

# Regulatory Analysis Form

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2005 JUN -3 RMID: 39

(1) Agency

Pennsylvania Milk Marketing Board

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

47-11

IRRC Number: 2466

(3) Short Title

Transactions between dealers and customers; Dealer inducements

(4) PA Code Cite

7 Pa. Code Chapter 145

(5) Agency Contacts & Telephone Numbers

Primary Contact: Keith Bierly, 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.

The principal purpose of the amendments is to prohibit loans made by Board licensed milk dealers to their customers. Section 807 of the Pennsylvania Milk Marketing Law (Law) (31 P.S. § 700j-807) provides that "[n]o method or device shall be lawful whereby milk is bought or received . . . , or sold . . . or delivered . . . , or offered to be bought or received . . . , or sold . . . or delivered . . . , at a price less than the minimum price applicable to the particular transaction . . . ." Milk dealers, in the course of acquiring new customers, sometimes make loans to those customers. Examining those loans to determine if they have the effect of bringing any particular transaction below the minimum price applicable for that transaction raises a myriad of valuation and enforcement issues. Widespread use of loans also has the potential to cause market disruption in some areas of Pennsylvania. In addition, the Board believes that the majority of milk dealers do not want to provide loans to customers, but in many cases the dealers feel that they must make a loan to retain or acquire a customer. The Board believes that prohibiting loans will tend to reduce the potential for market disruption and will lead to improved compliance with the Law's minimum pricing provisions.

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

**Section 307 of the Law (31 P.S. § 700j-307) provides the Board with the authority to adopt and enforce regulations necessary or appropriate to carry out the provisions of the Law.**

**Section 807 of the Pennsylvania Milk Marketing Law (Law) (31 P.S. § 700j-807) provides that "[n]o method or device shall be lawful whereby milk is bought or received . . . , or sold . . . or delivered . . . , or offered to be bought or received . . . , or sold . . . or delivered . . . , at a price less than the minimum price applicable to the particular transaction . . . ." The Board has found that dealer loans to customers have at least the potential to provide a means for milk to be bought or sold at prices less than Board-established minimums.**

## 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?

**Section 807 of the Pennsylvania Milk Marketing Law (Law) (31 P.S. § 700j-807) provides that "[n]o method or device shall be lawful whereby milk is bought or received . . . , or sold . . . or delivered . . . , or offered to be bought or received . . . , or sold . . . or delivered . . . , at a price less than the minimum price applicable to the particular transaction . . . ." Milk dealers, in the course of acquiring new customers, sometimes make loans to those customers. Such loans have at least the potential to result in milk being bought and sold at prices below the applicable Board-mandated minimum price. Widespread use of loans also has the potential to cause market disruption and destructive competition in some areas of Pennsylvania. In addition, the Board believes that the majority of milk dealers do not want to provide loans to customers, but in many cases the dealers feel that they must make a loan to retain or acquire a customer. The Board believes that prohibiting loans will tend to reduce the potential for market disruption and will lead to improved compliance with the Law's minimum pricing provisions. The Board believes that it is in the public interest to ensure the greatest compliance possible with the Law's minimum pricing provisions.**

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

**Increasing use of loans from dealers to customers to secure or retain business has the potential to cause market disruption and destructive competition, particularly as those loans are used to make sales below the applicable Board-established minimums. One benefit that results from the Law's minimum pricing provisions is an unparalleled diversity of milk processors, providing a wide range of choices for Pennsylvania milk consumers. The large number of processors in Pennsylvania also ensures Pennsylvania consumers of the highest quality and freshest milk available. The use of loans to circumvent the minimum pricing provisions has the potential to cause market disruption and destructive competition, eventually to the detriment of Pennsylvania's milk consumers.**

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

**All of Pennsylvania's milk consumers will benefit from this regulation, as noted in item 12 above. The regulation will also eliminate a source of potential market disruption and destructive competition, benefiting milk dealers doing business in Pennsylvania and their customers.**

## 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 only persons who will be adversely affected by the regulation are those customers of milk dealers who have been receiving below market value loans. The number of these customers varies widely month-to-month based on a number of factors, including the wholesale price of milk and business decisions of milk dealers and their customers.**

(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.)

