

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Milk Marketing Board

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

47-12

IRRC Number:

2564

(3) Short Title

Transactions between dealers and customers – Refrigeration Equipment; Records and Reports

(4) PA Code Cite

7 Pa. Code Chapter 145;
7 Pa. Code Chapter 146;
7 Pa. Code Chapter 147

(5) Agency Contacts & Telephone Numbers

Primary Contact: Keith Bierly, Secretary
787-4194

Secondary Contact: John H. Howard, Staff Attorney
787-4194

(6) Type of Rulemaking (check one)

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

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

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

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

Current Board regulations prohibit milk dealers from giving or lending refrigeration equipment to wholesale customers without charge, but do not prohibit milk dealers from selling or leasing such equipment to customers according to specified terms and conditions. During a recent statewide enforcement audit conducted by Board Staff, it was discovered that virtually all dealers in Pennsylvania that were providing refrigeration equipment to wholesale customers were not in compliance with these terms and conditions. It is apparent to the Board that the industry is not being well served by the existing regulations. Based upon reviews of existing practices as well as feedback from industry participants during private discussions and public meetings, the Board believes that there is a strong preference for a method to incorporate sale and lease charges into the wholesale minimum price of milk, rather than requiring sale and lease payments that are separate and apart from payments for milk. The proposed amendments provide a method whereby licensed milk dealers may sell or lease refrigeration equipment to wholesale customers through an additional charge added to the Board-established minimum prices. Secondary purposes of the amendments are to clarify that subdealers as well as dealers are governed by the regulations; to specify that a manufacturer or seller of refrigeration equipment may not sell or in any way handle milk without a license; to clarify that cream dispensers are considered as

refrigeration equipment covered by the regulations; and to preclude the possibility of a dealer avoiding the regulations by contracting with a seller or manufacturer of equipment to have the equipment delivered to a wholesale customer on behalf of the dealer.

(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.

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

No

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

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 or retaining existing customers, are sometimes asked to provide refrigeration equipment to those customers. If such equipment would be provided to a customer without an adequate charge to cover the dealer's cost, it could result in milk being bought and sold at prices below the applicable Board-mandated minimum price. Widespread gifts of refrigeration equipment to customers also has the potential to cause market disruption and destructive competition in some areas of Pennsylvania. Milk dealers have told the Board that many of their wholesale customers want them to provide refrigeration equipment for price controlled milk products, but are unwilling to be billed and pay separately the sales or lease charges. Based upon meetings and input from both dealers and retailers, the Board believes that the amendments, which provide for sales and lease payments as an addition to the minimum price for those customers selling and leasing equipment, will solve this problem.

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

Gifts of refrigeration equipment by dealers to customers to secure or retain business has the potential to cause market disruption and destructive competition, particularly if such gifts 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 gifts of refrigeration equipment 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.)

Both milk dealers and their wholesale customers will benefit from the regulation by having a method whereby sales and leases of refrigeration equipment by dealers to customers can be paid for by an addition to the minimum price for milk rather than through a separate billing and payment.

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

No one will be adversely affected by the regulation.

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

There are approximately 60 fluid milk processors and former fluid milk processors licensed by the Board as milk dealers and approximately 145 licensed milk subdealers 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 held a public meeting/workshop on March 8, 2006 to discuss the issue in general and to determine what changes to the regulations, if any, the interested parties would like to see. Among the attendees were representatives of the Pennsylvania Association of Milk Dealers, the Pennsylvania Food Merchants' Association, Dairy Marketing Services, LLC, Dean Foods Company, Meadow Brook Dairy Company, Lehigh Valley Dairies, Schneider's Dairy, Inc., Schneider-Valley Farms, Inc., and Wawa Dairy, Inc. The problem expressed by the attendees at this meeting was that many wholesale customers want dealers to provide refrigeration equipment, but are unwilling to pay a separate sales or lease payment as required by the current regulations. There was a consensus that customers would be willing to pay such charges if they were included as an additional charge, or "upcharge," added to the minimum price of milk. The first draft of the proposed amendments was written as a result of the discussion and comments at that public meeting and circulated among interested parties.

