

**INDEPENDENT REGULATORY  
REVIEW COMMISSION  
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2012 MAR -6 A 10:44

IRRC Number:

2935

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

(2) Agency Number: **47**  
Identification Number: **47-16**

(3) PA Code Cite: **7 Pa. Code Chapter 143**

(4) Short Title: **Transactions between dealers and producers – Payment; Testing**

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Tim Moyer, Secretary (717) 787-4194 tmoyer@pa.gov**

Secondary Contact: **Andy Saylor, Staff Attorney (717) 787-4194 asaylor@pa.gov**

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**The regulations are being amended to reflect technological and procedural changes in calculating and making payment to producers for their milk, and in testing and transporting milk samples.**

(8) State the statutory authority for the regulation. Include specific statutory citation.

**Section 307 of the Pennsylvania Milk Marketing Law (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.**

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**Section 608 of the Law requires milk dealers to pay producers for their milk “. . . either upon the basis of weight, measure or butterfat or appropriate milk component content, or any combination thereof, as the rules, regulations or orders of the board may require.” Section 608 also requires dealers to furnish “such information as may be required by the board” to producers regarding the amount and component content of milk. Section 606 of the Law sets out the testing requirements for dealers purchasing milk on the basis of component content, as well as the requirements for notification of producers of the results of these tests. The existing regulation, as well as the amended regulation, establish standards and procedures to ensure that milk is properly sampled**

**and tested, and that producers are promptly notified of test results, and properly paid according to the components in the milk they sell. There is no deadline for action, since there is an existing regulation in place. However, changes in milk testing and electronic communications technology have made the existing regulation increasingly obsolete.**

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**The Board believes it is in the public interest that Pennsylvania producers (dairy farmers) are fairly and promptly paid for the milk they sell, and that they receive timely notification of the results of the tests of the milk components upon which that their payment will be based. There are approximately 7,400 producers in Pennsylvania. Dairy producers are paid for the milk they sell based upon “multiple component pricing” which uses butterfat, protein and other milk solids (such as lactose and minerals) to determine the price of that milk. Producers need to be promptly paid for their milk, and to be notified of test results that will be the basis of their payment in a timely fashion so that they can quickly resolve any problems when test results deviate from the expected. Without regulation, the potential exists for dairy producers to receive late payment, or less than full payment for the components in the milk they sell, either of which would cause financial hardship for dairy producers.**

**Milk dealers and private laboratories that test milk components for payment purposes will also benefit because it will allow them to take advantage of more efficient technology and reduce paperwork requirements. There are approximately 126 licensed milk dealers (including cooperatives) that purchase milk from Pennsylvania producers, and approximately 12 laboratories testing milk for purposes of payment to Pennsylvania producers.**

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**Data is not the basis for this regulation.**

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

**No one will be adversely affected by the regulation.**

(13) 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 126 licensed milk dealers (including cooperatives) that purchase milk from Pennsylvania producers, and approximately 12 laboratories testing milk for purposes of payment to Pennsylvania producers who are currently required to comply with the existing regulation, and they will required to comply with the amended regulation.**

(14) 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. Explain how the dollar estimates were derived.

**The regulated community will incur no additional costs associated with compliance with the regulation. The regulated community may incur some savings in time, paper and postage, which cannot be specifically estimated, by being allowed to provide notice of test results, monthly statements, and producer payments electronically rather than by mail.**

(15) 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. Explain how the dollar estimates were derived.

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

(16) 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. Explain how the dollar estimates were derived.

**There will be no costs and/or savings to state government associated with implementation of the regulation.**

(17) 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						

<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
	0	0	0	0

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

**Since no one is adversely affected by the amendments to the regulations, the benefits clearly outweigh adverse effects.**

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

**On October 12, 2006, the Board, after due notice, conducted a public hearing to receive comments on a first draft of the proposed amendment. Among the attendees were representatives of the United States Department of Agriculture Milk Marketing Order #33, QC Laboratories, Dairylea Cooperative Inc./Dairy Marketing Services LLC, Independent Regulatory Review Commission (IRRC), and Board staff. As a result of the discussion and comments at that public hearing, the proposed amendment was revised and a final draft was circulated among the interested parties to receive further comment.**

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**The only alternative regulatory scheme considered was to continue with the existing regulations. This was dismissed because, due to changes in technology since the regulations were last amended, the existing regulations are increasingly obsolete.**

(21) 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 regulations.

