

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 147

(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.

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.

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(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.

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 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.

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 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 upon publication in the *Pennsylvania Bulletin*, anticipated to be no later than January 1, 2007. 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)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

2564

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General
Anthony W. Elliott
BY: _____
(DEPUTY ATTORNEY GENERAL)

AUG 28 2006
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: July 27, 2006

BY: [Signature]

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: [Signature]

July 27, 2006
DATE OF APPROVAL

~~Deputy General Counsel~~
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

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

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PENNSYLVANIA MILK MARKETING BOARD

(7 Pa. Code Chapters 145 and 147)

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

The Pennsylvania Milk Marketing Board (Board) proposes to amend 7 Pa. Code §§ 145.1 - 145.10 (relating to transactions between dealers and customers with regard to refrigeration equipment) and § 147.12 (relating to records and reports) to read as set forth in Annex A.

Purpose of proposed amendments

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, 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.

Summary of proposed amendments

The amendments add a new Section 145.0 (7 Pa. Code § 145.0) which: (a) prohibits a dealer or subdealer from avoiding the regulations by purchasing equipment that will be delivered by the seller of the equipment directly to a wholesale customer; (b) prohibits a dealer or subdealer from avoiding the regulations by contracting with a third party to provide equipment to a wholesale customer; (c) prohibits a manufacturer of refrigeration equipment from selling or in any way handling milk in Pennsylvania without a license; and (d) exempts grocery wholesalers who are licensed as dealers, and

who in the normal course of their business supply their subsidiaries, franchisees, affiliates, or non-affiliated customers with a complete line of groceries including milk, to the extent that refrigeration equipment is not used as an inducement related to acquiring or retaining the milk business of any customers.

The amendment to Section 145.1 (7 Pa. Code § 145.1) adds the words "or subdealer" to subsections (a) and (b), and eliminates subsection (c) because dealers have told us that equipment with dual temperature controls are no longer in use.

Currently, section 145.2 (7 Pa. Code § 145.2) establishes the written requirements for leases and requires that such leases be for "an amount comparable to the fair rental value of the equipment at the time of the execution of the lease." Section 145.3 (7 Pa. Code § 145.3) goes further, setting out a minimum monthly amount that must be paid, based upon the value of the equipment, and requires monthly payments, in advance, billed separately from any other billing. The amendment eliminates the above-quoted portion of section 145.2 and eliminates section 145.3 in its entirety. Instead, a new subsection is added to section 145.2 that establishes a minimum upcharge of \$0.0025 per quart equivalent added to the Board-established minimum prices for every unit of controlled products sold to the customer at the site where the leased equipment is used. The amendment also adds the words "or cream" to the types of equipment covered to parallel the wording of section 145.1 and to remove any possible ambiguity as to whether such dispensers are covered.

Section 145.4 (7 Pa. Code § 145.4) governs the sale of refrigeration equipment. In addition to the writing requirements, this section currently allows for time payment sales over a maximum period of 36 months, and again requires monthly payments, in advance, billed separately from any other billing. The amendment eliminates the current language in subsections (b) and (d) which set out the terms for time payment (installment) sales, and replaces it by establishing a minimum upcharge of \$0.01 per quart equivalent added to the Board-established minimum prices for every unit of controlled products sold to the customer at the site where the purchased equipment is used, until the full value of the equipment has been paid. The amendment also adds the words "or cream" for the reasons previously stated above.

The amendment adds the words "or subdealers" to section 145.5 (7 Pa. Code § 145.5) for consistency with the other sections in this chapter.

Section 145.6 (7 Pa. Code § 145.6) governs the sale or lease of home milk dispensers, which were often provided by milk dealers in the days before modern home refrigeration existed. The amendments repeal this section of the regulations since such equipment is no longer provided by dealers or needed by consumers.

Existing section 145.8 (7 Pa. Code § 145.8) was a savings clause added when this chapter was amended in 1977; the amendments repeal this section as it is no longer applicable.

Sections 145.9 (7 Pa. Code § 145.9) and 145.10 (7 Pa. Code § 145.10) are both amended to add the words "or subdealer" for consistency with the other sections in this chapter.

