date in § 148.2 will result in the pooled portion of the over-order premium being paid one month later than the portion of the over-order premium which is not pooled. IRRC also expressed concern regarding the nature of the form required to file this report. As noted, the Board has clarified that the form will be the PMMB-62. The Board anticipates that all the information needed to implement the regulation can be obtained from the present PMMB-62, so there should be no change in these reporting requirements from present practices.

The final form regulation also removes reference to "Pennsylvania over-order premium dealer" from § 148.2. This change was made due to an IRRC comment regarding clarity and also because a provision has been added relating to reporting of state of origin of milk by cooperatives. In order to accurately collect and disburse pool funds, it is essential for the pool administrator and Pennsylvania pool plants to know

where milk was produced. The Board received no objection to this new requirement for cooperatives when we circulated a final form draft to the industry.

IRRC had several comments regarding clarity and § 148.1 (relating to definitions). First IRRC suggested that, to improve readability, the word "Pennsylvania" was not needed to preface defined terms. Because of the extensive interstate nature of raw and packaged milk movement, the Board feels more comfortable leaving the word "Pennsylvania" in the definitions and throughout the regulation as submitted in final form, primarily so that there can be no doubt about exactly what is meant by each of the definitions.

IRRC also had concerns with the term "distributing plant" in the proposed regulation. This term has been removed from the final form regulation.

IRRC had two concerns with the definition of "diversion." First, that the last sentence of the definition was substantive and should be moved to the body of the regulation. Second, that a reference be added to the specific United States Department of Agriculture guidelines the Board will use to determine whether milk enters a Pennsylvania pool plant. The Board addressed this concern first by removing the last sentence of the definition from the regulation. We then codified the guidelines, which actually are a combination of Federal Milk Marketing Order language and Federal Milk Marketing Order internal audit guidelines, in § 148.5 (relating to the calculation of qualified pounds).

IRRC further noted that "Pennsylvania Class I pounds," while being defined, was not used in the regulation. The definition for "Pennsylvania Class I pounds" has been removed from the final form regulation. A definition for "Pennsylvania Class I utilization" has been added.

Based on IRRC's comment that the second component of the definition of "Pennsylvania milk pool or pool" was confusing, the second sentence was deleted.

The definition of "pool administrator" was also refined based on IRRC comments. The redundant phrase was deleted and the reference to the "Board" was changed to "Pennsylvania Milk Marketing Board."

The last of IRRC's comments regarding definitions involved substantive provisions contained in the definition of "qualified pounds." This definition was changed based on this comment, with the substantive provisions moved to § 148.5 (relating to the calculation of qualified pounds).

After submitting the final form regulation, the Board determined that a change needed to be made to the definition of "Pennsylvania production" to clarify that only Pennsylvania-produced milk is eligible to participate in the pool. We made this change in the present version of the final form regulation.



IRRC had several concerns regarding § 148.3 (relating to calculation of the contributing pool plant over-order premium value). First, IRRC suggested that the Board clarify the term "Pennsylvania production" as used in the section. Section 148.3 deals with the method for calculating the over-order premium value for each contributing pool plant. Therefore, the term "Pennsylvania production" refers not to a total for all Pennsylvania dairy producers or just one Pennsylvania dairy producer. Rather, since the calculation is done separately for each of the contributing pool plants, "Pennsylvania production" as used in this section is specific to each of the contributing pool plants, and is the total for each contributing pool plant.

IRRC also noted that the result of the variable "F" in the example was unclear. Since "F" was not a value calculated from any of the other values, the Board changed the example to clear up this confusion. The example was also unclear in that the equation "ExFxD=G" was not showing that "F" was expressed as a hundredweight; the example was changed to clear up this confusion as well. Finally, the Board added the term "hundredweight" to the text of subsection (b).

IRRC suggested changes to the examples in §§ 148.4 and 148.5 to improve clarity. IRRC also suggested an example be added to § 148.5 to further improve clarity. In reviewing the proposed regulation in preparation for submission as a final form regulation, the Board came to the conclusion that §§ 148.4 and 148.5 were confusing and were not written as we intended them to be written. The Board also came to the conclusion that the examples were more confusing than edifying. Therefore, the regulation went through some measure of rewriting and the examples were removed. The Board believes that the final form regulation as written without the examples is clearer than the proposed regulation.

IRRC also requested information relative to the data upon which the Board determined the allocation of the over-order premium. As noted previously, the Board mandates an over-order premium be paid on milk that is produced, processed, and sold as Class I fluid milk within Pennsylvania. The Board has mandated a 1 over-order premium since 1988 to address conditions faced by all dairy farmers in Pennsylvania. The Board does not mandate the over-order premium to address conditions peculiar to Class I processors or the dairy farmers who supply Class I processors. The over-order premium is applied to Class I milk solely because the Board sets minimum wholesale and retail prices for all Class I milk sold within Pennsylvania. Since the Board sets minimum prices for all Class I milk sold in Pennsylvania, we can include the value of the over-order premium in the minimum wholesale and retail prices for Class I milk.

The effect of the system as it stands now is that producers supplying handlers with higher Class I utilization in Pennsylvania receive a greater proportion of the over-order premium than producers supplying handlers with lower Class I utilization in Pennsylvania. This despite the fact that the Board mandates the over-order premium to address conditions common to all dairy farmers in Pennsylvania. The Board simply feels that it is unfair for the over-order premium, which is meant to address conditions common to all Pennsylvania producers, to be paid only to those producers who supply the

Class I market. This regulation is an attempt to more equitably distribute a state-mandated premium, the cost of which is borne by Pennsylvania's milk consumers.

So under this regulation, those producers receiving a greater proportion of the over-order premium because they ship to handlers with a high Class I utilization in Pennsylvania will receive less of the over-order premium than they receive now, and those producers receiving less of the over-order premium because they ship to handlers with no Class I utilization (such as manufacturing plants) will receive more. Simply put, the partial pool of 45% is the result of a compromise. What is important is that with this regulation a far greater number of Pennsylvania's milk producers will share in the state-mandated over-order premium, which the Board establishes based on conditions common to all Pennsylvania milk producers and which the Board intends to benefit the entire dairy industry, than share in the over-order premium absent the regulation. It is also vitally important to note that while those producers who are currently receiving a greater proportion of the over-order premium will receive a lower proportion of the over-order premium, they will still receive higher payments than they would in the absence of an over-order premium, and in any event, Class I processors are free to pay any voluntary premiums they wish, which are recouped through the minimum wholesale prices set by the Board.

The Board also received comments from Representatives Bunt, Daley, Veon, and LaGrotta, and Senators Waugh and White. We believe these comments can be best characterized as recognizing the complex and controversial nature of the issue, with the legislators having constituents on both sides of the issue, and encouraging the Board to take all sides into account and continue working to best serve the dairy industry in Pennsylvania. The Board has taken all these comments seriously and is well aware of the complex and controversial nature of the regulation, and assures all those involved that all views were fully taken into account.