Following circulation of the first draft, the Board received correspondence from the Pennsylvania School Boards Association expressing concern that the proposed upcharge, since it was the same regardless of container size, would unfairly affect schools, who purchase milk predominantly in half-pint containers.

On April 12, 2006, a meeting of the interested parties was held to discuss the first draft of the amendments. At this meeting, it was agreed among the parties present that the upcharge should be added on a per quart equivalent basis rather than per unit. Based upon the discussion and comments at that meeting, a final draft of the proposed amendments was circulated among the interested parties.

On May 16, 2006, the Board, after due notice, conducted a public hearing to receive comments on the proposed amendments. Representatives of the Pennsylvania Association of Milk Dealers, the Pennsylvania Food Merchants' Association, and Rutter's Dairy were in attendance in addition to Board Staff. Both Board Staff and the Pennsylvania Association of Milk Dealers spoke in favor of the proposed amendments and urged the Board to adopt them. Subsequent to the public hearing, correspondence was received from Giant Eagle, Inc., a grocery wholesaler also licensed as a milk dealer, requesting that the Board exempt grocery wholesalers who supply a complete line of groceries, including milk, to wholly-owned subsidiaries, franchisees, affiliates, or non-affiliated customers to the same extent that such grocery wholesalers are exempted from the dealer loan prohibition elsewhere in Chapter 145. The final draft was changed to accommodate this request.

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 the elimination of the requirement for separate billings for refrigeration equipment sales and lease charges.

(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.

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

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(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. The regulation is designed to provide dealers an opportunity to recapture the costs of equipment that they supply to wholesale customers; milk dealers and subdealers should essentially break even.

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.

Since no one is adversely affected by the amendments to the regulations, the benefits (i.e. less paperwork due to elimination of separate billing) clearly outweigh adverse effects.

(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 milk dealers using gifts of refrigeration equipment 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 dealers from providing gifts of refrigeration equipment to their customers to prevent the market disruption and destructive competition that could result.

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(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 gifts of refrigeration equipment by 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 March 8, 2006, and an additional meeting for interested parties to discuss the first draft of the amendments on April 12, 2006. The Board held a public hearing on the final draft of the proposed amendments on May 16, 2006. Board staff also held discussions with numerous parties between the meetings while circulating drafts of the regulation. No further public hearings or further informational meetings with the industry are contemplated.

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(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 amendments will not require any paperwork in addition to that already required under the existing regulations. If anything, paperwork requirements for milk dealers will be reduced because the amendments eliminate the requirements for separate billings for lease and rental charges.

(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 provide refrigeration equipment to their customers in conjunction with transactions involving the full range of items sold by grocery wholesalers, including milk. To the extent that refrigeration equipment is provided only incidentally to milk sales and not to secure or retain the milk business of a customer, the proposed regulation does not prohibit this.

(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 be effective 90 days after 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
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INDEPENDENT REGULATORY
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 a true and correct copy
of a document issued, prescribed or promulgated by:

Pennsylvania Milk Marketing Board
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 47-12

DATE OF ADOPTION: September 13, 2007

BY: _____

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: _____

September 13, 2007
DATE OF APPROVAL

~~XXXXXXXXXXXXXXXXXXXX~~
(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 145, 146 and 147)

Transactions between dealers and customers – Refrigeration Equipment; Records and Reports

The Pennsylvania Milk Marketing Board (Board) deletes the provisions in Chapter 145, adds the reformatted and amended provisions in new Chapter 146 (relating to transactions between dealers and customers) and amends § 147.12 (relating to contracts for sale or lease of refrigeration equipment) 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 36 Pa. B. 5875 (September 23, 2006) 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 two comments, which are discussed below.

In final-form rulemaking, the Board considered the comments and suggestions of IRRC and amended the regulations accordingly. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation.

