

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### MILK MARKETING BOARD

[ 7 PA. CODE CH. 143 ]

#### Transactions between Dealers and Producers

The Milk Marketing Board (Board) amends Chapter 143 (relating to transactions between dealers and producers) under the authority of section 307 of the Milk Marketing Law (act) (31 P. S. § 700j-307).

Notice of proposed rulemaking was published at 42 Pa.B. 1378 (March 17, 2012) with a 30-day public comment period. The Board did not receive public comments. Comments were not received from the Senate Agriculture and Rural Affairs Committee, the House Agriculture and Rural Affairs Committee or the Independent Regulatory Review Committee (IRRC).

#### *Purpose of the Final-Form Rulemaking*

The purpose of the final-form rulemaking is to update several 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.

#### *Changes in the Final-Form Rulemaking*

There have not been changes in the final-form rulemaking from the proposed rulemaking. Therefore, this final-form rulemaking is adopted as proposed.

#### *Paperwork Estimates*

The final-form rulemaking will not require additional paperwork by the regulated entities or the Commonwealth or its political subdivisions. The final-form rulemaking 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*

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

There is not a sunset date.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 6, 2012, the Board submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 1378, to IRRC and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 18, 2012, the final-form rulemaking was deemed approved by the House and

Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective July 18, 2012.

#### *Contact Person*

For further information about this final-form rulemaking, contact Timothy A. Moyer, Secretary, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4194, tmoyer@pa.gov.

#### *Findings*

The Board finds that:

(1) Public notice of the intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and comments were not received.

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

#### *Order*

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 7 Pa. Code Chapter 143, are amended by amending §§ 143.11—143.14 and 143.21—143.28 to read as set forth at 42 Pa.B. 1378.

(b) The Board will submit this order and 42 Pa.B. 1378 to the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Board shall certify this order and 42 Pa.B. 1378 and deposit them with the Legislative Reference Bureau as required by law.

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

LUKE BRUBAKER,  
*Chairperson*

*(Editor's Note:* For the text of the order of the Independent Regulatory Commission relating to this document, see 42 Pa.B. 4992 (August 4, 2012).)

**Fiscal Note:** Fiscal Note 47-16 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-48. Filed for public inspection January 11, 2013, 9:00 a.m.]

### MILK MARKETING BOARD

[ 7 PA. CODE CH. 144 ]

#### Electronic Methods for Testing Milk for Fat Content

The Milk Marketing Board (Board), under authority of section 307 of the Milk Marketing Law (act) (31 P. S. § 700j-307), amends Chapter 144 (relating to electronic methods for testing milk for fat and component content) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 41 Pa.B. 2123 (April 23, 2011) with an invitation to submit written comments within 30 days. The Board did not receive public comments. The Senate Committee on Agri-

culture and Rural Affairs and the House Agriculture and Rural Affairs Committee did not offer comments, suggestions or objections. The Independent Regulatory Review Commission (IRRC) did offer comments which are discussed as follows.

*Purpose*

The former regulations specified which electronic testing instruments were approved for testing butterfat content of milk for purposes of payment to producers. Advances in testing technology, as well as changes in the way producers are paid for their milk, made the former regulations obsolete. This final-form rulemaking incorporates by reference Nationally-recognized milk testing standards, specifies how electronic milk testing equipment shall be maintained and calibrated and eliminates references to specific equipment. This final-form rulemaking provides flexibility as new technology is developed and accountability to ensure that testing is performed in accordance with applicable standards.

*Comments*

In § 144.1 (relating to electronic methods—general), IRRC recommended that certified testers, rather than the manufacturers, be responsible to provide the operations manual and information for electronic testing instruments. The Board agreed that certified testers are under its regulatory authority, rather than manufacturers. This change has been made in this final-form rulemaking.

In § 144.1a (relating to definitions), IRRC suggested that the definition of “certified tester” correspond directly to, and reference, the statutory definition in section 602 of the act (31 P. S. § 700j-602). The Board agreed and made this change.

In § 144.6 (relating to required records), IRRC recommended clarification that the listed records are required and that the period of retention in this section and in § 144.7 (relating to summary record required) should be 2 years to correspond to section 602 of the act. The Board agreed and made these changes.

In §§ 144.6 and 144.7, IRRC recommended that the proposed 1-year recordkeeping requirement be changed to 2 years to be consistent with statutory requirements. These changes have been made.

*Additional Changes*

Several additional changes have been made. The names of several of the organizations or agencies which establish the approved testing methods have been updated. Those organizations or agencies approve the testing methods, but neither they nor the Board approve the testing instruments. This has been clarified. The definition of “milk component or component” in § 144.1a has been revised by adding “but are not necessarily limited to” because the component classifications used for payment purposes could change and the current listing should not be construed as exclusive. Minor grammatical changes have also been made.

*Paperwork Estimates*

This final-form rulemaking will not substantially alter paperwork, accounting or reporting requirements already in place.