The Board has received questions and comments regarding how the over-order premium obligation will be calculated. This final form regulation does not change the way the over-order premium obligation is calculated. The over-order premium obligation will continue to be calculated pursuant to Official General Order A-888, just as it has been since August 1, 1995, the effective date of OGO A-888. What the regulation does change is the distribution of the over-order premium, to the extent that 45% of the over-order premium obligation will now be pooled. The over-order premium obligation will continue to be calculated based on milk that is produced, processed, and utilized as a Class I fluid milk product in Pennsylvania. The pooled portion of the over-order premium will be distributed back to Pennsylvania pool plants based on milk that is produced in Pennsylvania and received by Pennsylvania pool plants. "Pennsylvania production" is used to determine what portion of the milk sold to a plant is produced in Pennsylvania and hence to calculate the over-order premium obligation. "Qualified pounds" are used to calculate the distribution of the pooled portion of the over-order premium to the pool plants.

It has also been suggested that distributing the pooled portion of the over-order premium to manufacturing, or even bottling, plants for further distribution to their Pennsylvania producers would result in some Pennsylvania over-order premium dollars being paid to Pennsylvania producers whose milk was processed or manufactured in Pennsylvania but ultimately sold out-of-state and that such "subsidy" of these plants dooms the regulation. First, the pooled portion of the over-order premium is not a "subsidy" to any plant. The over-order premium dollars have always been the milk producers' dollars, not the plants' dollars. Second, over-order premium dollars are paid now on Pennsylvania-produced milk that is sold out-of-state by Pennsylvania milk dealers as packaged Class I fluid milk products. Milk dealer representatives have testified at hearings that every dollar they collect in over-order premium is distributed back to Pennsylvania producers who supply their plants (remember, the over-order premium obligation of the Class I plants is calculated only on milk that is produced, processed, and utilized as a Class I packaged product in Pennsylvania, while the plants collect the over-order premium on all milk that they sell in Pennsylvania, regardless of where it is produced or processed). When enforcing distribution of the over-order premium, the Board has ensured that all Pennsylvania producers that were part of each Pennsylvania Class I milk dealer's individual handler pool received their share of the over-order premium. The pooled portion of the over-order premium will now expand distribution of the over-order premium to all Pennsylvania producers selling their milk to all licensed milk dealers located in Pennsylvania regardless of that dealer's class of utilization).

The Board has changed the effective date of the regulation in the resubmitted final form regulation based on a suggestion from Dairy Lea Cooperative and Dairy Farmers of America. The new effective date of the regulation is the first day of the month immediately following the 90<sup>th</sup> day after final publication of the regulation in the *Pennsylvania Bulletin*. Pooling a portion of the over-order premium may have an effect on the marketing of milk in Pennsylvania and may have an effect on what the level of the over-order premium should be. The Board anticipates that an over-order premium order will be in effect when the regulation becomes effective. The Board also anticipates that some changes in marketing arrangements may take place. The Board believes that the 90 day period before the regulation becomes effective will provide time for market participants to begin to analyze what changes may take place in the marketplace and how the level and duration of the over-order premium should, if at all, be adjusted accordingly.

At times cooperatives have suggested that the pool allotments be paid directly to them, rather than to the pool plants to be redistributed to the cooperatives. The Board has chosen to provide for distribution of the pool allotment to the pool plants and then on to the cooperatives because there is often a discrepancy between what plants report they receive and what cooperatives report they have delivered. Since we have always audited the milk dealer reports while not auditing cooperative reports as extensively, we have more confidence we will be able to arrive at the correct pool allotments by relying on the pool plant reports rather than cooperative reports. Therefore, the Board continues to believe it is better to pay the pool allotments to the pool plants for redistribution.

In the present version of the final form regulation, § 148.4(b) was changed to provide that pool payments be due on the 5<sup>th</sup> day of the month following receipt of PMMB-62 (milk dealer's monthly report). This change was necessary due to the length of time needed by the Comptroller's Office to process Automated Clearing House debits. This change necessitated a change in the Pool Administrator's Reporting Requirements found in § 148.8(a). The date certain information is reported to the pool plants by the Pool Administrator has been changed to the 3<sup>rd</sup> day of the month following receipt of PMMB-62.

The Board also added language to § 148.4(c) in the resubmitted final form regulation to clarify that the over-order premium pool is net of underpayments, overpayments, and adjustments. The Pool Administrator will clear the pool every month – everything that is collected will be distributed.

#### *Paperwork Estimates*

Chapter 148 should not substantially alter reporting requirements for licensed milk dealers since the information needed to perform the calculations described in the proposed regulation is already reported on a monthly basis to the Board. There will be some additional accounting and paperwork requirements for Pennsylvania pool plants to calculate the amount to be paid as the producer pool distribution payment to each individual producer. However, the Board has provided that the date that the producer pool distribution payment be made is the same as the date of final payment pursuant to Federal Milk Marketing Orders, so there will be no need for Pennsylvania pool plants to issue additional checks. Pennsylvania pool plants will also have a one time requirement to complete an Automated Clearing House account application.

The Board will incur additional reporting and accounting requirements. The Board will generate approximately 50 reports each month, to be distributed to each of the Pennsylvania pool plants, and containing the information in § 148.8 (relating to the pool administrator's reporting requirements). The Board anticipates a spreadsheet with information merged into a document template which will be e-mailed and/or faxed to the Pennsylvania pool plants, with an original following via first class United States mail. The information needed to calculate the pool is already reported to the Board and entered into the Board's computer system for other purposes, so additional accounting requirements are estimated to be minimal.

#### *Effective Date*

This final form regulation will become effective with milk delivered beginning on the first day of the month immediately following the 90<sup>th</sup> day after 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 31 Pa. B. 5367 (September 22, 2001) 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. This material is also available on the Board's website at <http://www.mmb.state.pa.us>.

In preparing this final form regulation, the Board has considered the comments received from all commentators.

*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 are amended by adding 7 Pa. Code Chapter 148 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 for milk delivered beginning on the first day of the month immediately following final publication in the *Pennsylvania Bulletin*.

Beverly R. Minor  
*Chairperson*

## "PLAIN" VERSION ANNEX A

### PENNSYLVANIA OVER-ORDER PREMIUM POOL

#### § 148.1 Definitions

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

**Contributing Pool Plant** – Pennsylvania pool plant with Pennsylvania Class I utilization.

**Directly Distributed Over-Order Premium** – The amount of over-order premium distributed directly to the Pennsylvania producers from whom the contributing pool plant has purchased milk.

**Diversion** – Purchases of milk or milk products from producers in which the milk thus purchased is not received by the Pennsylvania pool plant and is delivered to another plant.

**Grade A Milk** – That milk meeting the standards for "milk for pasteurization" contained in 7 Pa Code §§ 59.51 and 59.52 (relating to standards for milk and milk products – rule and table).