**No.**

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's

ability to compete with other states?

**There is a large variation among states with regard to testing of milk and terms of payment to producers. This amendment and other recent amendments are intended to assure that Pennsylvania's regulations are current and effective. This regulation will not put Pennsylvania at a competitive disadvantage with other states.**

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

**No.**

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**The amendment eases the reporting, record keeping and paperwork requirements somewhat. The amendment allows notice of test results, monthly statements, and producer payment to be done electronically rather than by mail.**

(25) 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.

**There are no special provisions, but the purpose of the amendment is to assure fair treatment of Pennsylvania dairy farmers.**

(26) Include a schedule for review of the regulation including:

- |   |                           |
|---|---------------------------|
| A. The date by which the agency must receive public comments:                               | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held:                     | not applicable            |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | by July 1, 2012           |
| D. The expected effective date of the final-form regulation:                                | upon publication          |
| E. The date by which compliance with the final-form regulation will be required:            | upon publication          |
| F. The date by which required permits, licenses or other approvals must be obtained:        | not applicable            |

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

*[Signature]*

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

**APR 13 2011**

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. 47-16

DATE OF ADOPTION: 3/10/11

BY: *[Signature]*

TITLE: Acting Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: *[Signature]*

3/10/11  
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.

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APR 14 11 04 18

**PENNSYLVANIA MILK MARKETING BOARD**  
**(7 Pa. Code Chapter 143)**  
**Transactions between dealers and producers – Payment; Testing**

The Pennsylvania Milk Marketing Board (Board) proposes to amend 7 Pa. Code Chapter 143 (relating to transactions between dealers and producers) to read as set forth in Annex A.

***Purpose of proposed amendment***

The purpose of the amendment is to update several sections of the Board's regulations pertaining to payments to producers and testing of producers' milk for payment purposes to reflect changes in the way producers are paid for milk and in milk testing and electronic communication technology that have occurred since these regulations were last amended.

***Summary of proposed amendments***

The heading of section 143.11 (7 Pa. Code § 143.11) has been amended to add the words "by handlers" to correct an apparent misprint in the existing regulation, which clearly deals with handlers, not producers, that receive milk at multiple plants or receiving stations. Subsection (a) has been amended to add "milk component" and "components" in addition to butterfat as the basis for payment to producers because producers whose milk is marketed under a federal milk marketing order are now paid on the basis of multiple components rather than on butterfat alone. Subsection (b) has been amended to add a sentence to ensure that dealers who have been authorized to base payments upon aggregate utilization of all plants cannot switch back and forth between aggregate utilization and individual plant utilization without authorization from the Board.

Subsection (a) of section 143.12 (7 Pa. Code § 143.12) has been amended to add two additional paragraphs in recognition of the fact that Federal Milk Marketing Order regulations will control the terms and timing of payment to producers receiving payment under those orders.

Subsection (a) of section 143.13 (7 Pa. Code § 143.13) has been amended to allow payment by wire transfer or other methods, because requiring payment by check or cash only is outdated and costly. Most dealers are already direct-depositing producers' checks, so this change is being made to bring the regulation in line with current industry practices.

The amendment to section 143.14 (7 Pa. Code § 143.14) allows one additional day for dealers to furnish producers with monthly statements and allows producers to receive statements electronically if they have an agreement to do so filed with the purchasing dealer. It also requires inclusion of the producer number (item (4)), combines former items (5), (6) and (7) into a new item (5) to eliminate redundancy, and replaces "butterfat" with "components." The remaining items have been re-numbered. The amendment eliminates the requirement of the 3.5% butterfat pay rate (renumbered items (7) and (8)) since that is no longer used for producer payment, and additionally requires the inclusion of a listing of pounds of milk subject to state-mandated premiums (renumbered item (12)) and daily pick-up amounts (renumbered item (17)) on the monthly statement.