Section 147.12 of Chapter 147 (relating to records and reports) currently requires a dealer wishing to sell or lease equipment to a customer to submit the sale or lease agreement to the Board for approval. The amendment eliminates the need for Board approval of sale or lease agreements by the removal of the words "for approval." For consistency with other sections dealing with sales and leases, the word "contract" (of sale or lease) has been replaced with "agreement," and the words "or subdealer: have been added. Finally, the phrase "subject to section 145.0 of the regulations" has been added to this section for the purpose of exempting those grocery wholesaler licensees who are also exempted from the provisions of Chapter 145.

Statutory authority

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.

Public hearing

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 milk dealers proposed that the specified amounts and terms in the current regulations be replaced by an upcharge of \$0.0025 (1/4 of one cent) per unit of controlled product sold to a customer for each piece of leased equipment for as long as the equipment is in use, and \$0.01 (one cent) per unit of controlled product sold to a customer for each piece of equipment sold to a customer until the full value of the equipment has been paid. 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.

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 have a negative fiscal impact on retail stores only to the extent that they were being provided with refrigeration equipment without adequate charges in contravention of the existing regulations.

Paperwork requirements

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.

Effective date; sunset date

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

Regulatory review

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

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

Public Comment

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

Boyd E. Wolff
Chairman

ANNEX A

§ 145.0. 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 these regulations.

(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 these regulations.

(c) A manufacturer or seller of refrigeration equipment shall not sell, deliver, arrange for delivery, or in any way handle, as defined by the Milk Marketing Law, milk within the Commonwealth without a dealer or sub-dealer license.

(d) These regulations do 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.

§ 145.1. Gifts of refrigeration equipment.

(a) No dealer or subdealer shall 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.

~~(c) No dealer who is engaged in the manufacture or distribution of dairy products requiring freezing temperatures or below may provide a wholesale customer with facilities having dual temperature controls or compartments.~~

§ 145.2. Leasing and rental agreements.

(a) Whenever a dealer or subdealer leases or rents refrigeration equipment, or milk or cream dispensers or similar facilities to a wholesale customer, the lease or rental agreement or an extension thereof shall be reduced to writing and shall be made for an amount comparable to the fair rental value of the equipment at the time of the execution of the lease 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 shall constitute the entire agreement between the parties, and shall contain a complete description of the subject matter of the lease equipment with respect to type, style, model and serial number, manufacturer and year of manufacture.

(c) The agreement shall set forth actual cost of the facilities to the milk dealer or the fair market value of the equipment at the time of the execution of the lease, the rental charges and the method of payment.

§ 145.3. Rental of equipment. Reserved.

~~(a) Refrigeration equipment or milk or cream dispensers used for the purpose of storing or dispensing milk or cream by wholesale customers shall be leased at the following minimum monthly rentals:~~

~~(1) If the cost of the equipment to the dealer plus a service or maintenance charge of 2.0% thereof, plus the cost of installation aggregates not more than \$150.00, the rental rate shall be \$5.00 per month.~~

~~(2) If the aggregate value as computed in paragraph (1) of this subsection ranges from:~~

<i>Value (dollars)</i>	<i>Monthly Rates (dollars)</i>
151.00—350.00	7.00
351.00—500.00	10.00
501.00—750.00	15.00
751.00—1,000.00	20.00
1,001.00—1,500.00	30.00
1,501.00—2,000.00	40.00
2,001.00—3,000.00	60.00
3,001.00—4,000.00	80.00
4,001.00—5,000.00	100.00

~~(3) For values in excess of \$5,000 the monthly rentals shall be computed as follows: The cost of the equipment to the dealer plus installation costs amortized over a five year period and a 2.0% per annum maintenance or service charge on the total value plus installation costs.~~

~~(b) The lease price for used equipment shall also be computed from the table. Its aggregate value shall be determined by adjusting its original cost to the dealer for annual straightline depreciation at a rate of 8% per annum plus charges of 2.0% per annum maintenance or service plus the cost of installation. Lease prices for used equipment with an aggregate value in excess of \$5,000 shall be computed in the same manner as new equipment.~~

~~(c) Rent is payable in advance and shall be billed monthly, including appropriate additions for Commonwealth Sales and Use Taxes, to lessee at least ten days prior to the due date, on an invoice separate from any other billing. Whenever a lessee's payments shall be 90 days in arrears, the dealer shall immediately remove such equipment from the premises.~~

§ 145.4. Sale of equipment.