**There are approximately 64 fluid milk processors and former fluid milk processors licensed by the Board as milk dealers who will be required to comply with the 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.

**The Board conducted a roundtable meeting on June 29, 2004, to generally discuss the issues surrounding loans made by milk dealers to their customers. Among the attendees were the Pennsylvania Association of Milk Dealers, Pennsylvania Food Merchants' Association, Pennsylvania Farm Bureau, Dean Foods Company, Lehigh Valley Dairies, Rutter's Dairy, Pocono Mountain Dairy, Ritchey's Dairy, Galliker's Dairy, Vale Wood Farms, Crowley Foods, Upstate Farms Cooperative, and Land O' Lakes. The Board learned at this roundtable meeting that the general consensus in the industry was that loans by dealers to their customers should be prohibited. A first draft of the regulation was completed following the roundtable meeting. Various drafts were circulated among the interested parties and revised over the course of the next five months.**

**On December 15, 2004, the Board conducted a public hearing to receive comments on the proposed regulation. The attendees at the public hearing included representatives of the Pennsylvania Association of Milk Dealers, Pennsylvania Food Merchants' Association, Pennsylvania Farm Bureau, Dean Foods Company, Dairy Marketing Services, Lehigh Valley Dairies, Schneider's Dairy, Pennsylvania Department of Agriculture, United Dairy Company, and Land O' Lakes. The Pennsylvania Food Merchants' Association raised the issue of grocery wholesalers making loans to customers in conjunction with the full line of grocery sales to those customers. The amendments address that issue by clarifying that loans made by grocery wholesalers in conjunction with transactions that may include milk sales are not prohibited if the loans are only incidentally related to the milk sales and are not made as an inducement to secure or retain the milk business of the customer.**

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 no costs associated with compliance with the regulation.**

**The regulated community may incur some savings, which cannot be specifically estimated, as a result of being prohibited from making loans, which in some cases would be below market value or non-performing.**

(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.

**There will be no costs and/or savings to state government associated with implementation of the regulation. The Board's enforcement staff will merely re-direct enforcement efforts to other issues.**

## 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	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</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 Board believes that that there will be no costs or revenue losses by the regulated community, local government, or state government by prohibiting loans from milk dealers to their customers. The Board also believes that no savings will be incurred by the regulated community, local government, or state government by prohibiting loans from milk dealers to their customers.

### 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
	\$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 elimination of the potential for market disruption and destructive competition by ensuring compliance with Board-established minimum prices. The minimum price provisions of the Law ultimately benefit Pennsylvania milk consumers by assuring them access to the greatest possible variety of the freshest possible fluid milk at more reasonable prices than what might otherwise occur. The Board believes that the regulation will result in no adverse effects or costs; rather, adverse effects and costs will result from non-regulation of dealer loans to their customers.**

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

**There are no non-regulatory alternatives available to prevent the market disruption and destructive competition that could result from increasing use of loans by milk dealers to secure or retain milk business.**

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

**There are no alternative regulatory schemes to prohibit dealer loans to their customers to prevent the market disruption and destructive competition that could result from increasing use of such loans.**

### 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?

**Pennsylvania's Milk Marketing Law is somewhat unique. The Board has not identified any other states that prohibit loans from milk dealers to their customers; however, only two other states have a milk regulatory program as comprehensive as Pennsylvania's.**

**The regulation will not put Pennsylvania at a competitive disadvantage with other states, as the regulation will only be enforced on transactions that take place in Pennsylvania.**

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

No.