Purpose

Current Board regulations prohibit milk dealers from giving or lending refrigeration equipment to wholesale customers without charge, but do not prohibit milk dealers from selling or leasing such equipment to customers according to specified terms and conditions. During a recent statewide enforcement audit conducted by Board Staff, it was discovered that virtually all dealers in Pennsylvania that were providing refrigeration equipment to wholesale customers were not in compliance with these terms and conditions. It is apparent to the Board that the industry is not being well served by the existing regulations. Based upon reviews of existing practices as well as feedback from industry participants during private discussions and public meetings, the Board believes that there is a strong preference for a method to incorporate sale and lease charges into the wholesale minimum price of milk, rather than requiring sale and lease payments that are separate and apart from payments for milk.

The amendments provide a method whereby licensed milk dealers may sell or lease refrigeration equipment to wholesale customers through an additional charge, or "up-charge" of not less than \$0.01 (1¢) or \$0.0025 (¼¢), respectively, added to the Board-established minimum prices. Secondary purposes of the amendments are to clarify that subdealers as well as dealers are governed by the regulations; to specify that a manufacturer or seller of refrigeration equipment may not sell or in any way handle milk without a license; to clarify that cream dispensers are considered as refrigeration

equipment covered by the regulations; and to preclude the possibility of a dealer avoiding the regulations by contracting with a seller or manufacturer of equipment to have the equipment delivered to a wholesale customer on behalf of the dealer.

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.

IRRC had two concerns with regard to clarity of § 146.4. First, Subsection (a)(2) contained the phrase "value of the equipment to the dealer at the time it was placed at the customer's location . . ." without specifying how that value would be determined. The final-form rulemaking amends § 146.4(a)(2) to clarify that new equipment is valued at the actual cost to the dealer, while used equipment is valued according to the depreciation formula set forth in § 146.4(c).

Second, Subsection (d) required dealers and subdealers to maintain certain records without specifying how long these records must be kept. The final-form rulemaking amends § 146.4(d) by cross-referencing § 147.9, which specifies a five year time period for all records relating to any type of equipment sold or leased to customers.

Paperwork Estimates

The amendments will not require any paperwork in addition to that already required under the existing regulations. If anything, paperwork requirements will be reduced because the amendments eliminate the requirements for separate billings for lease and rental charges.

Fiscal impact

The Board believes that adoption of these amendments will have a positive fiscal impact on milk dealers, since it will eliminate the requirement that sales and lease charges be billed separately from milk sales. The amendments may have an additional positive impact on dealers to the extent that dealers were providing refrigeration equipment to customers without receiving adequate payment. The amendments will only have a negative impact on retail stores if they were being provided with refrigeration equipment without adequate charges in contravention of the existing regulations. The amendment may have a positive fiscal impact on retail stores by eliminating the need to pay for sales and lease charges separately from milk purchases.

Effective date

The amendments will become effective ninety (90) days after 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 36 Pa. B. 5875 (September 23, 2006) 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 provisions in Chapter 145 of the regulations of the Board, 7 Pa. Code Chapter 7, are deleted.
- (b) The provisions formerly in Chapter 145 are amended and reformatted in new Chapter 146 as set forth in Annex A.

(c) § 147.12 is amended to read as set forth in Annex A.

(d) 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.

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

(f) The order shall take effect ninety (90) days after final-form publication in the *Pennsylvania Bulletin*.

Boyd E. Wolff,
Chairman

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 145. (Reserved)

§§ 145.1--145.11. (Reserved).

§§ 145.21--145.24. (Reserved).

§ 145.26. (Reserved).

CHAPTER 146. TRANSACTIONS BETWEEN DEALERS AND CUSTOMERS.

REFRIGERATION EQUIPMENT

REFRIGERATION EQUIPMENT

§ 146.1. Applicability.

(a) Dealers and subdealers purchasing refrigeration equipment directly for use by, or sale to, or lease or rental to their wholesale customers are governed by this chapter.

(b) Dealers and subdealers providing refrigeration equipment to their wholesale customers in conjunction with, or through, or in coordination with, a third party refrigeration equipment manufacturer or supplier are deemed to be supplying the refrigeration equipment directly and are governed by this chapter.