**Over-Order Premium Value** – The contributing pool plant's total over-order premium obligation based on the calculation described in § 148.3 (relating to calculation of the contributing pool plant over-order premium value). This value includes both the directly distributed over-order premium and pool payment.

**Over-Order Premium Rate** – Hundredweight rate of the over-order premium as established by the Official General Orders of the Pennsylvania Milk Marketing Board (Board).

**Pennsylvania Class I Utilization** – Producer milk sold in Pennsylvania in the form of Class I fluid milk products and adjusted for purchases from other dealers, shrinkage, and inventory variation.

**Pennsylvania Milk Premium Pool or Pool** – The sum of the pool payments net of underpayments, overpayments, and adjustments.

**Pennsylvania Pool Plant** – (1) A milk dealer located in Pennsylvania that purchases Pennsylvania producer milk, excluding producer-dealers, or (2) Cooperatives operating dairy processing or manufacturing plants located in Pennsylvania or contracting for dairy processing or manufacturing services with other plants located in Pennsylvania.

**Pennsylvania Producer** – A person who operates a farm located in Pennsylvania that produces Grade A milk.

**Pennsylvania Production** – (1) Grade A milk produced by Pennsylvania producers and sold to Pennsylvania pool plants, or (2) Grade A cooperative Pennsylvania member milk produced on a farm located in Pennsylvania and processed or used in dairy-product manufacturing in a

cooperative owned plant located in Pennsylvania or in a Pennsylvania pool plant under the terms of a service contract.

Pool Administrator – The Pennsylvania Milk Marketing Board.

Pool Allotment – The amount distributed by the Pool Administrator from the pool to a Pennsylvania pool plant.

Pool Payment – The amount of the over-order premium payable to the pool by a contributing pool plant.

Producer-Dealer – A person who (a) operates a dairy farm and a distributing or manufacturing plant in Pennsylvania; (b) receives milk solely from its own farm production and may receive bulk milk from other dealers; (c) receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from milk dealers (this limitation shall not apply if the producer-dealer's own farm production is less than 150,000 pounds during the month); and (d) provides proof satisfactory to the Pool Administrator that the care and management of the dairy animals and other resources necessary to produce all milk handled (excluding receipts of bulk milk from other dealers) and the processing and packaging operations are the producer-dealer's own enterprise and at its own risk.

Qualified Pounds – Pounds of Pennsylvania Grade A milk used to calculate the pool allotment for each Pennsylvania pool plant.

Total Producer Purchases – Grade A milk purchased from all dairy farmers regardless of the location of the farm, excluding producer-dealers.

#### § 148.2 Reporting Requirements

(a) On or before the 25<sup>th</sup> day after the end of each month, each Pennsylvania pool plant shall file with the Board the information contained in Form PMMB-62. The date of receipt by the Board and not the date of deposit in the mails shall be determinative.

(b) On or before the 14<sup>th</sup> day after the end of each month, cooperatives shall provide state of origin reports to each Pennsylvania pool plant to which they sell or deliver milk, with a copy to the Pool Administrator, indicating the state where the milk was produced. If the state of origin report is not received by a Pennsylvania pool plant operator and the Pool Administrator by the 14<sup>th</sup> day of the month following that in which the milk was sold or delivered, the Pool Administrator shall presume that all milk received that month was produced outside Pennsylvania. No adjustment shall be made in subsequent months if the state of origin report is received after the 14<sup>th</sup>. Adjustments shall be made in subsequent months for errors in state of origin reports.

#### § 148.3 Calculation of the Contributing Pool Plant Over-Order Premium Value

The Pool Administrator shall calculate the over-order premium value for each contributing pool plant in the following manner.



(a) Divide the Pennsylvania production by the total producer purchases and in the case of cooperatives, receipts from members, net of non-Class I diversions to arrive at the percentage of Pennsylvania purchases. This percentage may not exceed 100%.

(b) Multiply the over-order premium rate times the Pennsylvania Class I utilization expressed on a hundredweight basis times the percentage of Pennsylvania purchases to arrive at the contributing pool plant over-order premium value.

#### EXAMPLE

Where

A = 300,000 pounds Pennsylvania production

B = 700,000 pounds total producer purchases

C = 100,000 pounds non-Class I diversions

D = percentage of Pennsylvania purchases

E = \$1.00/cwt over-order premium rate

F = 350,000 pounds (3,500 hundredweight) Pennsylvania Class I utilization

G = contributing pool plant over-order premium value

$$\frac{A}{(B - C)} = D \quad \frac{300,000}{(700,000 - 100,000)} = 50\%$$

$$E \times F \times D = G \quad \$1.00 / \text{cwt} \times 3,500 \text{ cwt} \times 50\% = \$1,750$$

#### § 148.4 Calculation of the Pool

The Pool Administrator shall calculate the Pennsylvania milk premium pool in the following manner.

(a) Multiply the contributing pool plant over-order premium value calculated in § 148.3 (relating to the calculation of the contributing pool plant over-order premium value) for each contributing pool plant by 45% (the pool percentage) to arrive at the contributing pool plant pool payment. The remaining 55% of the over-order premium value is the directly distributed over-order premium value.

(b) Contributing pool plants shall make pool payments to the pool administrator on or before the 5<sup>th</sup> day of the month following receipt of the dealer's report required by § 148.2 (relating to reporting requirements). For example, pursuant to § 148.2 the May report is due June 25, therefore pool payments are due on or before July 5.

(c) The sum of all contributing pool plant pool payments net of underpayments, overpayments, and adjustments is the Pennsylvania milk premium pool.

§ 148.5 Calculation of Qualified Pounds

The qualified pounds at each Pennsylvania pool plant shall be the Pennsylvania pool plant's Pennsylvania production, less the Pennsylvania pool plant's Pennsylvania production transferred or diverted to non-Pennsylvania pool plants, and excluding milk received from producer-dealers.

(a) Transfers and diversions shall be allocated to Pennsylvania or out-of-state production based upon the percentage of producer purchases at a Pennsylvania pool plant. For example, if 50,000 pounds of milk is transferred or diverted to non-Pennsylvania pool plants, and the Pennsylvania pool plant purchases 1,000,000 pounds of producer milk, 50% of which is Pennsylvania production, then 25,000 pounds would be considered a transfer/diversion of Pennsylvania production.

(b) For the purpose of determining whether milk is transferred or diverted from a Pennsylvania pool plant, milk shall be considered received by a Pennsylvania pool plant if it is unloaded into a stationary storage tank that is not used solely as a reloading point either from one tank truck to another tank truck or back to the original tank truck.

§ 148.6 Calculation of Pool Allotments

The Pool administrator shall divide the pool by the sum of the qualified pounds from all Pennsylvania pool plants to arrive at a redistribution rate. That redistribution rate shall be multiplied by the qualified pounds for each Pennsylvania pool plant to arrive at the pool allotment for each Pennsylvania pool plant.

