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# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### MILK MARKETING BOARD

#### [ 7 PA. CODE CH. 150 ]

#### Milk Marketing Fees

[50 Pa.B. 1836]

[Saturday, March 28, 2020]

The Milk Marketing Board (Board) amends Chapter 150 (relating to milk marketing fees) by increasing the license fees for milk dealers, subdealers and haulers, and increasing the examination and certificate fees for weigher-samplers and testers. This final-form rulemaking is the same as the proposed rulemaking published at 49 Pa.B. 4991 (August 31, 2019).

#### A. *Effective Date*

This final-form rulemaking will be effective 30 days after publication in the *Pennsylvania Bulletin*. Increases for new applicants will be effective when this final-form rulemaking is effective. Increases for renewal applicants will be effective for license years beginning on or after July 1, 2020. There is no sunset provision.

#### B. *Statutory Authority*

The Milk Marketing Fee Act (act) (31 P.S. §§ 700k-1—700k-10.1) gives the Board the authority to charge and collect license fees. Sections 700k-3(c) and 700k-6—700k-8 provide that the Board has the authority to set the fees by regulation.

#### C. *Purpose and Explanation*

The Board is self-funded, primarily by these fees. The Board has not received any general fund appropriations since the 1996-1997 fiscal year. The fees have not been increased since January 2004. The fees and any other funds received by the Board are paid into the State Treasury and placed in the Milk Marketing Fund (Fund). Despite the Board's careful stewardship, expenses have increased substantially in these 15 years, while income has not. The Fund is being eroded by the resulting deficits. Without this fee increase, the Board's financial viability will become uncertain. Further details are available in the Regulatory Analysis Form available at [www.irrc.state.pa.us](http://www.irrc.state.pa.us) or from the contact person designated as follows.

Section 150.3 is deleted because the classification transition described in that regulation was implemented and completed by the Board as described in the regulation.

#### D. *Summary of Public Comments*

The only comments received were from the Independent Regulatory Review Commission (IRRC).

#### *Adequacy of fee increase*

IRRC asked for an explanation of the Board's decision to seek a fee increase that reduces but does not eliminate the Board's budget deficits.

The Board realizes that this fee increase does not eliminate the annual deficits. A fee increase that would eliminate the budget deficits would be ideal for the agency, but not ideal for the dairy industry in this Commonwealth.

The Legislative Budget and Finance Committee (Committee) released "A Study of Pennsylvania's Dairy Industry" in September 2019. The document can be found at <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/653.pdf>. It catalogues the challenges facing the dairy industry in this Commonwealth. The Board is aware of these challenges and was reluctant to increase fees more than absolutely necessary. The report noted that the Board was proposing a fee increase and recommended pursuing alternative funding sources "before any additional burden is placed on Class I—IV parties to make up this shortfall" (see page 98). The report also recommended licensing milk retailers, which would be another potential source of income.

In July 2019, the Pennsylvania Dairy Future Commission was created by the Legislature. It is to issue a report by August 2020. One of its tasks is to make recommendations about the impact of State laws and regulations on the dairy industry in this Commonwealth.

These studies are just examples of the serious efforts being made to support the dairy industry in this Commonwealth in a time of enormous challenges. The Board does not know which, if any, of the recommendations or initiatives will come to fruition. But one or more could impact the Board's revenue. At a time when the dairy industry is struggling and new directions are being considered, the Board is proposing fee increases that help but do not solve the funding situation, realizing further steps will be needed in coming years.

#### *Revised method of calculating subdealer fee*

IRRC asked for an explanation of the Board's decision to change the method of calculating subdealer fees from milk purchased by the subdealers to milk sold by the subdealers.

Subdealers currently pay an annual fee based on the number of quarts they buy in this Commonwealth. The Board bases this fee on quarts sold in this Commonwealth. There are several reasons for the change.