The amendment to section 143.21 (7 Pa. Code § 143.21) replaces “butterfat” with “components,” allows notification of test results to be made available to producers through electronic or other means rather than solely by writing delivered to producers, and eliminates the requirement that composite samples be held for 10 days since this is no longer necessary or practical.

The amendment to section 143.22 (7 Pa. Code § 143.22) replaces “butterfat” with “components” and eliminates any reference to specific testing methods, consistent with our recent amendments to Chapter 144 (relating to electronic methods for testing milk for fat content), and instead refers to that chapter for approved testing methods.

Section 143.23 (7 Pa. Code § 143.23) has been amended to replace “aseptic” with “sanitary” because truly aseptic conditions cannot be attained in farm bulk tanks where samples are taken.

Section 143.24 (7 Pa. Code § 143.24) has been amended to require a longer agitation period if specified by a bulk tank manufacturer for complete agitation.

Section 143.25 (7 Pa. Code § 143.25) has been amended to limit this section to farm bulk milk tanks since this section is not applicable to weighing and sampling of direct load milk under section 143.29 (relating to weighing and sampling of direct load milk) which was adopted in December, 2010. The amendment also allows calibration charts for cooperative members to be maintained by the cooperative rather than a milk dealer.

Sections 143.26 (7 Pa. Code § 143.26) and 143.27 (7 Pa. Code § 143.27) have been amended to eliminate the term “refrigeration” and instead specify the temperature range at which samples must be held and transported, and to express this range in degrees Centigrade rather than Fahrenheit because all laboratories testing milk samples have migrated to the Centigrade scale. Subsection 143.27(b) has been reworded to remove superfluous language and to allow a dealer to maintain samples at a designated location other than the dealer’s plant.

The amendment eliminates the requirement in section 143.28 (7 Pa. Code § 143.28) that composite samples tested off-premises be held for ten days since this is no longer necessary or practical.

### ***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***

On October 12, 2006, the Board, after due notice, conducted a public hearing to receive comments on a first draft of the proposed amendment. Among the attendees were representatives of the United States Department of Agriculture Milk Marketing Order #33, QC Laboratories, Dairylea Cooperative Inc./Dairy Marketing Services LLC, Independent Regulatory Review Commission (IRRC), and Pennsylvania Milk Marketing Board staff. As a result of the

discussion and comments at that public hearing, the proposed amendment was revised and a final draft was circulated among interested parties to receive further comment.

***Fiscal impact***

The proposed amendment will not have a negative fiscal impact on the regulated entities or on the Commonwealth or its political subdivisions. The amendments may have a positive fiscal impact on the regulated entities by allowing notice of test results, monthly statements, and producer payment to be done electronically rather than on paper delivered by mail.

***Paperwork requirements***

The proposed amendment will require no additional paperwork by the regulated entities or by the Commonwealth or its political subdivisions. The amendment may ease the paperwork requirements for regulated entities by allowing notice of test results, monthly statements, and producer payment to be done electronically rather than on paper delivered by mail.

***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*.

Luke Brubaker  
*Chairman*

## ANNEX A

### CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS

\* \* \*

#### PAYMENT

##### **§ 143.11. Determination of payment to producers by dealers having more than one plant.**

(a) Dealers shall pay their producers on a weight and butterfat or milk component basis as determined by the components in the milk and/or the utilization of the milk received at each plant or receiving station.

(b) Upon written authorization from the Board, a dealer may base payments to producers upon the aggregate utilization of the milk received at several plants or receiving stations. Dealers electing to base payments upon the aggregate utilization must receive authorization from the Board before returning to individual plant or receiving station utilization unless the Board revokes authorization on its own motion.

##### **§ 143.12. Terms of payment.**

(a) Producers shall be paid not later than the 26th day of each month and the 17th day of the following month, as follows:

(1) Payment that covers the approximate value of milk or cream purchased from the first to the 15th of each month shall be made not later than the 26th day of each month. This payment need not be accompanied by an itemized statement. This payment shall be at least the lowest announced class price for the previous month for the number of pounds purchased or received during the first 15 days of the month.