§ 148.7 Distribution

(a) Each contributing pool plant shall divide its directly distributed over-order premium value by its Pennsylvania production to arrive at a producer distribution rate. The contributing pool plant shall then multiply that producer distribution rate by the pounds purchased from each Pennsylvania producer to arrive at the directly distributed over-order premium for that producer, which shall be distributed with the final payment.

(b) On or before the 16<sup>th</sup> day of the month following receipt of the reports required by § 148.2 (relating to reporting requirements), the State Treasurer shall make payment of the pool allotment to each Pennsylvania pool plant receiving pool payments for redistribution to their Pennsylvania producers.

(c) Each Pennsylvania pool plant shall divide its pool allotment by its Pennsylvania production to arrive at a producer distribution rate. The Pennsylvania pool plant shall then multiply that producer distribution rate by the pounds purchased from each Pennsylvania producer to arrive at the producer pool distribution payment for each Pennsylvania producer, which shall be paid no later than the day after payment of the pool allotment has been received from the State Treasurer.

§ 148.8 Pool Administrator's Reporting Requirements

(a) On or before the 3<sup>rd</sup> day of the month following receipt of the reports required by § 148.2 (relating to reporting requirements), the Pool Administrator shall advise each Pennsylvania pool plant of the following information as it pertains to them for the month for which the report was filed. If the 3<sup>rd</sup> day falls on a weekend or state-recognized holiday, the Pool Administrator shall advise each Pennsylvania pool plant of the following information on the last business day prior to the weekend or state-recognized holiday.

- (1) Pennsylvania production;
- (2) total producer purchases;
- (3) Pennsylvania Class I utilization;
- (4) non-Class I diversions;
- (5) diversions to out-of-state plants;
- (6) over-order premium rate;
- (7) over-order premium value;
- (8) pool percentage;
- (9) pool payment.

(b) On or before the 13<sup>th</sup> day of the month following receipt of the reports required by § 148.2 (relating to reporting requirements), the Pool Administrator shall advise each Pennsylvania pool plant of the following information as it pertains to them for the month for which the report was filed. If the 13<sup>th</sup> day falls on a weekend or state-recognized holiday, the Pool Administrator shall advise each Pennsylvania pool plant of the following information on the last business day prior to the weekend or state-recognized holiday.

- (1) qualified pounds;
- (2) Pennsylvania Milk Premium Pool;
- (3) total qualified pounds in the pool;
- (4) redistribution rate;
- (5) pool allotment;
- (6) adjustments from previous months.

§ 148.9 Dates

If a date required for payment contained in this chapter falls on a Saturday, Sunday, or State holiday, such payment shall be due on the next day that the pool administrator's office is open for public business.

§ 148.10 Method of Payment

(a) All payments by or to the Commonwealth required by this chapter shall be made by electronic payment (automated clearing house, or ACH) accounts.

(b) All Pennsylvania pool plants shall be established in the Commonwealth vendor file on and after the effective date of this chapter.

(1) Creation of ACH accounts shall be coordinated by the pool administrator, who shall provide an ACH application and a federal form W-9 to each Pennsylvania pool plant.

(2) Pennsylvania pool plants may also register for ACH accounts at <http://www.vendorregistration.state.pa.us>.

## ANNEX A

### PENNSYLVANIA OVER-ORDER PREMIUM POOL

#### §148.1 Definitions

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

**Contributing Pool Plant** – Pennsylvania pool plant with Pennsylvania Class I utilization.

**DIRECTLY DISTRIBUTED OVER-ORDER PREMIUM** – THE AMOUNT OF OVER-ORDER PREMIUM DISTRIBUTED DIRECTLY TO THE PENNSYLVANIA PRODUCERS FROM WHOM THE CONTRIBUTING POOL PLANT HAS PURCHASED MILK.

~~Distributing Plant – A plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.~~

~~Diversions – Any transaction involving the PurchaseS of milk or milk products from a producerS in which the milk thus purchased IS NOT RECEIVED BY does not enter the Pennsylvania pool plant and is delivered to another plant. Whether milk enters the Pennsylvania pool plant will be determined on the basis of the United States Department of Agriculture guidelines.~~

**GRADE A MILK** – THAT MILK MEETING THE STANDARDS FOR "MILK FOR PASTEURIZATION" CONTAINED IN 7 PA. CODE §§ 59.51 AND 59.52 (RELATING TO STANDARDS FOR MILK AND MILK PRODUCTS – RULE AND TABLE).

**Over-Order Premium Value** – THE CONTRIBUTING POOL PLANT'S TOTAL OVER-ORDER PREMIUM OBLIGATION BASED ON THE CALCULATION DESCRIBED IN § 148.3 (RELATING TO CALCULATION OF THE CONTRIBUTING POOL PLANT OVER-ORDER PREMIUM VALUE). THIS VALUE INCLUDES BOTH THE DIRECTLY DISTRIBUTED OVER-ORDER PREMIUM AND POOL PAYMENTS. ~~The over-order premium value is an amount, over and above the applicable federal order or Board-established minimum Class price, which the Board mandates be paid to producers for all milk produced in the state and included in the Pennsylvania Class I utilization of Pennsylvania Pool Plants.~~

**Over-Order Premium Rate** – Hundredweight rate of the over-order premium AS ESTABLISHED BY THE OFFICIAL GENERAL ORDERS OF THE PENNSYLVANIA MILK MARKETING BOARD (BOARD). ~~value paid on Class I milk produced, processed, and utilized in Pennsylvania.~~

**PENNSYLVANIA CLASS I UTILIZATION** – PRODUCER MILK SOLD IN PENNSYLVANIA IN THE FORM OF CLASS I FLUID MILK PRODUCTS AND ADJUSTED FOR PURCHASES FROM OTHER DEALERS, SHRINKAGE, AND INVENTORY VARIATION.

~~Pennsylvania Class I Pounds—Pennsylvania milk disposed of in the form of fluid milk products and adjusted for purchases from other dealers, shrinkage, and inventory variation.~~

~~Pennsylvania Milk PREMIUM Pool or Pool – The sum of the POOL PAYMENTS NET OF UNDERPAYMENTS, OVERPAYMENTS, AND ADJUSTMENTS. obligation of over-order premium from Pennsylvania Pool Plants. Amount to be redistributed to Pennsylvania producers.~~

~~Pennsylvania Out-of-State Diversion—Diversion of Pennsylvania production to out-of-state plants.~~

~~Pennsylvania Pool Plant – (1) A MILK DEALER LOCATED IN Pennsylvania plant that purchases and physically receives Pennsylvania producer milk, excluding producer-dealers, OR (2) COOPERATIVES OPERATING DAIRY PROCESSING OR MANUFACTURING PLANTS LOCATED IN PENNSYLVANIA OR CONTRACTING FOR DAIRY PROCESSING OR MANUFACTURING SERVICES WITH OTHER PLANTS LOCATED IN PENNSYLVANIA.~~

