

**Regulatory Analysis Form**

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY  
REVIEW COMMISSION****RECEIVED**

MAR 2 2021

Independent Regulatory  
Review Commission

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

**Pennsylvania Milk Marketing Board**

(2) Agency Number: 47

Identification Number: 20

IRRC Number:

(3) PA Code Cite: 7 Pa. Code sec. 143.15

(4) Short Title: **Cooperative disclosure of over-order premium**

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

Primary Contact: **Doug Eberly, 717-836-3115, [deberly@pa.gov](mailto:deberly@pa.gov)**Secondary Contact: **Carol Hardbarger, 717-836-3113, [chardbarge@pa.gov](mailto:chardbarge@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 Board mandates an over-order premium be paid to Pennsylvania producers based on milk produced, processed, and sold in Pennsylvania. The Board requires milk dealers to provide a line item on monthly statements to independent producers showing the amount of over-order premium being paid. The Milk Marketing Law defines cooperatives as "producers," so cooperatives are told how much over-order premium they are paid. However, a similar requirement does not currently apply to cooperative statements to their members. This regulation would require cooperatives to provide a line item on monthly statements to members disclosing the amount of over-order premium being paid.

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

Section 301 of the Pennsylvania Milk Marketing Law ("Law") (31 P.S. § 700j-301) gives the Board the authority to "supervise, investigate, and regulate the entire milk industry of the Commonwealth . . . , including the purchase and sale of milk . . . in this Commonwealth, and including the establishment of reasonable trade practices . . . ." Section 307 of the Law (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 Law. Section 608 of the Law (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 Law (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.”**

**(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. No**

**(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.**

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

**When asked if they receive an over-order premium, 69 percent 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 percent 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 state 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.**

**There are approximately 4,300 cooperative member producers in Pennsylvania. The majority of those 4,300 producers do not have a line item currently on their statements detailing the amount of over-order premium they are being paid. Those producers, approximately 4,100-4,200, who do not have the line item are the intended beneficiaries of this regulation.**

**(11) 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.**

**There are no provisions that are more stringent than federal standards because federal milk orders do not mandate an over-order premium. The over-order premium is just that – a premium paid over the federal order price.**

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

**The only other state with a similar milk regulatory scheme is Maine. Pennsylvania producers generally do not compete against Maine producers for markets. In any event, Maine producers receive information regarding the amount of the analogous Maine payment.**

**Also, this is a requirement to provide information to producers, so it should have no effect on competitiveness.**

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations. **No**

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

**The regulation was prompted by a petition from Representative John Lawrence. The Board held a public hearing on May 1, 2019. Notice of the hearing was published in the Pennsylvania Bulletin on April 6, 2019. The Board also provided notice on March 20, 2019, via Board Bulletin to parties who have requested notice of Board hearings.**

**The following parties testified and/or provided written comments as part of the hearing: Representative John Lawrence, 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.**

**The Board solicited public comments when the proposed regulation was submitted. The Board received public comments from Representative Lawrence, Pennsylvania Farm Bureau, Pennsylvania Association of Dairy Cooperatives, and Independent Regulatory Review Commission Staff. Based on those comments, the Board drafted and circulated for additional comment a first draft of the final form regulation; Pennsylvania Association of Dairy Cooperatives provided additional comments on the first draft of the final form. All of the comments received are addressed in the Preamble.**

**The cooperatives that are members of the Pennsylvania Association of Dairy Cooperatives are not small businesses and Dairy Farmers of America Northeast Council is not a small business. However, the individual member farms of each of the cooperatives, for the most part, are small businesses. There is no overall tracking of receipts by individual farms. However, the average Pennsylvania dairy herd size is approximately 80 cows; at prevailing milk prices and average Pennsylvania production since 2016 at least, a farm would have to milk at least 170 cows to not be a small business. The same analysis applies to other organizations with dairy farmer members – National Dairy Producers Organization, Progressive Agriculture, and Pennsylvania Farm Bureau. Nelson Troutman is a dairy farmer – his farm is a small business.**

**Essentially, most of the input the Board solicited and received ultimately can be attributed to small businesses. The vast majority of the intended beneficiaries (individual dairy farmers) of the**

**regulation are small businesses.**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

**Approximately 4,300 dairy cooperative member producers will be affected by the regulation by having a line item added to their monthly pay statements showing the amount of mandated Pennsylvania over-order premium they were paid. Only one cooperative of approximately 150 farmers currently provides this information to its members as a line item on the monthly statement.**

**Dairy cooperatives with Pennsylvania members will be affected by the regulation. They will have to add a line item to monthly statements to members showing the amount of mandated Pennsylvania over-order premium being paid.**

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

**Dairy farmer cooperatives with Pennsylvania members will be required to comply with the regulation.**

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

**For many years, many cooperative members have expressed concerns about not knowing how much of the mandated Pennsylvania over-order premium they are being paid. 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 February 2021, there were approximately 1,100 independent producers and 4,300 cooperative member producers in Pennsylvania. The independent producers are provided information on their monthly pay statements showing the direct benefit they receive from the Pennsylvania over-order premium. The cooperative member producers do not receive (with the exception of one cooperative) the same information. The social impact and benefit of the regulation is to allow the 4,300 cooperative member producers to see on their monthly pay statements the benefit they receive from the mandated over-order premium.**