(c) A manufacturer or seller of refrigeration equipment may not sell, deliver, arrange for delivery, or in any way handle, as defined by the act, milk within this Commonwealth without a dealer or subdealer license.

(d) This chapter does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the 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.

§ 146.2. Gifts of refrigeration equipment.

(a) A dealer or subdealer may not give or lend refrigeration equipment or milk or cream dispensers of any type to customers for storing or dispensing milk or cream.

(b) Nothing in subsection (a) may be construed to prohibit a dealer or subdealer from selling or leasing any of the described equipment to a wholesale customer.

§ 146.3. Leasing agreements.

(a) Whenever a dealer or subdealer leases refrigeration equipment, or milk or cream dispensers or similar facilities to a wholesale customer, the lease agreement must be reduced to writing and provide for a payment of at least the minimum price established by the Board plus an additional charge of at least \$0.0025 per quart equivalent for every unit of controlled products sold to that wholesale customer at the site at which the equipment is used.

(b) The agreement must contain a complete description of the equipment with respect to type, style, model and serial number, manufacturer and year of manufacture.

§ 146.4. Sale of equipment.

(a) Whenever refrigeration equipment, or milk or cream dispensers, or similar facilities are sold to stores or other wholesale customers, the agreement of sale must be reduced to writing and contain the following:

(1) A complete description of the equipment with respect to type, style, model and serial number, manufacturer and year of manufacture.

(2) An itemized record of the actual cost of new equipment to the dealer, or the value of [the] used equipment as determined according to Subsection (c) of this Section, [to the dealer] at the time it was placed at the customer's location, including handling, installation, freight, tax if applicable and interest.

(3) A provision that title to the refrigeration equipment, or milk or cream dispensers, or similar facilities does not pass until the last payment has been made under the agreement.

(b) Equipment may be purchased outright by payment in full at or before the time of installation or by payment of an additional charge per quart equivalent purchased until the full purchase price has been made. If payment is to be made by means of an additional charge per quart equivalent, each agreement must provide for a payment of at least the minimum price posted by the Board plus an additional charge of at least \$0.01 per quart equivalent for every unit of controlled products sold to that wholesale customer at the site at which the equipment is used. When the cumulative sum of the additional charges is equal to the itemized cost or value established in subsection (a)(2), the dealer may eliminate the additional charge. At that time, ownership of the equipment may be transferred to the customer.

(c) Used equipment may be sold to a wholesale customer at a price determined by adjusting its original cost to the dealer for annual straight line depreciation at a rate of 8-1/3% per annum plus all ancillary costs.

(d) A dealer or subdealer selling equipment pursuant to an agreement providing for payment by means of an additional charge per unit shall maintain the following records for review by the Board for the time period specified in § 147.9 (relating to equipment records):

(1) A complete list of all wholesale customers purchasing equipment pursuant to this provision, showing the location of each piece of equipment and the date the equipment was placed at that location;

(2) A record of the number of quart equivalents of price-controlled packaged products sold to each customer in this program along with the cumulative sum of the additional charges since the equipment was placed at the customer's location.

§ 146.5. Exceptions for certain schools regarding refrigeration equipment.

Dealers or subdealers installing refrigeration equipment, including milk vending machines, dispensers and milkshake dispensers in schools which are approved for the school milk program and which are eligible for reimbursement, in whole or in part, for the amortization of the equipment need not execute and submit to the Board a formal lease or contract of sale if the dealer submits to the Board a sworn statement setting forth the type, style, model and serial number, manufacturer, year of manufacture, cost of the equipment to the dealer plus handling, installation, tax and freight charges, and date of installation, together with the method of amortization.

§ 146.6. Maintenance of equipment.

(a) Maintenance of equipment when it is leased to the customer may be the responsibility of the lessor. When maintenance is performed by the lessee, no charge may be made to the lessor dealer for maintenance.

(b) Maintenance of equipment, whenever it is sold either by lump sum payment or on a time payment sales basis, shall be the responsibility of the purchaser.