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

**The Board held an informal roundtable discussion on June 29, 2004. The Board also held a public hearing on December 15, 2004. No further public hearings or further informational meetings with the industry are contemplated.**



### Regulatory Analysis Form

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

No.

(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 does take into account the particular needs of grocery wholesalers who are also licensed by the Board as milk dealers. Grocery wholesalers sometimes make loans to their customers in conjunction with transactions involving the full range of items sold by grocery wholesalers, including milk. To the extent those loans are only incidentally related to milk sales and are not made to secure or retain the milk business of a customer, the proposed regulation does not prohibit them.**

(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 regulation will become effective upon publication in the *Pennsylvania Bulletin*. Compliance with the regulation will be required as of the effective date. No additional permits or licenses will be required.**

(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.**

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**  
(Pursuant to Commonwealth Documents Law)

2005 JUN -3 AM 10:39

DO NOT WRITE IN THIS SPACE

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 a true and correct copy  
of a document issued, prescribed or promulgated by:

PA Milk Marketing Board  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 47-11

DATE OF ADOPTION: June 3, 2005

BY: 

TITLE: Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to  
form and legality. Executive or Independ-  
ent Agencies.

BY: 

6/3/05  
DATE OF APPROVAL

~~(DEPUTY GENERAL COUNSEL)~~  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

☐ Check if applicable. No Attorney Gen-  
eral approval or objection within 30  
days after submission.

## **PENNSYLVANIA MILK MARKETING BOARD**

### **(7 Pa. Code Chapter 145)**

#### **Transactions between dealers and customers; Dealer inducements**

The Pennsylvania Milk Marketing Board (Board) amends 7 Pa. Code §§ 145.11, 145.21, 145.25, and 145.26 (relating to transactions between dealers and customers and dealer inducements) to read as set forth in Annex A, under authority of section 307 of the Milk Marketing Law (31 P.S. § 700j-307).

Notice of proposed rulemaking was published at 35 Pa. B. 1772 (March 19, 2005) with an invitation to submit written comments within 30 days. The Board received no comments during the public comment period. The Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs Committee offered no comments, suggestions, or objections to the amendment. The Independent Regulatory Review Commission (IRRC) offered no comments, suggestions, or objections to the amendment.

In final-form rulemaking, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Purpose*

The principal purpose of the amendments is to prohibit loans made by Board licensed milk dealers to their customers. Section 807 of the Pennsylvania Milk Marketing Law (Law) (31 P.S. § 700j-807) provides that "[n]o method or device shall be lawful whereby milk is bought or received . . . , or sold . . . or delivered . . . , or offered to be bought or received . . . , or sold . . . or delivered . . . , at a price less than the minimum price applicable to the particular transaction . . . ." Milk dealers, in the course of acquiring new customers, sometimes make loans to those customers. Examining those loans to determine if they have the effect of bringing any particular transaction below the minimum price applicable for that transaction raises a myriad of valuation and enforcement issues. Widespread use of loans also has the potential to cause market disruption in some areas of Pennsylvania. In addition, the Board believes that the majority of milk dealers do not want to provide loans to customers, but in many cases the dealers feel that they must make a loan to retain or acquire a customer. The Board believes that prohibiting loans will tend to reduce the potential for market disruption and will lead to improved compliance with the Law's minimum pricing provisions.

A secondary purpose of the final-form rulemaking is to achieve greater clarity and consistency in the regulations.

#### *Comments*

The Board received no comments during the public comment period. The Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs

Committee offered no comments, suggestions, or objections to the amendment. The Independent Regulatory Review Commission (IRRC) offered no comments, suggestions, or objections to the amendment.

*Paperwork Estimates*

There will be no additional paperwork requirements due to these amendments.

*Effective date*

The amendments will become effective upon final-form 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(a)), the Board submitted a copy of the notice of proposed rulemaking published at 35 Pa. B. 1772 (March 19, 2005) to IRRC and to the Senate Committee on Agriculture and Rural Affairs and the House Agriculture and Rural Affairs Committee for review and comment.