(2) Final settlement for all milk and cream purchased during any month shall be made not later than the 17th day of the following month. The final settlement shall include any balances due for the first 15-day period and shall be accompanied by a statement to each producer setting forth the information required under § 143.14 (relating to monthly statement to producers).

(3) If payment for milk is made under the terms of a Federal Milk Marketing Order, payment to producers, cooperatives and producer settlement funds shall be made under the terms of that Federal Order.

(4) If a date required for payment falls on a Saturday, Sunday or State or National Holiday, such payment will be due on the next day that the office of the Milk Marketing Board is open for public business.

(b) This section may not be interpreted as prohibiting a dealer from paying its producers on a weekly basis; however, when a dealer pays on this basis, it shall also provide its producers with a

monthly statement as prescribed by § 143.14. All advance payments on the weekly basis shall be at least at the lowest announced class price for the previous month for the number of pounds purchased or received during the week in question. The final settlement shall include any balances due for the initial weeks during the month and shall be accompanied by a statement to each producer setting forth the information required under § 143.14.

**§ 143.13. Manner of payment.**

(a) Dealers shall pay producers either by check, [or by] cash, wire transfer, money order or by any other Board-approved payment device. Dealers electing to pay producers by cash shall, in all cases, obtain a dated, signed receipt from each producer. Receipts shall be made a part of the permanent records of the dealer.

(b) The giving of a promissory note shall not constitute payment within the meaning of this section.

**§ 143.14. Monthly statement to producers.**

Dealers purchasing milk or cream from producers shall furnish producers with statements containing each of the following items[,] by not later than the [17]18th day of each month[:]. Producers receiving their statements via electronic media must have an agreement to do so on file with the purchasing dealer.

- (1) The name and address of dealer issuing statement.
- (2) The date of statement.
- (3) The period for which statement is rendered.
- (4) The name and producer number of the producer for whom statement is intended.
- (5) [The butterfat test for the first half of the month, or the average of fresh samples, with a minimum of two taken, evenly spaced, the first half of the month.
- (6) The butterfat test for the last half of the month, or the average of fresh samples, with a minimum of two taken, evenly spaced, in the last half of the month.
- (7) The average butterfat test for the month.] A report of the results of the component tests required under section 143.21 (relating to testing; notification of producer) of this chapter.
- ~~[(8)](6)~~ For milk purchased in Pennsylvania not regulated under the terms of a Federal Milk Marketing Order, [T]the percentage of milk utilized in each classification.
- ~~[(9)](7)~~ The rate paid per hundredweight [for 3.5% milk] for each classification as established by applicable Official General Order, which may be obtained from the Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, Pennsylvania [17120]17110.

[(10)](8) [Three and one-half percent blend rate per hundredweight and butterfat differential per 0.1%]For milk purchased under the terms of a Federal Milk Marketing Order all applicable components, component rates and total component pounds and values.

[(11)](9) The blend rate paid at the producer's average test.

[(12)](10) The total pounds of milk purchased from producer.

[(13)](11) The gross amount paid for milk.

[(14)](12) The pounds of milk subject to state-mandated premiums and a[A]dditional amounts paid as premiums, bonuses or similar payments.

[(15)](13) The gross amount due after addition of premiums, bonuses or similar payment.

[(16)](14) Itemization of advance payments and authorized deductions.

[(17)](15) The total deductions.

[(18)](16) The net amount due and paid.

(17) A listing of the amount of milk picked up each day.

## TESTING

### § 143.21. Testing; notification of producer.

(a) A milk dealer buying or receiving milk from a producer on the basis of, or with reference to, the amount or percentage of [butterfat] components contained in such milk shall, within five days after the end of each sampling period, test composite samples and within two days thereafter notify the producer of the result of such test, stating the period of time during which samples were taken.