~~Pennsylvania Producer – A person who operates a farm located in Pennsylvania that produces GRADE A milk.~~

~~Pennsylvania Production – (1) GRADE A milk produced by Pennsylvania producers and sold to Pennsylvania pool plants, OR (2) GRADE A COOPERATIVE PENNSYLVANIA MEMBER MILK PRODUCED ON A FARM LOCATED IN PENNSYLVANIA AND PROCESSED OR USED IN DAIRY PRODUCT MANUFACTURING IN A COOPERATIVE OWNED PLANT LOCATED IN PENNSYLVANIA OR IN A PENNSYLVANIA POOL PLANT UNDER THE TERMS OF A SERVICE CONTRACT. regardless of the location of plant of physical receipt.~~

~~Pool Administrator – The Pool Administrator is the Pennsylvania Milk Marketing Board.~~

~~Pool Allotment – The amount DISTRIBUTED BY THE POOL ADMINISTRATOR allotted from the pool to a Pennsylvania pool plant for payment to individual producers entitled to receive an amount due from pool payments.~~

~~Pool Payment – The amount of the over-order premium payable to the Pennsylvania Milk PREMIUM Pool by a CONTRIBUTING Pennsylvania pool plant.~~

~~Producer-Dealer – A person who (a) operates a dairy farm and a distributing or manufacturing plant in Pennsylvania; (b) receives milk solely from its own farm production and may receive bulk milk from other dealers; (c) receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from milk dealers (this limitation shall not apply if the producer-dealer's own farm production is less than 150,000 pounds during the month); and (d) provides proof satisfactory to the Pool Administrator that the care and management of the dairy animals and other resources necessary to produce all milk handled (excluding receipts OF~~

BULK MILK from OTHER DEALERS ~~part b above~~) and the processing and packaging operations are the producer-dealer's own enterprise and at its own risk.

Qualified Pounds – POUNDS OF Grade A milk USED TO CALCULATE THE POOL ALLOTMENT FOR EACH PENNSYLVANIA POOL PLANT. ~~produced in Pennsylvania and physically received at a Pool Plant from a Pennsylvania Producer, less Pennsylvania production transferred to non-pool plants, and excluding milk received from a Producer-Dealer. Transfers will be allocated to Pennsylvania or out-of-state production based upon the percentage of physical producer receipts at a Pool Plant. For example, if 50,000 pounds of milk is transferred to non-pool plants, and a Pool Plant physically receives 1,000,000 pounds of producer milk, half of which is Pennsylvania production, then 25,000 pounds would be considered a Pennsylvania produced transfer. Any non-Class I milk depooled from a federal milk marketing order at the dealer's or producer's election during any month is disqualified for that month and one additional month. For example, if non-Class I milk is depooled for three months, that amount of milk for the depooling producer or dealer is disqualified from the pool for six months.~~

Qualified Producer—Any Pennsylvania Producer whose Grade A milk is purchased or processed as fluid or manufactured products by a Pennsylvania Pool Plant, ~~excluding diversions to out-of-state distributing plant and receipts from Producer-Dealers.~~

Redistribution Rate—The premium rate due to Qualified Producers, ~~calculated by dividing the Pool by the Qualified Pounds, and rounding to the fourth decimal place using the uniform method of increasing the fourth decimal place by one if the next decimal place is five or more or making no change if the next decimal place is less than five. Example—\$1.05655 becomes \$1.0566 and \$1.05654 becomes \$1.0565.~~

TOTAL PRODUCER PURCHASES – GRADE A MILK PURCHASED FROM ALL DAIRY FARMERS REGARDLESS OF THE LOCATION OF THE FARM, EXCLUDING PRODUCER-DEALERS.

§ 148.2 ~~Pennsylvania Over-Order Premium Dealer's Reporting Requirements~~

(A) ~~ON OR BEFORE No later than the 25<sup>TH</sup> 9th day after the end of each month, each Pennsylvania pool plant shall file with the Milk Marketing Board THE information contained in Forms PMMB-62. THE DATE OF RECEIPT BY THE BOARD AND NOT THE DATE OF DEPOSIT IN THE MAIL SHALL BE DETERMINATIVE. prescribed and furnished by the Board.~~

(B) ON OR BEFORE THE 14<sup>TH</sup> DAY AFTER THE END OF EACH MONTH, COOPERATIVES SHALL PROVIDE STATE OF ORIGIN REPORTS TO EACH PENNSYLVANIA POOL PLANT TO WHICH THEY SELL OR DELIVER MILK, WITH A COPY TO THE POOL ADMINISTRATOR, INDICATING THE STATE WHERE THE MILK WAS PRODUCED. IF THE STATE OF ORIGIN REPORT IS NOT RECEIVED BY A PENNSYLVANIA POOL PLANT OPERATOR AND THE POOL ADMINISTRATOR BY THE 14<sup>TH</sup> DAY OF THE MONTH FOLLOWING THAT IN WHICH THE MILK WAS SOLD OR DELIVERED, THE POOL ADMINISTRATOR SHALL PRESUME THAT ALL MILK

RECEIVED THAT MONTH WAS PRODUCED OUTSIDE PENNSYLVANIA. NO ADJUSTMENT SHALL BE MADE IN SUBSEQUENT MONTHS IF THE STATE OF ORIGIN REPORT IS RECEIVED AFTER THE 14<sup>TH</sup>. ADJUSTMENTS SHALL BE MADE IN SUBSEQUENT MONTHS FOR ERRORS IN STATE OF ORIGIN REPORTS.

§ 148.3 Calculation of the Contributing Pool Plant Over-Order Premium Value

The Pool Administrator shall calculate the over-order premium value for each contributing pool plant in the following manner.

(a) Divide the Pennsylvania production by the total producer purchases AND IN THE CASE OF COOPERATIVES, RECEIPTS FROM MEMBERS, net of non-Class I diversions to arrive at the percentage of Pennsylvania purchases. This percentage may not exceed 100%.

(b) Multiply the over-order premium rate times the Pennsylvania Class I utilization EXPRESSED ON A HUNDREDWEIGHT BASIS times the percentage of Pennsylvania purchases to arrive at the contributing pool plant over-order premium value.

EXAMPLE

Where

- A = 300,000 pounds Pennsylvania production
- B = 700,000 pounds total producer purchases
- C = 100,000 pounds non-Class I diversions
- D = percentage of Pennsylvania purchases
- E = \$1.00/cwt over-order premium rate
- F = 350,000 400,000 pounds (3,500 HUNDREDWEIGHT) Pennsylvania Class I utilization
- G = contributing pool plant over-order premium value

$$\frac{A}{(B - C)} = D \qquad \frac{300,000}{(700,000 - 100,000)} = 50\%$$

$$E \times F \times D = G \qquad \$1.00 / \text{cwt} \times 3,500 \text{ cwt } 400,000 \times 50\% = \$1,750 2,000$$

§ 148.4 Calculation of the Pool

The Pool Administrator shall calculate ~~the plant Pool obligation for each Contributing Pool Plant, the Pennsylvania milk PREMIUM pool or Pool and the Re distribution Rate~~ in the following manner.