Dealer fees are based on sales. The fee calculations will be more consistent when both dealer and subdealer fees are based on sales.

Subdealers already report their annual sales on the Subdealer Survey form which they submit with their annual license renewal.

Dealers licensed by the Board are required to report their sales to subdealers. Some subdealers purchase their products from dealers in other states. Those dealers may not be licensed by the Board. Then those sales to the subdealers are not reported to the Board. Recent analysis by milk industry economists and the Committee report (see page 107) have stated that the Board's effectiveness will be increased by gathering more comprehensive data about milk sales in this Commonwealth. By basing the fees on sales instead of purchases, the Board will obtain more definitive data about Commonwealth transactions. The Subdealer Surveys are not adequate for this purpose because those are not audited as the reports of sales for fee-setting purposes can be.

#### *Fiscal impact of revised method of calculating subdealer fee*

IRRC asked what fiscal impact the revised method of calculating the subdealer fee will have on the regulated community.

The subdealer quart-equivalent fee currently produces a total of about \$18,000 per license year for all subdealers. There are 11 fee categories based on volume. About 80% of the subdealers are

in the smallest volume category. There are only five subdealers in the five highest categories.

The fees are currently calculated based on the volumes that licensed dealers report selling to licensed subdealers. Subdealer sales are not currently reported, other than on the Subdealer Surveys, which are not audited and are not necessarily consistently submitted.

Therefore we cannot calculate with certainty the impact of this change. But most of the subdealers have relatively small volume with limited geographical range. Their product sold is likely to be commensurate with their product purchased. The large volume subdealers, if this changes their fee at all, can be sure they will not experience an enormous change because there is a cap on the amount of this fee (\$1,750). Two of the five large subdealers are already in the top category, so the only increase they will experience is the increase for that category.

The Board's expectation that this change is not likely to have a large impact is evidenced in the fee estimate for the year after this change is implemented. A 25% increase from \$18,000 to \$22,500 is projected.

#### *E. Fiscal and Administrative Impact*

The milk dealers are projected to pay a combined total of about \$370,000 to \$385,000 per year more than they would under the current fee structure. The milk subdealers are projected to pay a combined total of about \$8,500 per year more than they would under the current fee structure. The milk haulers are projected to pay a combined total of about \$950 per year more than they would under the current fee structure. The milk weigher-samplers are projected to pay a combined total of about \$8,195 per year more than they would have under the current fee structure. The milk testers are projected to pay a combined total of about \$325 per year more than they would have under the current fee structure. These are projected estimates.

These fees are not new fees—they are increases in existing fees. Therefore the administrative impact is not expected to be significant. Subdealers will calculate their fees based on the volume of milk products sold, which is information that is obviously readily available, instead of having their fees calculated on the basis of milk products purchased, and therefore this is not expected to result in a significant administrative impact.

#### *F. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 31, 2019, the Board submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 4991 to IRRC and to the Chairs of the House and Senate Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(g) 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. § 745.5(a)(j.2)), on January 30, 2020, 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 January 31, 2020, 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), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 49 Pa.B. 4991.

(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 150, are amended by deleting § 150.3 and amending §§ 150.11, 150.12, 150.21, 150.22, 150.51, 150.61, 150.62, 150.71 and 150.72 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*.

(*Editor's Note:* See 50 Pa.B. 1001 (February 15, 2020) for IRRCs approval order.)

**Fiscal Note:** 47-19. No fiscal impact; (8) recommends adoption.

ROBERT N. BARLEY,  
Chairperson

## Annex A

### TITLE 7. AGRICULTURE

#### PART VI. MILK MARKETING BOARD

#### CHAPTER 150. MILK MARKETING FEES

#### GENERAL PROVISIONS

§ 150.3. (Reserved).

#### LICENSE FEES OF MILK DEALERS

§ 150.11. Fixed fees.