*Effective Date*

This final-form rulemaking will become effective upon 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)), on March 6, 2012, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 2123, to IRRC and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 16, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 17, 2012, and approved the final-omitted rulemaking.

*Contact Person*

For further information about this final-form rulemaking, contact Timothy A. Moyer, Secretary, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4194, tmoyer@pa.gov.

*Findings*

The Board finds that:

(1) Public notice of the intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

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

*Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 7 Pa. Code Chapter 144, are amended by adding § 144.1a, deleting §§ 144.8—144.11 and amending §§ 144.1—144.7 and 144.12—144.14 to read as set forth in Annex A.

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

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

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

LUKE BRUBAKER,  
*Chairperson*

*(Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 3182 (July 2, 2012).)

**Fiscal Note:** Fiscal Note 47-15 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 7. AGRICULTURE

## PART VI. MILK MARKETING BOARD

## CHAPTER 144. ELECTRONIC METHODS FOR TESTING MILK FOR FAT AND COMPONENT CONTENT

## § 144.1. Electronic methods—general.

(a) Reference methods used to determine the component content of milk for payment purposes shall be those recognized or approved and set forth in the latest edition of the SMEDP, by the AOAC in Official Methods of Analysis, published by the AOAC, Gaithersburg, Maryland, or by the USDA. Only electronic instruments capable of performance standards as referenced in § 144.4 (relating to routine inspection and control) shall be used to test milk for payment purposes in this Commonwealth.

(b) A certified tester using an electronic testing instrument shall make available upon request to the Board a complete instrument operation and maintenance manual and further information as requested.

## § 144.1a. Definitions.

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

*AOAC*—AOAC International.

*Accuracy check*—A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the electronic testing apparatus.

*Calibration*—The adjustment of an electronic instrument so that the results for a given payment component meet the comparison criteria results of an AOAC, SMEDP or USDA approved reference method.

*Certified tester*—A Board certified technician as provided in section 602 of the act (31 P. S. § 700j-602).

*Control milk or control sample*—Samples produced by a commercial laboratory or by the USDA, or its successor agency, used to do the following:

- (i) Determine the calibration of an electronic instrument.
- (ii) Set the calibration of an electronic instrument.

*Electronic method*—A method for determining the components in raw milk using an electronic testing instrument.

*Milk component or component*—A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include but are not necessarily limited to the following:

- (i) Butterfat.
- (ii) Protein.
- (iii) Lactose.
- (iv) Solids nonfat.
- (v) Other solids.
- (vi) Total solids.

*Reference method*—A standard method using analytical chemistry or other approved techniques by which all other electronic methods of testing milk are compared for determining the components in milk.

*Repeatability check*—A test run at the beginning of each testing session to demonstrate the ability of a given electronic testing instrument or piece of equipment to

meet the requirements for repeatability in § 144.4(b)(2) (relating to routine inspection and control).

*SMEDP*—Standard Methods for the Examination of Dairy Products published by the American Public Health Association, Washington, D.C.

*USDA*—The United States Department of Agriculture.

## § 144.2. Certification and approval requirements.

(a) No person may use a method to test milk for component content for payment purposes unless the method has been approved by the Board, the SMEDP, the AOAC or the USDA or their successor organizations.

(b) No person may use or employ an electronic instrument or method to test milk for component content for payment purposes unless certified by the Board under section 602 of the act (31 P. S. § 700j-602).

## § 144.3. Laboratory facilities and supplies.

Laboratories and other facilities using an electronic instrument or method to test milk for component content for payment purposes shall have the following supplies and facilities available and in proper working order:

(1) An electronic testing instrument capable of performance standards as referenced in § 144.4 (relating to routine inspection and control), required accessories and reagents and an instruction manual for operation of the instrument.

(2) A thermostatically controlled water, or other manufacturer-prescribed medium, bath with recording thermometer having proper temperature distribution, set to maintain samples at the temperature specified by the manufacturer of the electronic testing instrument or other methods of obtaining the required temperature as specified by the instrument manufacturer.

## § 144.4. Routine inspection and control.

(a) *Preparation of control samples.* Control samples shall be prepared in accordance with the methods in § 144.1 (relating to electronic methods—general).

(b) *Daily performance.*

(1) *Accuracy check.* Each day before routine testing begins, at least once each hour during the course of the testing session, and when the testing session ends, at least one subsample of control milk shall be tested using the electronic instrument. The certified tester shall read the test to 0.01%. The result difference obtained by the reference method must be 0.05 or less than the known reference test sample result. If the difference of the samples exceeds 0.05, the certified tester shall discontinue operation of the instrument, determine the reason for the difference and correct the deficiencies before resuming operation.

(2) *Repeatability check.* Each day before routine testing begins, and generally within the first hour of the session, at least ten consecutive readings on a single well-mixed sample of milk that has not been homogenized shall be made and recorded as a permanent record. If more than ten consecutive readings are taken, the certified tester shall use the last ten results. The repeatability check is acceptable if the range of the ten readings is 0.04 or less.