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>.

*Contact Person*

The official responsible for information on these final form regulations is Keith Bierly, 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 the final-form rulemaking 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.

(3) The final-form rulemaking is necessary and appropriate for the administration of the act.

*Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 7 Pa. Code §§ 145.11, 145.21, 145.25, and 145.26, are amended to read as set forth in Annex A.

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

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

(d) The order shall take effect upon final-form publication in the *Pennsylvania Bulletin*.

Boyd E. Wolff,  
*Chairman*

## ANNEX A

### § 145.11. Financing.

Milk Dealers and their affiliates, subsidiaries, or representatives thereof shall not provide financial accommodations for a wholesale customer by lending money to the customer, or by paying or guaranteeing the payment of any obligation of the customer, or by acting as a cosigner on a promissory note or other obligation of said the customer, or by depositing money or collateral with a third party, person or organization which will lend money or extend credit to a wholesale the customer. The provisions of this section shall not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees, or wholesale customers to the extent such transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee, or wholesale customer.

### § 145.21. Giveaways.

(a) Milk dealers and their affiliates, subsidiaries, or representatives thereof shall not give or lend any milk, milk products, money, article, prize, award, or any other item to a customer or a prospective customer, as an inducement for the purpose of soliciting or securing business or making collections for said dealer, unless such person is a regular employee of the dealer. The provisions of this section shall not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees, or wholesale customers to the extent such transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee, or wholesale customer.

~~(b) Subsection (a) of this section shall not apply to persons employed by "Welcome Wagon Service," any similar organization, any accredited collection agency, or attorneys retained for collection purposes.~~

### § 145.25. ~~Loans and credit; wholesale customers.~~

~~Loans by a dealer, or an affiliate, subsidiary, or representative thereof to wholesale customers of fluid milk shall be deemed an extension of credit as that term is used under section 807 of the act (31 P. S. § 700j 807), and are prohibited insofar as an extension of credit is prohibited under such section.~~

### § 145.26. Extension of credit to wholesale customers.

(a) Extension of credit to a wholesale customer, excluding a hospital, school or government agency, beyond 30 days from the date of invoice is prohibited.

(1) The invoice from dealers to customers must be rendered no less frequently than once a month.

(2) If a customer fails to pay an invoice within 30 days, the dealer must then place that customer on a cash basis.

(b) For the purpose of this section, cash payment basis may, at the option of the dealer, be interpreted to mean weekly payments for the delivery of the past weeks plus not less than 4% of the past due account to be received by the dealer, on a regular and continuing weekly basis until the customer has reduced the past due balance below the maximum 30-day credit limitation. A dealer who has placed a customer on a cash payment basis under the provisions of this section may, with approval of the Board, require such customer to execute a promissory note in favor of the dealer, or to grant the dealer a lien on assets of the customer, or to otherwise secure payment of the past due balance to the dealer. Such dealer shall immediately notify the Board of the full details of any such action taken to secure the payment of a past due balance under this section.

(c) The provisions of this section shall not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees, or wholesale customers to the extent such transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee, or wholesale customer.

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

**I.D. NUMBER:** 47-11

**SUBJECT:** Transactions between dealers and customers; Dealer inducements

**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

2005 JUN -3 AM 10:39

**FILING OF REGULATION**

**DATE**

**SIGNATURE**

**DESIGNATION**

6-3-05

*C. Zini*

HOUSE COMMITTEE ON Agriculture and Rural  
Affairs

6-3-05

*S. Altland*

SENATE COMMITTEE ON Agriculture and Rural  
Affairs

6-3-05

*C. Bryn*

INDEPENDENT REGULATORY REVIEW COMMISSION

06/03/05

*Judge Mark Eagle*

ATTORNEY GENERAL

6/3/05

*John J. Hall*

LEGISLATIVE REFERENCE BUREAU

April 20, 2001