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PROPOSED RULEMAKING

MILK MARKETING BOARD

[7 PA. CODE CH. 143]

Transactions Between Dealers and Producers; Payment

[49 Pa.B. 5455]

[Saturday, September 21, 2019]

The Milk Marketing Board (Board) proposes to amend Chapter 143 by adding § 143.15 (relating to cooperative communication of over-order premium) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective 90 days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 301 of the Milk Marketing Law (act) (31 P.S. § 700j-301) gives the Board the authority to ". . .supervise, investigate and regulate the entire milk industry of this Commonwealth, including the . . .purchase and sale of milk. . .in this Commonwealth, and including the establishment of reasonable trade practices. . ." Section 307 of the act (31 P.S. § 700j-307) gives the Board the authority to adopt and enforce regulations necessary or appropriate to carry out the provisions of the act. Section 608 of the act (31 P.S. § 700j-608) provides that "[m]ilk dealers buying or receiving milk from producers shall furnish to each producer. . .a written statement. . ." and that "[s]uch statement shall set forth such information as may be required by the board. . ." The definition of milk dealer in Section 103 of the act (31 P.S. § 700j-103) provides, in pertinent part, "[i]f a cooperative distributes. . .milk within this Commonwealth. . .to other milk dealers. . .it shall be deemed to be a milk dealer. . .as to that part of its business, and shall be governed by the provisions of this act applicable thereto."

Purpose and Explanation

The Board mandates, by way of official general order, an over-order premium be paid to producers in this Commonwealth based on milk produced, processed and sold in this Commonwealth. The Board requires milk dealers to provide a line item on monthly statements to producers that shows the amount of over-order premium being paid. The act defines cooperatives as "producers," so cooperatives are told how much over-order premium they are paid. However, there is no similar requirement that cooperatives provide a line item on monthly statements to their members that shows the amount of over-order premium the members are paid. This regulation would require cooperatives to provide a line item on monthly statements to their members disclosing the amount of over-order premium being paid.

In April and May 2019, the Board conducted a survey to determine dairy farmers' knowledge and opinions about this Commonwealth's milk pricing system including the over-order premium.

When asked if they receive an over-order premium, 69% of cooperative members stated, "No" or "I'm not sure." Those individuals indicating, "I'm not sure," were asked for a reason for that response; the majority of comments stated that they have no information on monthly checks from cooperatives to indicate any over-order premium is received. Respondents were also asked

whether they believe the over-order premium is distributed fairly. Less than 5% of cooperative members agree that it is. Conversely, the majority of cooperative members believe the Board should revise its system for determining and distributing the over-order premium.

A total of 214 comments from survey respondents focused mainly on the lack of transparency by cooperatives in not providing information about the amount of over-order premium included in their monthly payment. Because they lack information, many cooperative members are skeptical and even distrustful of the Commonwealth and Board, as well as the cooperatives, when discussing their income. They do not understand how the system is benefitting them in any way and believe they are not, in fact, receiving what they are entitled to receive.

Milk dealers have been required since 1997 to provide a line item on monthly statements to producers showing the amount of over-order premium being paid; the independent producers are thus able to quantify the direct benefit they receive from the Board's mandated over-order premium. For payment purposes, cooperatives are defined as the "producer," so cooperatives are provided information regarding how much over-order premium they are being paid, but cooperatives are not required to provide that information to their members.

As of December 2018, there were approximately 1,100 independent producers and 4,500 cooperative member producers in this Commonwealth. The independent producers are provided information on their monthly pay statements showing the direct benefit they receive from the over-order premium.

The majority of the 4,500 cooperative member producers do not have a line item currently on their statements detailing the amount of over-order premium they are being paid. Those producers who do not have the line item are the intended beneficiaries of this proposed rulemaking.

Description of Proposed Amendments

This proposed rulemaking will require cooperatives to provide a line item on monthly statements to their producer members that shows the amount of Board-mandated over-order premium being paid.

This proposed rulemaking prescribes a formula for the cooperatives to use to calculate the over-order premium being paid to their producer members. This will provide uniformity between and among cooperatives regarding the amount of over-order premium. The Board also currently prescribes a formula for milk dealers to determine the line item on their monthly statements to independent producers.

The cooperative formula is identical to the formula the Board currently uses to provide information to a cooperative regarding the over-order premium rate received by that cooperative. That cooperative then provides the information to its members. Since this formula is already in use and produces a result that has effectively transmitted the over-order premium rate information, the Board decided to adopt it for this proposed rulemaking. This formula calculates the average amount received by cooperative members, not specific individual amounts. Calculating a specific individual amount for each member would be prohibitively costly and administratively impractical.

Public Hearing

This proposed rulemaking was prompted by a petition from the Honorable John Lawrence, Representative. The Board held a public hearing on May 1, 2019. Notice of the hearing was published at 49 Pa.B. 1737 (April 6, 2019). The Board also provided notice on March 20, 2019, by means of a Board Bulletin to parties who have requested notice of Board hearings.

The following parties testified or provided written comments, or both, as part of the hearing: the Honorable John Lawrence, Representative, Progressive Agriculture Association, Pennsylvania Farm Bureau, Dairy Farmers of America Northeast Area Council, Pennsylvania

Association of Dairy Cooperatives, National Dairy Producers Organization and Nelson Troutman. The Board also received input outside of the hearing from Dairy Farmers of America Northeast Council.

Fiscal Impact

This proposed rulemaking would have little fiscal impact on this Commonwealth, its political subdivisions or the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 10, 2019, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections about this proposed rulemaking to Doug Eberly, Chief Counsel, Pennsylvania Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110, or by e-mail to ra-pmmb@pa.gov within 30 days after publication in the *Pennsylvania Bulletin*. Individuals who require this information in a different format may call (717) 787-4194 or (800) 654-5984 which is the Pennsylvania AT&T Relay Service for TDD users.

ROBERT N. BARLEY,
Chairperson

Fiscal Note: 47-20. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS

PAYMENT

(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)

§ 143.15. Cooperative communication of over-order premium.

(a) Cooperatives shall show by line item on their monthly statements to dairy farmers marketing milk through the cooperative the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

(b) For the purpose of this section, "the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid" shall be calculated monthly by each cooperative by dividing the total over-order premium paid to the cooperative by the total cooperative member pounds marketed.

[Pa.B. Doc. No. 19-1419. Filed for public inspection September 20, 2019, 9:00 a.m.]

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