## § 144.5. Instrument calibration.

(a) *Calculation of calibration results.* An instrument shall be considered to be calibrated properly when the average difference between the instrument results for butterfat and protein and the reference method results for at least ten different control samples, called mean average, is  $\pm 0.04$  and the standard deviation of the difference between the instrument and reference methods,

called standard deviation, is 0.04 or less. For all solids the mean average is +/-0.09 and the standard deviation of the differences between the instrument and reference methods is 0.12 or less for those same ten samples.

(b) *Conditions requiring calibration.*

(1) The instrument shall be calibrated when initially installed.

(2) The instrument shall be calibrated when the accuracy check is confirmed to have failed.

(3) The instrument shall be calibrated if a part which may affect proper operation of the instrument is replaced, rebuilt or adjusted.

(4) The instrument shall be calibrated upon the occurrence of the specific circumstances which require calibration for that instrument, as determined by the manufacturer.

(5) The instrument shall be calibrated when new controls are available.

**§ 144.6. Required records.**

(a) The certified tester and testing facility or laboratory shall maintain the records listed in this section for at least 2 years. Records may be maintained in paper or electronic formats. Records must denote the record date. The name and license number of the certified tester who created or maintained the records must be included in the records or be readily available upon request.

(b) Records of calibrations, accuracy checks, mean average and standard deviation computations and other instrument use are required.

(c) Records of the operation and maintenance of each electronic testing instrument and records of test results by electronic method are required.

(d) Certified testers shall record standard deviation of the calibration verification as follows:

(1) The results of individual samples by reference method (average only for reference method) and electronic method.

(2) The date of computation, name and license number of certified tester.

(e) Certified testers operating electronic testing equipment shall perform a daily accuracy check and record the following:

(1) Reference method used, sample identification, individual test results and average test.

(2) Electronic method used, time, sample identification, individual test results and average test results.

**§ 144.7. Summary record required.**

(a) The certified tester and the testing facility or laboratory shall compile summary records of component tests performed for producers for the first and second half of each month containing results for at least two evenly spaced representative samples in each half month for each producer. The record must contain the farm sampling date, the laboratory testing date, the laboratory or testing site, the tester identification, the producer identification and the test result for each sample. The record shall be known as the original record or laboratory record and shall be maintained by the tester for at least 2 years. If the tests are performed by a milk dealer licensed by the Board, the milk dealer shall maintain the records of the component content of producers' milk samples for at least 2 years.

(b) If tests are performed in a commercial laboratory which is not an integral part of the milk plant where the samples were delivered, the licensed dealer or plant shall make available to the Board a copy of the final laboratory records of the component tests in computerized or written form for at least 2 years.

**§ 144.8. (Reserved).**

**§ 144.9. (Reserved).**

**§ 144.10. (Reserved).**

**§ 144.11. (Reserved).**

**§ 144.12. Credit producers with actual component test.**

(a) No individual producers delivering milk or cream, or both, to a milk or cream-receiving or purchasing plant, where the milk or cream is purchased on the basis of the milk components contained therein, may be credited with a greater or lesser percentage or average percentage of milk components than is actually contained in the milk or cream delivered.

(b) No report on a test to determine the milk component content of milk or cream may be of a greater or lesser percentage of milk components than is actually contained in the milk or cream from which the sample was taken. To be a basis of payment to an individual producer, a recheck of a producer's milk component test shall be made from the next available sample taken after the original test. Rechecks of a producer's milk component test shall be made when the butterfat varies 0.5% or more or the protein varies 0.3% or more from the most recent test.

**§ 144.13. Availability of records.**

Laboratory, cooperative or plant records shall be open to examination by the Board or its authorized representative. Upon request of a producer, the purchaser or receiver of milk or cream, or both, shall permit the producer to examine the part of the record containing information concerning the samples of milk or cream representing the milk or cream delivered by the producer. A purchaser or receiver of milk or cream from the producer thereof shall, on written request, at least once each month mail or deliver to the producer a written statement, unless the producer agrees to accept a verbal statement, of the percentage of milk components found to have been contained in the sample or samples representing the milk or cream delivered by the producer.

**§ 144.14. Responsibility for violations.**

A certified tester at a laboratory or plant is responsible for a violation of the act or this chapter, including the keeping of the reports and records required under the act and this chapter. The purchaser or receiver, or both, of the milk or cream, or both, or the licensed manager of a milk-gathering station, manufactory or plant receiving or purchasing milk or cream from producers for sale or resale or for manufacture, where the payment or settlement for the milk or cream is based in whole or in part on the milk component content thereof, is responsible for a violation of the act or this chapter by a person working under his direction or subject to his orders or the act or this chapter, including the keeping of the reports and records required by the act and this chapter.

[Pa.B. Doc. No. 13-49. Filed for public inspection January 11, 2013, 9:00 a.m.]