§ 146.7. Identification of ownership of equipment.

Dealers or subdealers leasing equipment to customers shall identify the equipment as the property of the dealer by painting, decal or metal plate affixed to the equipment. Identification shall be placed on all equipment in place within 30 days after _____. (Note: The blank refers to the effective date of adoption of this final-form rulemaking.). New identifications shall be so identified not later than 15 days after installation. Dealers or subdealers shall replace mutilated or missing identification within 15 days after either observing the requirement or being notified by the Board of the requirement.

§ 146.8. Unfair pricing.

(a) Sale of equipment by a dealer or subdealer to a wholesale customer at a price less than the brand or retail list price or fair market value of the equipment where there is no list price, is prohibited.

(b) When purchasing any equipment or property from a wholesale customer or prospective wholesale customer, a dealer or subdealer may not pay the customer a price in excess of the fair market value of the equipment or property at the time for the transfer to the milk dealer.

§ 146.9. Financing.

Milk dealers and their affiliates, subsidiaries or representatives thereof may 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 the customer, or by depositing money or collateral with a third party, person or organization which will lend money or extend credit to the customer. This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the 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.

DEALER INDUCEMENTS

§ 146.21. Giveaways.

Milk dealers and their affiliates, subsidiaries or representatives thereof may 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. This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the 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.

§ 146.22. Sampling prospective retail customers and established retail customers.

The practice of providing free samples to prospective retail customers or to established retail customers may not be permitted. This section does not apply to on-the-premises consumption in stores or restaurants.

§ 146.23. Gifts to established retail customers.

(a) Dealers may distribute to any of their established retail customers, but not to prospective retail customers, free of charge, in any one calendar year, any gift including milk, milk products, or other item, if the cost to the dealer of the gift does not exceed the sum of 60¢.

(1) Dealers may provide utilitarian gifts to any of their established retail customers who have purchased milk for at least 60 days prior to the birth of a child.

(2) The cost to the dealer of the gift may not exceed \$2.

(3) The gift must have particular and exclusive relationship to the care of newborn children.

(4) A dealer is limited to one such gift for each child.

(b) The word "gift" may not be construed to prohibit a dealer from lending a porch box to an established retail customer provided the box is imprinted with the name of the dealer and the unit cost to the dealer does not exceed \$5.

§ 146.24. Samples or gifts to wholesale customers.

(a) Samples of a product may not be given to a wholesale customer or prospective wholesale customer by or on behalf of a milk dealer.

(b) Gifts of any value may not be given by a dealer to a wholesale customer or to a purchasing agent, contracting officer or other person or organization whose position, rank or other means of influence, enables him to select or to influence the selection of milk vendors.

§ 146.25. 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 at least monthly.

(2) If a customer fails to pay an invoice within 30 days, the dealer shall 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 at least 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 this section may, with approval of the Board, require the 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. The dealer shall immediately notify the Board of the full details of an action taken to secure the payment of a past due balance under this section.

(c) This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the 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.

CHAPTER 147. RECORDS AND REPORTS

§ 147.12. Contracts for sale or lease of refrigeration equipment.

Whenever a dealer or subdealer which is subject to § 146.1 (relating to applicability) sells or leases refrigeration equipment, milk or cream dispensers or similar facilities to a customer, the [contract] agreement of sale or lease shall be submitted to the Board [for approval] on or before the date of installation of [such] the equipment.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

LD. NUMBER: 47-12

2007 SEP 14 PM 2:31

SUBJECT: Transactions between dealers and customers - Refrigeration Equipment;
Records and Reports

AGENCY: Pennsylvania Milk Marketing Board

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

XX Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9-14-07	<i>Maureen Jones</i>	HOUSE COMMITTEE ON Agriculture & Rural Affairs
9/14	<i>[Signature]</i>	
9/14	<i>Lisa Landis</i>	SENATE COMMITTEE ON Agriculture & Rural Affairs
09/14/07	<i>Judy Mott Eagle</i>	
9/14/07	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

April 20, 2001