

RULES AND REGULATIONS

Title 7—AGRICULTURE

MILK MARKETING BOARD

[7 PA. CODE CH. 149]

Uniform System of Accounts

The Milk Marketing Board (Board) amends § 149.43 (relating to cost centers and operating accounts) and adds § 149.46 (relating to cooperative cost centers) to read as set forth in Annex A.

A. Purpose and Statutory Authority

The purpose of this final-form rulemaking is to amend § 149.43 to delete milk dealer cost categories that have become outdated, add new categories and clarify category descriptions, and add § 149.46 to provide a framework for cooperatives to report costs they are not currently reporting.

Section 301 of the Milk Marketing Law (act) (31 P.S. § 700j-301) gives the Board the authority to adopt and enforce regulations necessary or appropriate to carry out the act.

B. Summary of Public Comments

Cost of compliance

The Pennsylvania Association of Milk Dealers (PAMD) commented that the cost of compliance estimated by the cooperatives appears to be understated, and that there was no statement of the costs that will be incurred by the Board or by interested parties such as PAMD or the Pennsylvania Food Merchants Association (PFMA) in “vetting the cost information” or in compiling dealer information for comparison.

PFMA commented that collection and verification of the data will be prohibitively expensive. The Pennsylvania Association of Dairy Cooperatives (PADC) commented that the cooperatives “are more than willing to bear this expense” incurred in complying with the regulations. The Independent Regulatory Review Commission (IRRC) recommended reviewing the cost of compliance estimates and further explaining how they were developed.

Detailed reporting will be provided by a cross-section of cooperatives. Each of the four cooperatives likely to be in the reporting cross-section independently projected the cost for the personnel and time that would be needed. These projections were reported to an independent accounting firm who compiled them. The cooperatives are willing to incur the projected expense.

PAMD and PFMA have not provided a statement of what their projected costs might be. Those costs would evidently be incurred in voluntary comparison reporting and analysis of the accuracy or legitimacy of the cooperative cost reporting, not in complying with the regulations. The Board does not anticipate hiring any additional personnel or incurring significant additional expense related to the cooperative reporting required by the regulations.

Compliance with generally accepted accounting principles

PAMD reiterated the testimony of Carl Herbein, CPA, at the March 23, 2016, public hearing that the cooperative reporting should comply with generally accepted accounting principles (GAAP). PFMA commented that there was not a reason given for not requiring the

cooperative reporting to comply with GAAP. IRRC recommended including in the regulations a statement that the reporting must comply with GAAP.

This requirement has been added to § 149.46(b). The existing dealer reporting regulations did not have a GAAP compliance requirement; it is added as § 149.43(c).

Reporting requirement benefits

The Department of Agriculture commented that the cost centers “are proper and will allow the Board to accurately determine cooperative procurement costs.” PADC commented that the reporting requirements will “fill a gap in the Board’s collection of cost data for milk products from production at the farm to sale to consumers in the store.” The Professional Dairy Managers of Pennsylvania commented that by obtaining cooperative cost information, the Board would “correct what would seem to be an inconsistency in data access as it exercises its price setting authority.”

The Board concurs that this reporting will provide significant useful information about the industry that the Board regulates.

Reporting requirement clarifications

PAMD reiterated the testimony of Carl Herbein, CPA, that there should be a chart of accounts for the reporting of cooperative costs, and that there is no assurance that relevant costs will be sufficiently segregated and accurate.

IRRC recommended revision of the regulations to clarify the cost categories and other reporting requirements, state the reporting deadlines, and delete language which would give the Board discretion to expand the reporting requirements or set the deadlines. IRRC also commented that the Board should explain how the regulation will produce accurate and reliable cost figures.

Section 149.46(b) has been revised to require that the cooperatives will use the same operating ledger accounts that the dealers use, which are in § 149.43(b). This will further assure accurate and reliable cost figures. The reporting deadlines are stated in § 149.46(d), and the dealer deadlines are added as § 149.43(d). The provisions giving the Board discretion have been deleted.