(a) Multiply the contributing pool plant over-order premium value calculated in ~~section~~ § 148.3 (RELATING TO THE CALCULATION OF THE CONTRIBUTING POOL PLANT OVER-ORDER PREMIUM VALUE) ~~above~~ for each contributing pool plant by 45% (THE POOL PERCENTAGE) to arrive at the CONTRIBUTING POOL plant pool PAYMENT.



obligation. The remaining 55% of the over-order premium value is the directly distributed over-order premium value.

(b) CONTRIBUTING POOL PLANTS SHALL MAKE POOL PAYMENTS TO THE POOL ADMINISTRATOR ON OR BEFORE THE 5<sup>TH</sup> DAY OF THE MONTH FOLLOWING RECEIPT OF THE DEALER'S REPORT REQUIRED BY § 148.2 (RELATING TO REPORTING REQUIREMENTS). FOR EXAMPLE, PURSUANT TO § 148.2 THE MAY REPORT IS DUE JUNE 25, THEREFORE POOL PAYMENTS ARE DUE ON OR BEFORE JULY 5.

(c) The sum of all CONTRIBUTING POOL plant pool PAYMENTS NET OF UNDERPAYMENTS, OVERPAYMENTS, AND ADJUSTMENTS ~~obligations from all Contributing Pool Plants~~ is the Pennsylvania milk PREMIUM pool. ~~or Pool. Divide the Pool by the hundredweights of all Qualified Pounds for all Pennsylvania Pool Plants to arrive at the Redistribution Rate.~~

EXAMPLE

Where

- G<sup>a</sup> = \$2,000 ————— Contributing Pool Plant Over Order Premium Value (Dairy A)
- G<sup>b</sup> = \$3,000 ————— Contributing Pool Plant Over Order Premium Value (Dairy B)
- G<sup>c</sup> = \$0 ————— Contributing Pool Plant Over Order Premium Value (Dairy C)
- I<sup>a</sup> = ————— Plant Pool obligation (Dairy A)
- I<sup>b</sup> = ————— Plant Pool obligation (Dairy B)
- I<sup>c</sup> = ————— Plant Pool obligation (Dairy C)
- J<sup>a</sup> = ————— Directly Distributed Over Order Premium Value (Dairy A)
- J<sup>b</sup> = ————— Directly Distributed Over Order Premium Value (Dairy B)
- J<sup>c</sup> = ————— Directly Distributed Over Order Premium Value (Dairy C)
- A<sup>a</sup> = 300,000 pounds — Pennsylvania Production (Dairy A)
- A<sup>b</sup> = 500,000 pounds — Pennsylvania Production (Dairy B)
- A<sup>c</sup> = 50,000 pounds — Pennsylvania Production (Dairy C)
- K<sup>a</sup> = 50,000 pounds — Pennsylvania Out-of-State Diversion (Dairy A)
- K<sup>b</sup> = 200,000 pounds — Pennsylvania Out-of-State Diversion (Dairy B)
- K<sup>c</sup> = 0 pounds — Pennsylvania Out-of-State Diversion (Dairy C)
- L<sup>a</sup> = 100,000 pounds — Federally De-pooled Milk (Dairy A)
- M<sup>a</sup> = ————— Qualified Pounds (Dairy A)
- M<sup>b</sup> = ————— Qualified Pounds (Dairy B)
- M<sup>c</sup> = 192,857 pounds — Qualified Pounds (Dairy C)
- N = Pennsylvania Milk Pool
- O = Redistribution Rate

(a) Dairy A —————

$$G^a \times 45\% = I^a \quad \$2,000 \times 45\% = \text{—————} \$900$$

$$G^a - I^a = J^a \quad \$2,000 - \$900 = \$1,100$$

Dairy B

$$G^b \times 45\% = I^b \quad \$3,000 \times 45\% = \quad \$1,350$$

$$G^b - I^b = J^b \quad \$3,000 - \$1,350 = \$1,650$$

Dairy C

$$G^c \times 45\% = I^c \quad \$0 \times 45\% = \quad \$0$$

$$G^c - I^c = J^c \quad \$0 - \$0 = \$0$$

(b) N Pennsylvania Milk Pool \$2,250

(c) Dairy A

$$A^a - (K^a + L) = M^a \quad 300,000 - (50,000 + 100,000) = 150,000$$

Dairy B

$$A^b - K^b = M^b \quad 500,000 - 200,000 = 300,000$$

Dairy C

$$M^c \quad 192,857 \quad \underline{192,857}$$

642,857

$$\frac{N}{(M^a + M^b + M^c) / 100} = \frac{\$2,250}{642,857 / 100} = \$0.3500 / \text{Hundredweight}$$

§ 148.5 CALCULATION OF QUALIFIED POUNDS ~~Collect on and Distribution of the Pool~~

THE QUALIFIED POUNDS AT EACH PENNSYLVANIA POOL PLANT SHALL BE THE PENNSYLVANIA POOL PLANT'S PENNSYLVANIA PRODUCTION, LESS THE PENNSYLVANIA POOL PLANT'S PENNSYLVANIA PRODUCTION TRANSFERRED OR DIVERTED TO NON-PENNSYLVANIA POOL PLANTS, AND EXCLUDING MILK RECEIVED FROM PRODUCER-DEALERS.

(A) TRANSFERS AND DIVERSIONS SHALL BE ALLC CATED TO PENNSYLVANIA OR OUT-OF-STATE PRODUCTION BASED UPON THE PERCENTAGE OF PRODUCER PURCHASES AT A PENNSYLVANIA POOL PLANT. FOR EXAMPLE, IF 50,000 POUNDS OF MILK IS TRANSFERRED OR DIVERTED TO NON-PENNSYLVANIA POOL PLANTS, AND THE PENNSYLVANIA POOL PLANT PURCHASES 1,000,000

POUNDS OF PRODUCER MILK, 50% OF WHICH IS PENNSYLVANIA PRODUCTION, THEN 25,000 POUNDS WOULD BE CONSIDERED A TRANSFER/DIVERSION OF PENNSYLVANIA PRODUCTION.

(B) FOR THE PURPOSE OF DETERMINING WHETHER MILK IS TRANSFERRED OR DIVERTED FROM A PENNSYLVANIA POOL PLANT, MILK SHALL BE CONSIDERED RECEIVED BY A PENNSYLVANIA POOL PLANT IF IT IS UNLOADED INTO A STATIONARY STORAGE TANK THAT IS NOT USED SOLELY AS A RELOADING POINT EITHER FROM ONE TANK TRUCK TO ANOTHER TANK TRUCK OR BACK TO THE ORIGINAL TANK TRUCK.