(b) Notice to the producer shall be in writing delivered to the producer, or made available to the producer electronically through internet access, e-mail, automated telephone dial-in, or any other method approved by the Board.

(c) For the purposes of implementing the Milk Marketing Law regarding "Composite Samples," it may be interpreted that "Fresh Samples" may be used for the determination of [butterfat] component content for payment to producers, providing that not less than two random representative fresh milk samples, evenly spaced, shall be taken and tested in each one-half month period, or a total of not less than four random representative fresh milk samples, and not

less than four butterfat tests in each calendar month. [Producers shall be notified of the results of such tests, stating the sampling period, within two days after the end of each period.

(d) After composite samples have been tested, their residues shall be held intact under refrigeration at a temperature of between 32°F and 40°F for a period of not less than 10 days.]

#### **§ 143.22. Acceptable test methods.**

For the purposes of implementing the act regarding tests as to the amount [of] or percentage of [butterfat] components contained in milk or cream, the term “[Babcock] Test” as used in the act shall include all [butterfat] component-testing methods[, including the Gerber Method, Automated Light Scattering Method, and Infra-Red Method, having prior approval of the Board and] referenced in Chapter 144 of these regulations and performed in accordance with the standards established by the Association of Official Agricultural Chemists in that organization’s current edition of Official Methods of Analysis[, which may be obtained from the Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17120].

#### **§ 143.23. Quantity of sample.**

(a) At least a 35 milliliter sample shall be taken under [aseptic]sanitary conditions from each lot of milk for use by the plant or laboratory in all quality and composition determinations.

(b) The samples must be held, unless used for testing purposes the same day of pick-up, until the next set of samples is collected.

#### **§ 143.24. Agitation before sampling.**

Before any sample is taken from a farm bulk milk tank for testing purposes, the milk shall be agitated for a minimum of 5 minutes, unless a longer period of time is specified by the buyer of the milk or his agent or the manufacturer of the bulk tank.

#### **§ 143.25. Calibration chart.**

(a) A calibration chart for a farm bulk milk tank shall be posted in the milk house of the producer, and an exact reproduction of the chart shall be maintained as part of the records of the dealer or the cooperative for their producer members.

(b) The chart shall show the name and address of the manufacturer, the serial number of the tank, the serial number of the measuring rod together with the tank capacity, the name or number of the producer and the date of calibration.

#### **§ 143.26. [Refrigeration] Temperature of samples.**

Composite and fresh samples shall be maintained [under refrigeration] at a temperature of between [32°F]0.0°C and [40°F]4.4°C. When daily additions to composites are made, composite samples shall not be unrefrigerated for more than 30 minutes.

**§ 143.27. Transportation of samples.**

(a) Milk samples may be transported in bulk tank trucks provided the facilities for transporting the samples [are refrigerated and] maintain a temperature of between [32°F]0.0°C and [40°F]4.4°C at all times when samples are contained therein.

(b) The daily fresh samples shall[, upon return of the tank truck from the producer's farm to the dealer's plants,] be transferred to the composite sample bottle or maintained at the dealer's plant [under refrigeration]or designated sample storage location at a temperature between [32°F]0.0°C and [40°F]4.4°C for testing if fresh sampling method for payment is used.

**§ 143.28. Off-premises testing.**

Composite and fresh samples may be tested off the premises of the milk dealer by a recognized laboratory if the [following conditions are complied with:]samples are transported at a temperature of between 0.0°C and 4.4°C.

[(1) Samples shall be transported under refrigeration at a temperature of between 32°F and 40°F.

(2) After testing, the residues of the composite samples shall be kept under refrigeration at a temperature of between 32°F and 40°F for a period of not less than ten days.]

\* \* \*

## **ANNEX A (Final without markup)**

### **CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS**

\* \* \*

#### **PAYMENT**

##### **§ 143.11. Determination of payment to producers by dealers having more than one plant.**

(a) Dealers shall pay their producers on a weight and butterfat or milk component basis as determined by the components in the milk and/or the utilization of the milk received at each plant or receiving station.