Cost allocation clarification

PAMD reiterated the comments of Carl Herbein, CPA, that the cost allocation method should be clarified and not left to Board discretion. PFMA commented that the statement in proposed § 149.46(c) that the Board could direct a cost allocation different than the allocation stated in the regulations is impermissible. IRRC recommended deleting “based on an allocation method acceptable to the Board” from proposed § 149.46(a)(9) and “unless otherwise directed by the Board” from proposed § 149.46(c) and instead specify the allocation method.

It is not feasible to impose one allocation method for all entities; that has not been imposed on the processing dealers. While not codified, current practice does not impose a single allocation method on all dealers (including PAMD members) but allows allocation methods in accordance with GAAP. Section 149.46(b) has been revised to codify the requirement that the allocation methods are in accordance with GAAP, which assures the legitimacy of any allocation method. This requirement is also being

added to the dealer reporting requirement in § 149.43(c). The provisions giving the Board discretion have been deleted.

Forms

IRRC commented that the relevant forms should be submitted with this final-form rulemaking, and that the Regulatory Analysis Form and this preamble should clarify that the reporting forms will implement (and not usurp or add to) the regulatory reporting requirements.

The Board acknowledges that the reporting forms will implement (and not usurp or add to) the regulatory reporting requirements.

Small business impact

IRRC recommended that the Board directly address the impact of the regulation on small businesses in the revised Regulatory Analysis Form.

A statement has been added to §§ 149.43(c) and 149.46(b) that cooperatives or dealers that are not in the reporting cross-section will submit a less detailed cost report, which reflects current practice. This can alleviate the reporting burden on small businesses. Dealers that were not in the dealer cross-section and cooperatives that are classified as dealers have already been submitting a less detailed report. The cooperative “short form” cost reporting has been revised to more closely correspond to the categories in § 149.46.

Cooperative-only cost recovery

PFMA commented that allowing recovery of cooperative costs is impermissible and would cause independent producers to join cooperatives, giving the cooperatives “monopoly or near-monopoly power” and increasing consumer milk prices, and that whether the over-order premium provides an adequate return to cooperatives should have been addressed.

PAMD commented at length that these reporting requirements could lead to the Board’s adoption of a cooperatives-only premium payment, which PAMD believes would be “contrary to the intent of the legislature and the public interest.”

These comments are not relevant because the regulations only involve the cooperatives reporting their costs, and do not provide for any recovery of those costs or any cooperatives-only premium. If a cooperatives-only premium or cooperative cost recovery is ever requested or considered, a Board hearing would be required. Any interested party would have the opportunity to participate, and to challenge it at that time. A challenge now, to something that is not authorized or even mentioned in the proposed or final-form rulemaking, is premature and irrelevant.

Pennsylvania Institute of Certified Public Accountants’ comment

The Pennsylvania Institute of Certified Public Accountants (PICPA) submitted and endorsed the public hearing testimony of Carl Herbein, CPA, given on behalf of PAMD. The testimony was given prior to the issuance of the proposed rulemaking. PAMD submitted comments about the proposed rulemaking which identified particular aspects of the testimony. Presumably those aspects were the ones PAMD believed merited comment at this stage of the proceedings.

PICPA did not provide any statement or identify any aspects of the public testimony to which attention should be directed. The Board therefore infers that PICPA’s concerns mirror PAMD’s concerns, in whole or in part,

particularly the issue that the cost reporting should comply with GAAP. These issues have been addressed.

C. Affected Persons and Parties

The amendments to § 149.43 essentially bring it up-to-date to correspond to how dealers currently report. Therefore, the amendments are not expected to significantly affect dealers.

Section 149.46 will affect licensed cooperatives which will be reporting these costs. Only those cooperatives invited to participate in a cross-section will submit detailed cost reports. While participation in cross-sections is voluntary, the cooperatives likely to be invited to participate in cross-sections are the same cooperatives who requested the opportunity to submit the more detailed reports. Some processing dealers will be invited to voluntarily submit reports like the co-op report for comparison purposes.

D. Fiscal and Administrative Impact

The amendments to § 149.43 are not expected to have significant fiscal or administrative impact on the milk dealers or any other parties. Section 149.46 will have a limited fiscal and administrative impact on the cooperatives in the reporting cross-section, estimated by them to be a total of \$15,000 the first year and \$9,200 each subsequent year. Based on a “dry run” the cooperatives have completed of implementing the accounting and reporting framework, these estimates are accurate.

E. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. There is not a sunset provision for these regulations.

F. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 28, 2016, the Board submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 3655 (July 9, 2016), to IRRC and the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on December 6, 2017, this 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 December 7, 2017, and approved this final-form rulemaking.

G. Contact Person

Interested persons may obtain information regarding this final-form rulemaking by contacting Douglas Eberly, Chief Counsel, Milk Marketing Board, 2301 North Cameron Street, Harrisburg PA 17110, ra-pmmb@pa.gov within 30 days after publication in the *Pennsylvania Bulletin*. Individuals who require this information in a different format may call the Pennsylvania AT&T Relay Service for TDD users, (717) 787-4194 or (800) 654-5984.

H. Findings

The Board finds that:

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

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

(3) The amendments to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 3655.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in this preamble.

I. Order

The Board orders that:

(a) The regulations of the Board, 7 Pa. Code Chapter 149, are amended by adding § 149.46 and amending § 149.43 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General 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 on publication in the *Pennsylvania Bulletin*.

TIM MOYER,
Secretary

(*Editor's Note:* See 47 Pa.B. 7808 (December 23, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 47-17 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 7. AGRICULTURE****PART VI. MILK MARKETING BOARD****CHAPTER 149. UNIFORM SYSTEM OF ACCOUNTS****CHART OF ACCOUNTS****§ 149.43. Cost centers and operating accounts.**

(a) Cost centers shall be as follows:

(1) *Receiving, laboratory, and field work.*

(2) *Standardization and pasteurization.* Productive cost center, which includes accountable costs associated with standardizing, pasteurizing and homogenizing milk.

(3) *Bottling.* Productive cost center, which includes accountable costs associated with the bottling and packaging of fluid milk and cream items.

(4) *Manufacturing other than ice cream.* Productive cost center, which includes all accountable costs associated with the manufacture of sour cream, cottage cheese, dips, and so on.

(5) *Ice cream manufacturing.* Productive cost center, which includes accountable costs associated with the manufacture of ice cream and other frozen products.

(6) *Ice cream hardening room.* Productive cost center, which includes accountable costs associated with operating the ice cream and frozen products hardening room.

(7) *Cold room, shipping and loading.* Productive cost center, which includes accountable costs associated with storing finished fluid milk products and other perishable products handled by the licensee, including shipping and loading and unloading of transportation units.

(8) *Delivery.* Productive cost center, which includes accountable costs associated with the delivery of milk, cream and other products (excluding ice cream and other frozen products) on routes.

(9) *Delivery, ice cream.* Productive cost center, which includes accountable costs associated with the delivery of ice cream and other frozen products to customers.

(10) *Selling.* Productive cost center, which includes accountable costs associated with selling of the products handled, and shall be separated into the following categories:

(i) Ice cream, which includes ice cream and other frozen products.

(ii) Packaged milk and cream, which includes packaged fluid milk, cream, sour cream and any other products for which the Board sets minimum prices (whether the transaction is controlled or noncontrolled).

(iii) Other products, which include items such as drinks, juices, ice cream mix, dips, bulk sales of fluid milk and cream, and any other items not included in subparagraph (i) or (ii).

(11) *Administrative.* Productive cost center, which includes the total accountable costs associated with administering the overall business of the licensee.

(12) *Garage.* Service cost center from which all expenditures shall be distributed to the productive and service cost centers in proportion to the benefit that the garage renders to other cost centers.

(13) *Transportation.* Service cost center which includes accountable costs associated with transporting milk of the licensee from the plant where processed to the distribution point or center of licensee. Costs accumulated in this center shall be distributed to the respective productive cost centers in proportion to the benefit that this cost center renders to the productive cost centers.

(14) *Power plant and refrigeration.* Service cost center from which expenditures shall be distributed to the productive and service cost centers in proportion to the benefit that the power plant and refrigeration renders to other cost centers.

(15) *Warehouse.* Service cost center from which all warehouse expenditures shall be distributed to the productive and service cost centers in proportion to the benefit that the warehouse renders to other cost centers.

(16) *General plant maintenance.* Service cost center from which all general plant maintenance expenditures shall be distributed to the productive and service cost centers in proportion to the benefit that the general plant maintenance renders to other cost centers.