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

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

(2) ~~An itemization of the charges for~~ itemized record of the actual cost or value of the equipment to the dealer at the time it was placed at the customer's location, handling, installation, freight, tax where applicable, and interest.

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

(b) ~~The minimum price for time payment sales shall be the actual cost of the equipment to the milk dealer, including all ancillary costs, plus 6.0% interest per year on the original face value of the loan divided evenly over a maximum period of 36 months. Reference should be made to Article III, Section 312 for reporting sales. 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 such time as the full purchase price has been made. If payment is to be made by means of an additional charge per quart equivalent, then each such agreement shall 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 subparagraph (a)(2) above, 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) ~~Installation payments are payable in advance and shall be billed monthly to purchasers at least ten days prior to the due date, on an invoice separate from any other billings. Whenever the payments of a purchaser shall become 90 days in arrears, the dealer shall immediately repossess such equipment by removing it from the premises of the customer. Any dealer or subdealer selling equipment pursuant to an agreement providing for payment by means of an additional charge per unit shall maintain for review by the Board:~~

(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.

§ 145.5. 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 such 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.

~~§ 145.6. Sale or lease of home milk dispensers, or other similar refrigerated equipment, to retail customers.~~ Reserved.

~~Home milk dispensers or other similar home refrigeration equipment shall be leased or sold at a minimum consideration of \$3.50 per month. Payments by customers may be recorded in the route book account of the customer; otherwise, a separate account receivable shall be maintained. The provisions of § 147.12 of this title (relating to contracts for sale or lease of refrigeration equipment) shall also apply to the sale or lease of home refrigeration equipment.~~

§ 145.7. Maintenance of equipment.

(a) Maintenance of equipment where it is leased to the customer may be the responsibility of the lessor. Where maintenance is performed by the lessee no charge shall 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.

§ 145.8. ~~Equipment in use prior to July 1, 1977.~~ Reserved.

~~(a) The effective date of this chapter shall continue to be governed by lease or purchase agreements negotiated in accordance with PMMB Regulations dated August 1, 1969, provided the lessee or purchaser does not change. However, this savings clause does not apply to the requirement for the rendition of monthly invoices for equipment. Monthly statements shall be required for all equipment effective upon publication and approval of this chapter.~~

~~(b) In the event a customer location changes ownership, agreements shall be renegotiated in accordance with this chapter.~~

~~(c) When it becomes necessary to replace equipment furnished or installed prior to publication of this chapter, replacement shall be made in accordance with this chapter. If the replaced equipment is transferred to another location, it shall also be leased or sold in accordance with this chapter.~~

§ 145.9. 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 the effective date of this chapter. 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 such requirement or being notified by the PMMB of such requirement.

§ 145.10. 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 such 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 shall not pay the customer a price in excess of the fair market value of such equipment or property at the time for the transfer to the milk dealer.

* * *

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

Whenever a dealer or subdealer which is subject to section 145.0 of the regulations 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 equipment.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED - PMMB
9/13/06 05:46:05

LD. NUMBER: 47-12

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

AGENCY: Pennsylvania Milk Marketing Board

TYPE OF REGULATION

XX 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

INDEPENDENT REGULATORY
REVIEW COMMISSION

2006 SEP -7 PM 2:35

RECEIVED

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

9-7-06 C. Zuni

HOUSE COMMITTEE ON Agriculture and Rural Affairs

9-7-06 S. Atland

9-7-06 C. Boyer

SENATE COMMITTEE ON Agriculture and Rural Affairs

09/07/06 Judy Mott Eagle

9/7/06 Kathy Connor

INDEPENDENT REGULATORY REVIEW COMMISSION

7-31-06 Amy M. Elliott

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

April 20, 2001