(b) Upon written authorization from the Board, a dealer may base payments to producers upon the aggregate utilization of the milk received at several plants or receiving stations. Dealers electing to base payments upon the aggregate utilization must receive authorization from the Board before returning to individual plant or receiving station utilization unless the Board revokes authorization on its own motion.

##### **§ 143.12. Terms of payment.**

(a) Producers shall be paid not later than the 26th day of each month and the 17th day of the following month, as follows:

(1) Payment that covers the approximate value of milk or cream purchased from the first to the 15th of each month shall be made not later than the 26th day of each month. This payment need not be accompanied by an itemized statement. This payment shall be at least the lowest announced class price for the previous month for the number of pounds purchased or received during the first 15 days of the month.

(2) Final settlement for all milk and cream purchased during any month shall be made not later than the 17th day of the following month. The final settlement shall include any balances due for the first 15-day period and shall be accompanied by a statement to each producer setting forth the information required under § 143.14 (relating to monthly statement to producers).

(3) If payment for milk is made under the terms of a Federal Milk Marketing Order, payment to producers, cooperatives and producer settlement funds shall be made under the terms of that Federal Order.

(4) If a date required for payment falls on a Saturday, Sunday or State or National Holiday, such payment will be due on the next day that the office of the Milk Marketing Board is open for public business.

(b) This section may not be interpreted as prohibiting a dealer from paying its producers on a weekly basis; however, when a dealer pays on this basis, it shall also provide its producers with a



monthly statement as prescribed by § 143.14. All advance payments on the weekly basis shall be at least at the lowest announced class price for the previous month for the number of pounds purchased or received during the week in question. The final settlement shall include any balances due for the initial weeks during the month and shall be accompanied by a statement to each producer setting forth the information required under § 143.14.

**§ 143.13. Manner of payment.**

(a) Dealers shall pay producers either by check, cash, wire transfer, money order or by any other Board-approved payment device. Dealers electing to pay producers by cash shall, in all cases, obtain a dated, signed receipt from each producer. Receipts shall be made a part of the permanent records of the dealer.

(b) The giving of a promissory note shall not constitute payment within the meaning of this section.

**§ 143.14. Monthly statement to producers.**

Dealers purchasing milk or cream from producers shall furnish producers with statements containing each of the following items by not later than the 18th day of each month. Producers receiving their statements via electronic media must have an agreement to do so on file with the purchasing dealer.

- (1) The name and address of dealer issuing statement.
- (2) The date of statement.
- (3) The period for which statement is rendered.
- (4) The name and producer number of the producer for whom statement is intended.
- (5) A report of the results of the component tests required under section 143.21 (relating to testing; notification of producer) of this chapter.
- (6) For milk purchased in Pennsylvania not regulated under the terms of a Federal Milk Marketing Order, the percentage of milk utilized in each classification.
- (7) The rate paid per hundredweight for each classification as established by applicable Official General Order, which may be obtained from the Milk Marketing Board, 2301 N. Cameron Street, Harrisburg, Pennsylvania 17110.
- (8) For milk purchased under the terms of a Federal Milk Marketing Order all applicable components, component rates and total component pounds and values.
- (9) The blend rate paid at the producer's average test.

(10) The total pounds of milk purchased from producer.

(11) The gross amount paid for milk.

(12) The pounds of milk subject to state-mandated premiums and additional amounts paid as premiums, bonuses or similar payments.

(13) The gross amount due after addition of premiums, bonuses or similar payment.

(14) Itemization of advance payments and authorized deductions.

(15) The total deductions.

(16) The net amount due and paid.

(17) A listing of the amount of milk picked up each day.

## **TESTING**

### **§ 143.21. Testing; notification of producer.**

(a) A milk dealer buying or receiving milk from a producer on the basis of, or with reference to, the amount or percentage of components contained in such milk shall, within five days after the end of each sampling period, test composite samples and within two days thereafter notify the producer of the result of such test, stating the period of time during which samples were taken.

(b) Notice to the producer shall be in writing delivered to the producer, or made available to the producer electronically through internet access, e-mail, automated telephone dial-in, or any other method approved by the Board.