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

**The Board has not identified any adverse effects of the regulation.**

**The benefits outweigh the costs because cooperative member producers will receive information they have requested for as much as 20 years and have not received in an adequate manner from**

**their cooperatives. The survey the Board conducted in April and May 2019 (see #10) confirmed anecdotal evidence that cooperative member producers were dissatisfied with the information they were receiving from their cooperatives.**

**The over-order premium is an amount added to the minimum producer price for milk produced, processed, and sold in Pennsylvania and intended to benefit Pennsylvania dairy farmers. Pennsylvania consumers ultimately pay the over-order premium, as it is a component of minimum retail prices set by the Board. All Pennsylvania dairy farmers – independent and members of cooperatives – should know what benefit they receive from a Board mandated price that is paid by Pennsylvania consumers and intended to benefit Pennsylvania producers.**

**(19) 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.**

**In discussion prior to the May 1 public hearing while the Board was gathering information relative to drafting the proposed regulation, Dairy Farmers of America estimated it would cost between \$98,200 and \$143,200 to program its computer system to provide a line item on producer checks showing the over-order premium. This amounted to between \$58.45 and \$85.24 per Pennsylvania producer. With the simplified cooperative-wide (as opposed to member-specific) over-order premium calculation adopted in this regulation, the Board believes this cost will be less – this is reflected in the cost estimates in #23.**

**At the May 1 hearing, the Pennsylvania Association of Dairy Cooperatives testified against the proposed regulation, in part due to the cost to implement. The Pennsylvania Association of Dairy Cooperatives provided no specifics as to cost.**

**No other cooperative provided information regarding the cost to implement the proposed regulation.**

**(20) Provide a specific estimate of the costs and/or savings to the 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 costs or savings to local governments.**

**(21) Provide a specific estimate of the costs and/or savings to the 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 should be no cost or savings to state government.**

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

**No additional legal, consulting, reporting, recordkeeping or other paperwork will be required for implementation of the proposed regulation.**

**Cooperatives will be required to sum the amounts of over order premium they receive each month and divide that amount by the number of pounds of Pennsylvania member milk sold that month. The cooperatives have all of the necessary information. They will be required to perform simple math and accounting functions on data they already have to arrive at the amount to report on member producer checks.**

**To minimize accounting and other requirements, the Board is prescribing a formula in the regulation for the cooperatives to follow when calculating the amount of over-order premium to be reported to their member producers. Each cooperative will have a cooperative-wide rate to apply to each member's pounds to report, rather than a member-specific rate, vastly decreasing accounting requirements. It is important to recognize that independent producers do not receive a producer-specific rate from their dealer – each independent producer shipping to a milk dealer receives the same rate as every other producer shipping to the same dealer. The cooperative reporting requirement (and information received by cooperative members) will thus be essentially of the same nature as that of dealers with independent farmers.**

(22a) Are forms required for implementation of the regulation? No

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

**Not applicable**

(23) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community	100,000	0	0	0	0	0

<b>Local Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Costs</b>	<b>100,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Local Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State Government</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Revenue Losses</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**(23a) Provide the past three year expenditure history for programs affected by the regulation. Not applicable**


**(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:**

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

**(a) Cooperative member dairy farmers – approximately 4,300**

**(b) The cooperatives that will be subject to the line item reporting requirement are not small businesses.**

**(c) The majority of the cooperative member dairy farmers are small businesses. They will receive**

**additional information that they have been requesting many years.**

**(d)**

**Dairy Farmers of America currently provides, in a quarterly mailing to members the rate information this regulation would require. No other dairy farmer cooperative, with the exception of one which currently provides a line item on monthly statements, told the Board if or how it provides information to its Pennsylvania members regarding the amount of Pennsylvania over-order premium being paid. In any event, since none of the cooperatives are small businesses, there is no less costly alternative to consider for small businesses.**

**(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.**

**The purpose of the regulation is to address the particular needs of dairy farmer cooperative members. There is currently no requirement that these farmers be told by their cooperatives how much of the Board-mandated over-order premium they are being paid. This regulation will remedy that situation, as requested for many years by cooperative members.**

**(26) 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.**

**No alternative regulatory provisions were considered. Milk dealers receiving independent producer milk have been required, since 1997, to provide a line item on the independent producers' monthly statements showing the specific amount of over-order premium being paid. Cooperative members have requested the same requirement apply to the monthly statements they receive from their cooperatives almost since the requirement came into effect for independent producers. The Board believes cooperatives should provide comparable information to their members. This regulation, with a prescribed formula to calculate a cooperative-wide over-order premium amount (as opposed to a member-specific amount) is the least burdensome alternative to provide the information for cooperative members.**

**(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:**

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**There is no small business burdened by the requirements of this regulation.**