The Pool Administrator shall calculate the Pool Allotment and Pool Payment for each plant in the following manner:

(a) Multiply the Redistribution Rate times hundredweights of the Qualified Pounds at each Pennsylvania Pool Plant to arrive at the Pool Allotment for each plant.

EXAMPLE

Where  $M^a = 150,000$  pounds — Qualified Pounds (Dairy A)  
 $M^b = 300,000$  pounds — Qualified Pounds (Dairy B)  
 $M^c = 192,857$  pounds — Qualified Pounds (Dairy C)  
 $O = \$0.3500 / \text{cwt}$  — Redistribution Rate  
 $P =$  — Pool Allotment

Dairy A

$$M^a \times O = P^a \quad (150,000 / 100) \times \$0.3500 = \$525$$

Dairy B

$$M^b \times O = P^b \quad (300,000 / 100) \times \$0.3500 = \$1050$$

Dairy C

$$M^c \times O = P^c \quad (192,857 / 100) \times \$0.3500 = \$675$$

\$2,250

(b) For Contributing Pool Plants:

(1) Add the Pool Allotment to the Directly Distributed Over Order Premium Value to arrive at the amount to be distributed among qualified producers.

(2) Subtract the amount to be distributed among qualified producers from the Contributing Plant Over Order Premium Value calculated in section 148.3 to arrive at the Pool Payment.

(3) Pool Payments shall be received by the Pool Administrator on or before the 18<sup>th</sup> day after the end of the month. If the 18<sup>th</sup> day falls on a weekend or state-recognized holiday, payment may be received on the next business day following the weekend or state-recognized holiday.

(4) Contributing Pool Plant operators must divide the amount to be distributed among qualified producers by the hundredweights of all Pennsylvania Production less Federally De-pooled milk to arrive at the Plant Distribution Rate.

(5) Multiply the Plant Distribution Rate by the hundredweights of milk from each Pennsylvania Producer or producer group to arrive at the net Over-Order Premium Value payable to each producer or producer group. No distribution of any Over-Order Premium Value shall be made to any producer or producer group for any portion of milk de-pooled under a Federal Milk Marketing Order.

(6) Contributing Pool Plant Operators must make payment of the Contributing Pool Plant Over-Order Premium Value with the final payment.

#### EXAMPLE

Where  $J^a = \$1,100$  — Directly Distributed Over-Order Premium Value (Dairy A)  
 $P^a = \$525$  — Pool Allotment (Dairy A)  
 $G^a = \$2,000$  — Contributing Pool Plant Over-Order Premium Value (Dairy A)  
 $Q^a =$  — Amount to be Distributed Among Qualified Producers  
 $R^a =$  — Pool Payment  
 $A^a = 300,000$  pounds — Pennsylvania Production  
 $B^a = 100,000$  pounds — Federally De-pooled Milk (Dairy A)  
 $S^a =$  — Plant Distribution Rate per Hundredweight

#### Dairy A

- To derive the amount to be distributed among qualified producers

$$J^a + P^a = Q^a \quad \text{---} \quad \$1,100 + \$525 = \$1,625$$

- To derive the Pool Payment

$$G^a - Q^a = R^a \quad \text{---} \quad \$2,000 - \$1,625 = \$375$$

- To Derive the Plant Distribution Rate per Hundredweight

$$\frac{Q^a}{A^a - B^a} = S^a \quad \text{---} \quad \frac{\$1,625}{300,000 - 100,000} = \$0.5417 / \text{Hundredweight}$$

~~(A<sup>a</sup> - E<sup>a</sup>) / 100~~

~~(300,000 - 100,000 / 100)~~

~~(c) For all Pennsylvania Pool Plants other than Contributing Pool Plants:~~

~~(1) The Pool Allotment is the amount to be distributed among qualified producers.~~

~~(2) Divide the amount to be distributed among qualified producers by the hundredweights of all Pennsylvania Production to arrive at the Plant Distribution Rate.~~

~~(3) Multiply the Plant Distribution Rate by the hundredweights of milk from each Pennsylvania Producer or producer group to arrive at the net Over-Order Premium Value payable to each producer or producer group.~~

~~(d) On or before the 22<sup>nd</sup> day after the end of the month, the State Treasurer shall make payment of the Pool Allotment to each Pennsylvania Pool Plant receiving pool payments for redistribution to their qualified producers.~~

~~(e) Pennsylvania Pool Plants receiving pool allotments shall distribute those funds to their Qualified Producers by the date of the advance payment for the following month. All checks forwarding pool payments to Qualified Producers shall include a line item that identifies the pool portion of the check.~~

#### § 148.6 CALCULATION OF POOL ALLOTMENTS

THE POOL ADMINISTRATOR SHALL DIVIDE THE POOL BY THE SUM OF THE QUALIFIED POUNDS FROM ALL PENNSYLVANIA POOL PLANTS TO ARRIVE AT A REDISTRIBUTION RATE. THAT REDISTRIBUTION RATE SHALL BE MULTIPLIED BY THE QUALIFIED POUNDS FOR EACH PENNSYLVANIA POOL PLANT TO ARRIVE AT THE POOL ALLOTMENT FOR EACH PENNSYLVANIA POOL PLANT.

#### § 148.7 DISTRIBUTION

(A) EACH CONTRIBUTING POOL PLANT SHALL DIVIDE ITS DIRECTLY DISTRIBUTED OVER-ORDER PREMIUM VALUE BY ITS PENNSYLVANIA PRODUCTION TO ARRIVE AT A PRODUCER DISTRIBUTION RATE. THE CONTRIBUTING POOL PLANT SHALL THEN MULTIPLY THAT PRODUCER DISTRIBUTION RATE BY THE POUNDS PURCHASED FROM EACH PENNSYLVANIA PRODUCER TO ARRIVE AT THE DIRECTLY DISTRIBUTED OVER-ORDER PREMIUM FOR THAT PRODUCER, WHICH SHALL BE DISTRIBUTED WITH THE FINAL PAYMENT.

(B) ON OR BEFORE THE 16<sup>TH</sup> DAY OF THE MONTH FOLLOWING RECEIPT OF THE REPORTS REQUIRED BY § 148.2 (RELATING TO REPORTING REQUIREMENTS), THE STATE TREASURER SHALL MAKE PAYMENT OF THE POOL

ALLOTMENT TO EACH PENNSYLVANIA POOL PLANT RECEIVING POOL PAYMENTS FOR REDISTRIBUTION TO THEIR PENNSYLVANIA PRODUCERS.

(C) EACH PENNSYLVANIA POOL PLANT SHALL DIVIDE ITS POOL ALLOTMENT BY ITS PENNSYLVANIA PRODUCTION TO ARRIVE AT A PRODUCER DISTRIBUTION RATE. THE PENNSYLVANIA POOL PLANT SHALL THEN MULTIPLY THAT PRODUCER DISTRIBUTION RATE BY THE POUNDS PURCHASED FROM EACH PENNSYLVANIA PRODUCER TO ARRIVE AT THE PRODUCER POOL DISTRIBUTION PAYMENT FOR EACH PENNSYLVANIA PRODUCER, WHICH SHALL BE PAID NO LATER THAN THE DAY AFTER PAYMENT OF THE POOL ALLOTMENT HAS BEEN RECEIVED FROM THE STATE TREASURER.