(c) For the purposes of implementing the Milk Marketing Law regarding “Composite Samples,” it may be interpreted that “Fresh Samples” may be used for the determination of component content for payment to producers, providing that not less than two random representative fresh milk samples, evenly spaced, shall be taken and tested in each one-half month period, or a total of not less than four random representative fresh milk samples, and not less than four butterfat tests in each calendar month.

### **§ 143.22. Acceptable test methods.**

For the purposes of implementing the act regarding tests as to the amount or percentage of components contained in milk or cream, the term “Test” as used in the act shall include all component-testing methods referenced in Chapter 144 of these regulations and performed in accordance with the standards established by the Association of Official Agricultural Chemists in that organization’s current edition of Official Methods of Analysis.

### **§ 143.23. Quantity of sample.**

(a) At least a 35 milliliter sample shall be taken under sanitary conditions from each lot of milk for use by the plant or laboratory in all quality and composition determinations.

(b) The samples must be held, unless used for testing purposes the same day of pick-up, until the next set of samples is collected.

**§ 143.24. Agitation before sampling.**

Before any sample is taken from a farm bulk milk tank for testing purposes, the milk shall be agitated for a minimum of 5 minutes, unless a longer period of time is specified by the buyer of the milk or his agent or the manufacturer of the bulk tank.

**§ 143.25. Calibration chart.**

(a) A calibration chart for a farm bulk milk tank shall be posted in the milk house of the producer, and an exact reproduction of the chart shall be maintained as part of the records of the dealer or the cooperative for their producer members.

(b) The chart shall show the name and address of the manufacturer, the serial number of the tank, the serial number of the measuring rod together with the tank capacity, the name or number of the producer and the date of calibration.

**§ 143.26. Temperature of samples.**

Composite and fresh samples shall be maintained at a temperature of between 0.0°C and 4.4°C. When daily additions to composites are made, composite samples shall not be unrefrigerated for more than 30 minutes.

**§ 143.27. Transportation of samples.**

(a) Milk samples may be transported in bulk tank trucks provided the facilities for transporting the samples maintain a temperature of between 0.0°C and 4.4°C at all times when samples are contained therein.

(b) The daily fresh samples shall be transferred to the composite sample bottle or maintained at the dealer's plant or designated sample storage location at a temperature between 0.0°C and 4.4°C for testing if fresh sampling method for payment is used.

**§ 143.28. Off-premises testing.**

Composite and fresh samples may be tested off the premises of the milk dealer by a recognized laboratory if the samples are transported at a temperature of between 0.0°C and 4.4°C.

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

RECEIVED  
IRRC

**I.D. Number:** 47-16

2012 MAR -6 A 10:44

**Subject:** Transactions between dealers and producers – Payment; Testing

**Agency:** Pennsylvania Milk Marketing Board

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**TYPE OF REGULATION**

Proposed Regulation


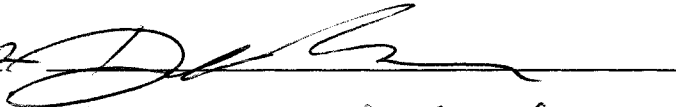
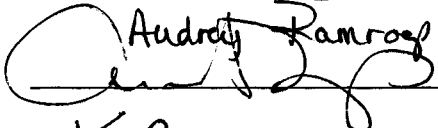
Final Regulation  With Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of  Governor  Attorney General

Delivery of Tolled Regulation  With revisions  Without revisions

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**FILING OF REGULATION**

<u>DATE</u>	<u>PRINTED NAME AND SIGNATURE</u>	<u>DESIGNATION</u>
3/6/12		House Committee on Agriculture & Rural Affairs (R)
3/6/12		House Committee on Agriculture & Rural Affairs (D)
3/6/12	Heather J Bunker	Senate Committee on Agriculture & Rural Affairs (R)
3/6/12		Senate Committee on Agriculture & Rural Affairs (D)
3/6/12	K Cooper	Independent Regulatory Review Commission
		Attorney General
03/06/12	Samuel Hansen	Legislative Reference Bureau