(17) *Blow-molder.* Productive cost center which includes accountable costs associated with the production of blow-mold plastic containers.

(b) Operating ledger accounts for the operations of the licensed dealer shall be as follows:

(1) *Executive salaries.* Includes salaries, wages, and other forms of compensation assigned to corporate officers, such as president, vice president, secretary and treasurer, partners and single proprietors, but excludes any fringe benefits.

(2) *Other salaries and wages.* Includes all other salaries and wages paid.

(3) *Payroll taxes.* Includes F.I.C.A. tax, Pennsylvania unemployment compensation tax and Federal unemployment compensation tax.

(4) *Workers' compensation insurance.* Includes the premiums paid and costs incurred for workers' compensation coverage.

(5) *Employee health and welfare.* Includes group life insurance premiums, health and accident insurance premiums, and medical insurance premiums paid by the employer for the benefit of employees. If the premiums are divided between the employer and the employee, only that portion paid by the employer should be included in this account.

(6) *Employee pension plan.* Includes contributions made to pension plans by the employer for the benefit of the employees. If the contributions are divided between the employer and the employee, only that portion paid by the employer should be included in this account.

(7) *Employee uniforms.* Includes cost of uniforms paid by the employer for the benefit of the employees. If the cost is divided between the employer and the employee, only that portion paid by the employer should be included in this account.

(8) *Employee relations.* Includes expenditures made by the employer for personnel relations.

(9) *Repair and maintenance, machinery and equipment.* Includes materials and purchased services for general repairs and maintenance of plant machinery and equipment, furniture and fixtures.

(10) *Repair and maintenance, buildings.* Includes materials and purchased services for general repairs and maintenance of buildings.

(11) *Supplies and equipment, office.* Includes the cost of computer hardware and software, printers, copiers, stationary, paper, envelopes, pencils, pens, typewriter ribbons, copy paper and other supplies of this nature.

(12) *Operating and cleaning supplies.* Includes manufacturing and cleaning supplies and materials used in the processing and manufacturing centers.

(13) *Depreciation, machinery and equipment.* Includes depreciation on plant machinery and equipment, and office equipment.

(14) *Depreciation, buildings.* Includes depreciation on buildings used for processing, manufacturing, garage, warehouse and branch buildings.

(15) *Depreciation, milk cases and pallets.* Includes depreciation on milk cases and pallets used for all products handled by the licensee.

(16) *Light, power, water and sewage.* Includes costs incurred for operating office and plant, electricity, water, power, gas and sewage.

(17) *Fire and other insurance.* Includes premiums paid for fire insurance coverage on buildings and contents, trucks, trailers and automobiles, and premiums paid for theft insurance coverage, public liability coverage and product liability coverage.

(18) *Real estate taxes.* Includes real estate taxes paid to cities, counties, boroughs and townships.

(19) *Taxes other than income and real estate.* Includes all other taxes paid except F.I.C.A., Pennsylvania unemployment tax, and State and Federal income taxes.

(20) *State sales and use tax.* Includes sales and use tax paid on all expense type items. Sales and use tax paid on capitalized items shall be included in the asset amount capitalized.

(21) *Rent—land and buildings.* Includes rental payments for land, office buildings, plant, warehouse space and so on, provided the lessor/lessee relationship is between two completely independent parties.

(22) *Gasoline, oil and grease.* Includes expenditures for gasoline, oil, and grease for plant and transportation equipment.

(23) *Licenses and permits.* Includes the cost of licenses and permits required by the Commonwealth and by any cities, counties, boroughs and townships for the operation of the business.

(24) *Advertising.* Includes expenditures for local, regional and National advertising and promotions, including newspapers, magazines, pamphlets, circulars and calendars, radio and television, signs and displays, and product sampling.

(25) *Travel and entertainment.* Includes traveling and subsistence expenses of salesmen, officers and any other employee on company business; also includes entertainment expenses normally incurred in business travel under this item.

(26) *Telephone and Internet.* Includes telephone, postage and Internet charges.

(27) *Subscriptions.* Includes expenses for periodic professional publications.

(28) *Rent—equipment.* Includes cost of renting, leasing, and using any office, plant or transportation equipment; includes royalties paid on equipment.