§ 148.8 Pool Administrator's Reporting Requirements

(A) ON OR BEFORE ~~No later than~~ the 3<sup>RD</sup> 16<sup>th</sup> day OF THE MONTH FOLLOWING RECEIPT OF THE REPORTS REQUIRED BY § 148.2 (RELATING TO REPORTING REQUIREMENTS), ~~after the end of each month~~, the Pool Administrator shall advise each Pennsylvania pool plant of the following information as it pertains to them FOR THE MONTH FOR WHICH THE REPORT WAS FILED. If the 3<sup>RD</sup> DAY 16<sup>th</sup> falls on a weekend or state-recognized holiday, the Pool Administrator shall advise EACH the Pennsylvania pool plant of the following information on the last business day prior to the weekend or state-recognized holiday.

- (1a) Pennsylvania production;
- (2b) total PRODUCER PURCHASES ~~Pounds Received~~;
- (3e) PENNSYLVANIA Class I ~~Pounds~~ Utilization;
- (4d) non-Class I diversions;
- (5e) diversions to out-of-state plants;
- (6f) over-order premium rate;
- (7g) over-order premium VALUE ~~Obligation~~;
- (8h) POOL percentage ~~to Pool (Currently 45%)~~;
- (9i) POOL PAYMENT ~~Amount of Premium Pooled~~;

(B) ON OR BEFORE THE 13<sup>TH</sup> DAY OF THE MONTH FOLLOWING RECEIPT OF THE REPORTS REQUIRED BY § 148.2 (RELATING TO REPORTING REQUIREMENTS), THE POOL ADMINISTRATOR SHALL ADVISE EACH PENNSYLVANIA POOL PLANT OF THE FOLLOWING INFORMATION AS IT PERTAINS TO THEM FOR THE MONTH FOR WHICH THE REPORT WAS FILED. IF THE 13<sup>TH</sup> DAY FALLS ON A WEEKEND OR STATE-RECOGNIZED HOLIDAY, THE POOL ADMINISTRATOR SHALL ADVISE EACH PENNSYLVANIA POOL PLANT OF THE FOLLOWING INFORMATION ON THE LAST BUSINESS DAY PRIOR TO THE WEEKEND OR STATE-RECOGNIZED HOLIDAY.

- (1j) qualified pounds;
- (2k) PENNSYLVANIA MILK PREMIUM ~~Total Pool Amount~~;
- (3l) total qualified pounds IN THE POOL;

- (4m) redistribution rate;
- (5n) pool ALLOTMENT Payment;
- ~~(e) Amount Pennsylvania Pool Plant Will Receive Out of Pool;~~
- (6p) Any adjustments from previous months. ; and
- ~~(e) Pennsylvania Pool Plant Distribution Rate Per Hundredweight~~

~~This information will be generated from the PMMB-62, Milk Dealers Monthly Report, submitted by the Pennsylvania Pool Plants.~~

§ 148.9 DATES

IF A DATE REQUIRED FOR PAYMENT CONTAINED IN THIS CHAPTER FALLS ON A SATURDAY, SUNDAY, OR STATE HOLIDAY, SUCH PAYMENT SHALL BE DUE ON THE NEXT DAY THAT THE POOL ADMINISTRATOR'S OFFICE IS OPEN FOR PUBLIC BUSINESS.

§ 148.10 METHOD OF PAYMENT

(A) ALL PAYMENTS BY OR TO THE COMMONWEALTH REQUIRED BY THIS CHAPTER SHALL BE MADE BY ELECTRONIC PAYMENT (AUTOMATED CLEARING HOUSE, OR ACH) ACCOUNTS.

(B) ALL PENNSYLVANIA POOL PLANTS SHALL BE ESTABLISHED IN THE COMMONWEALTH VENDOR FILE ON AND AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

(1) CREATION OF ACH ACCOUNTS SHALL BE COORDINATED BY THE POOL ADMINISTRATOR, WHO SHALL PROVIDE AN ACH APPLICATION AND A FEDERAL FORM W-9 TO EACH PENNSYLVANIA POOL PLANT.

(2) PENNSYLVANIA POOL PLANTS MAY ALSO REGISTER FOR ACH ACCOUNTS AT [WWW.VENDORREGISTRATION.STATE.PA.US](http://WWW.VENDORREGISTRATION.STATE.PA.US).



COMMONWEALTH OF PENNSYLVANIA  
MILK MARKETING BOARD

LYNDA J. BOWMAN  
EXECUTIVE SECRETARY

February 14, 2003

1301 NORTH CAMERON STREET  
HARRISBURG, PENNSYLVANIA 17110-9408  
717-787-4194  
FAX: 717-783-6492

John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Re: Regulation #47-9 (IRRC #2218)  
Milk Marketing Board  
Over-Order Premium Pool

Dear Chairman McGinley:

The Pennsylvania Milk Marketing Board is withdrawing the Over-Order Premium Pool Regulation as submitted in Final Form on November 18, 2002. We are withdrawing the regulation because we discovered some changes that we felt needed to be made, which are addressed in the new preamble.

Enclosed for submission is a Final Form Annex A, Preamble, and Regulatory Analysis Form, with the changes incorporated. For convenience and ease of reading we have also enclosed a non-formatted Annex A.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Lynda J. Bowman".

Lynda J. Bowman  
Secretary

Enclosure

cc: Honorable Raymond Bunt, Jr., Majority Chairman, House Agriculture and Rural Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: <b>47 - 9</b>	
SUBJECT: <b>Pennsylvania Over-Order Premium Pool</b>	
AGENCY: <b>Pennsylvania Milk Marketing Board</b>	
<b>TYPE OF REGULATION</b>	
Proposed Regulation	
<b>XX</b>	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
<b>FILING OF REGULATION</b>	
<b>DATE</b>	<b>SIGNATURE</b>
<b>DESIGNATION</b>	
<u>2/14/03</u>	<u><i>Kurt Hoffman</i></u>
HOUSE COMMITTEE ON Agriculture & Rural Affairs	
<u>2-14-03</u>	<u><i>J. C. ...</i></u>
SENATE COMMITTEE ON Agriculture and Rural Affairs	
<u>2-14-03</u>	<u><i>Cecilia Boyer</i></u>
SENATE COMMITTEE ON Agriculture and Rural Affairs	
<u>2-14-03</u>	<u><i>Sam Anderson</i></u>
INDEPENDENT REGULATORY REVIEW COMMISSION	
<u>2-14-03</u>	<u><i>Elena Payan</i></u>
ATTORNEY GENERAL	
LEGISLATIVE REFERENCE BUREAU	

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April 20, 2001