(a) A new applicant for a milk dealer's license shall pay a fixed fee of \$100 for applications submitted before January 1 of the license year for which the application is submitted, and \$50 for applications submitted on or after January 1.

(b) An applicant for annual renewal of a milk dealer's license shall pay a fixed fee of \$100.

### **§ 150.12. Hundredweight fees.**

(a) In addition to the fixed fee imposed under § 150.11 (relating to fixed fees), a milk dealer that was licensed for the entire calendar year preceding license renewal shall pay an annual hundredweight fee as set forth in paragraphs (1) and (2).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is \$.060 per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the calendar year preceding the period for which the license is issued, the fee is \$.0064 per hundredweight.

(b) In addition to the fixed fee imposed under § 150.11, a milk dealer that was not licensed for the entire calendar year preceding license application or renewal shall pay a monthly hundredweight fee as set forth in paragraphs (1) and (2). Monthly payments shall continue until the milk dealer has been licensed for an entire calendar year and for each month thereafter until the next license year begins. Annual payments shall then commence under subsection (a).

(1) For milk for which the Board has fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is \$.060 per hundredweight.

(2) For milk for which the Board has not fixed a minimum wholesale or retail price, received, produced or brought into this Commonwealth during the preceding month, the fee is \$.0064 per hundredweight.

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## **LICENSE FEES OF MILK SUBDEALERS**

### **§ 150.21. Fixed fees.**

(a) A new applicant for a subdealer's license shall pay a fixed fee of \$50.

(b) An applicant for annual renewal of a subdealer's license shall pay a fixed fee of \$50.

### **§ 150.22. Quart-equivalent fee.**

(a) In addition to the fixed fee imposed under § 150.21(b) (relating to fixed fees), an applicant for annual renewal of a subdealer's license shall pay an annual quart-equivalent fee calculated by dividing the total quarts of milk sold during the previous calendar year by the number of months in which the subdealer engaged in business. The Board will assess the fee in accordance with the following schedule:

<b>Ave. Qts. Sold Per Month</b>	<b>Annual Fee</b>
1 — 29,999	\$ 62.50
30,000 — 59,999	125.00
60,000 — 119,999	187.50

120,000—149,999	200.00
150,000—199,999	312.50
200,000—299,999	375.00
300,000—399,999	500.00
400,000—599,999	625.00
600,000—799,999	1000.00
800,000—999,999	1500.00
1,000,000 and over	1750.00

(b) As used in subsection (a), "quarts" means the total volume of milk for which the Board sets a price expressed in quart equivalents.

## **LICENSE FEES OF MILK HAULERS**

### **§ 150.51. Fixed fees.**

A new applicant for a milk hauler's license and an applicant for annual renewal of a milk hauler's license shall pay a fixed fee of \$35.

## **CERTIFICATION FEES OF MILK TESTERS**

### **§ 150.61. Examination fee.**

The fee to take the Board-approved examination for a certificate of proficiency in milk testing is \$30, payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.62 (relating to fixed fees for new and renewed certificates).

### **§ 150.62. Fixed fees for new and renewed certificates.**

A new applicant for a milk tester's certificate and an applicant for renewal of a milk tester's certificate shall pay a fee of \$25, which shall accompany the milk tester certificate application (available from the Board Office or website).

## **CERTIFICATION FEES OF MILK WEIGHERS AND SAMPLERS**

### **§ 150.71. Examination fee.**

The fee to take the Board-approved examination for a certificate of proficiency in milk weighing and sampling is \$30, payable when the examination is taken. The examination fee is not refundable and may not be applied toward payment of the fixed fees in § 150.72 (relating to fixed fees for new and renewed certificates).

### **§ 150.72. Fixed fees for new and renewed certificates.**

A new applicant for a milk weigher and sampler's certificate and an applicant for renewal of a milk weigher and sampler's certificate shall pay a fee of \$25, which shall accompany the milk weigher/sampler certificate application (available from the Board Office or website).

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