(29) *Professional services.* Includes all legal, accounting, auditing and similar expenses.

(30) *Tires and tubes, new and repairing.* Includes all expenditures for tires, tubes, recaps, and repairs to tires and tubes.

(31) *Commissions and wages.* Includes commissions and wages paid to route drivers, route runners and supervisors.

(32) *Repair and maintenance, delivery equipment.* Includes materials and purchased services for general repairs and maintenance of delivery trucks.

(33) *Depreciation, delivery equipment.* Includes depreciation on delivery vehicles.

(34) *Bad debts.* Includes amount charged as expense resulting from uncollectible sales.

(35) *Contract hauling and delivery expense.* This account is set up to capture all contracted bulk milk and cream hauling costs and finished product delivery costs.

(36) *Hauling reimbursement.* This account is set up to capture all reimbursements received by the dealer to cover hauling costs.

(37) *Heating fuel.* Costs incurred for heating fuel such as natural gas and fuel oil.

(38) *Cases expense.* Costs incurred for shipping cases and pallets.

(39) *Home office expense.* Organizational overhead which can be allocated to the licensed dealer.

(40) *Garage income.* Income received by the organization for services performed in its garage facilities.

(41) *Back hauling income (delivery cost center only)*. Income received for back hauling shall be separated into the following categories:

(i) Back hauling after deliveries of ice cream and frozen dessert products.

(ii) Back hauling after deliveries of other products.

(42) *Market Administrator fees (receiving, laboratory, and field work cost center only)*. Fees paid to the United States Department of Agriculture Market Administrator excluding producer-settlement fund payments.

(43) *Plant closing costs*. Expenses incurred by the closing of a processing plant, if the closing directly impacts the product volume of a licensed dealer, and the dealer is an affiliated or related company or the same company that closed the plant.

(44) *Turnpike and other tolls*. Costs incurred for the Pennsylvania Turnpike and other tolls.

(45) *Employee reimbursement*. Costs incurred for reimbursing employees for use of their personal vehicles or other property.

(46) *Rental income*. Income received for the rental or other use of any of the property for which costs are reported, which is not reported in any other income category.

(47) *Interest expense*. Costs incurred for interest on loans related to the dealer's operations.

(48) *Miscellaneous*. Accountable costs incurred for the dealers' operations that are not captured in any other account. The dealer should provide an explanation of any miscellaneous costs.

(c) All allocations and reports must be in accordance with generally accepted accounting principles. Dealers that are not in the reporting cross-section shall submit a less detailed report.

(d) The annual reporting deadline is May 1 for dealers that are included in the reporting cross-section and June 15 for all other dealers.

§ 149.46. Cooperative cost centers.

(a) Cost centers for cooperatives, as defined in the act, shall be as follows:

(1) *Field services*. Providing direct assistance to producers by inspecting and improving producer milk production and quality.

(2) *Laboratory*. Testing for quality and components of producer milk and bulk milk delivered to dealers including direct testing costs and related materials.

(3) *Producer payroll*. Making payment to producers for milk.

(4) *Sales invoicing*. Invoicing producer milk customers.

(5) *Dispatch, logistics and hauling*. Hauling and coordinating the hauling of producer milk for both collection and delivery of raw milk.

(6) *Calibration services*. Providing producer calibration services including cooperative-owned vehicles.

(7) *Producer relations*. Developing and maintaining producer relationships.

(8) *Customer relations*. Developing and maintaining customers for producer milk.

(9) *General and administrative*. Administering and managing the cooperative's milk marketing activity including costs related to human resources, information technology, corporate and executive expenses, professional fees and occupancy. The amount shall be a proportion of these costs which the cooperative reasonably allocates to its milk marketing activity.

(b) Cooperatives shall report these cost centers and allocate them into the applicable operating ledger accounts described in § 149.43(b) (relating to cost centers and operating accounts). Allocations and reports must be in accordance with generally accepted accounting principles. Cooperatives that are not in the reporting cross-section shall submit a less detailed report.

(c) The cost allocations must be based only on the cooperatives' milk marketing activities for their producers (members and nonmembers).

(d) The annual reporting deadline is May 1 for cooperatives that are included in the reporting cross-section and June 15 for all other cooperatives.

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