**(28) 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.

**Not applicable.**

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

- |   |                                  |
|---|----------------------------------|
| A. The length of the public comment period:   | <b>30 days after publication</b> |
| B. The date or dates on which any public meetings or hearings will be held:                   | <b>not applicable</b>            |
| C. The expected date of delivery of the final-form regulation:                                | <b>February 16, 2021</b>         |
| D. The expected effective date of the final-form regulation:                                  | <b>October 1, 2021</b>           |
| E. The expected date by which compliance with the final-form regulation will be required:     | <b>October 1, 2021</b>           |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <b>not applicable</b>            |

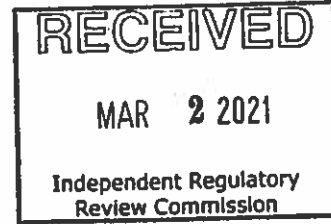
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

**If the Board stops receiving complaints from cooperative members regarding the lack of over-order premium information on their monthly statements, the Board will know the regulation is effective.**

**In follow up dairy farmer surveys, the Board will include questions regarding the line item on cooperative member checks to determine if the line item is there and if dairy farmers understand the information they are receiving.**

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**



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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Milk Marketing Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>47-20</u></p> <p>DATE OF ADOPTION: <u>February 11, 2021</u></p> <p><i>[Signature]</i></p> <p>BY: _____ TITLE <u>Secretary</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agency</p> <p>BY: <i>[Signature]</i></p> <p><u>February 11, 2021</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**PENNSYLVANIA MILK MARKETING BOARD**  
**7 PA. CODE SEC. 143.15**  
**TRANSACTIONS BETWEEN DEALERS AND PRODUCERS**  
**PAYMENT**

The Pennsylvania Milk Marketing Board (“Board”) amends 7 Pa. Code sec. 143 (transactions between dealers and producers) to read as set forth in Annex A.

*Effective date*

The amendments will be effective 120 days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

*Statutory authority*

Section 301 of the Pennsylvania Milk Marketing Law (“Law”) (31 P.S. § 700j-301) gives the Board the authority to “supervise, investigate, and regulate the entire milk industry of the Commonwealth . . . , including the purchase and sale of milk . . . in this Commonwealth, and including the establishment of reasonable trade practices . . . .” Section 307 of the Law (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 Law. Section 608 of the Law (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 Law (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 Pennsylvania producers based on milk produced, processed, and sold in Pennsylvania. 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 Milk Marketing Law (“Law”) 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, despite cooperatives being defined in the Law as dealers when they distribute member milk to other dealers. 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 Pennsylvania’s milk pricing system including the over-order premium.

When asked if they receive an over-order premium, 69 percent 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 percent 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 state 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 February 2021, there were approximately 1,100 independent producers and 4,300 cooperative member producers in Pennsylvania. The independent producers are provided information on their monthly pay statements showing the direct benefit they receive from the Pennsylvania over-order premium.

The majority of the 4,300 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 regulation.

#### *Description of proposed amendments*

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

The regulation prescribes a formula for the cooperatives to use to calculate the over-order premium rate and total amount being paid to their Pennsylvania producer members. This will provide uniformity between and among cooperatives regarding the calculation of 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 Pennsylvania 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 regulation. This formula calculates the average rate received by members of each cooperative.

#### *Public comments*

Pennsylvania Farm Bureau submitted a comment in favor of the Board adopting the regulation.

The Pennsylvania Association of Dairy Cooperatives (“PADC”) made several comments. First PADC (and IRRC) suggested adding “Pennsylvania” to subsection (b) to expressly specify the regulation was applicable to Pennsylvania member pounds. The Board agrees and “Pennsylvania” is added to subsection (b) in the final form regulation.

PADC proposed adding a subsection to account for those situations where cooperatives market the milk of non-members, suggesting that the non-member milk should be aggregated with member milk. Cooperatives are formed and operate with the purpose that the members work together to maximize benefits for the members. Non-members, by definition, are not parties to the agreement to work together to maximize benefits for the members; therefore, non-member milk should not be treated the same as member milk and non-member milk should receive information and payments specific to the milk the non-member markets through the cooperative. The Board currently requires cooperatives, as the dealers they are defined to be, to specify the amount of over-order premium being paid to non-members pursuant to the member/non-member dichotomy described. Therefore, this suggestion is not adopted in the final form regulation.

PADC also suggested language to treat milk marketed for other cooperatives the same as milk marketed for member farmers. This concept is not adopted for the final form regulation. The final form regulation concerns transactions between individual producers and their cooperatives. The PADC cooperatives are the only cooperatives that suggested this concept be included in the regulation. Without more input from other cooperatives, the Board does not think that this suggestion should be adopted at this time.

PADC also suggested adding language based on section 809 of the Law (31 P.S. § 700j-809) which provides in relevant part that cooperative members have the right to determine among themselves how the proceeds of their collective sales are distributed. The final form regulation contains section (e) providing that cooperatives are not required to reduce or alter any payments or information provided to their members beyond providing the over-order premium payment information required by the new regulation.

After the close of the public comment period, the Board circulated a proposed draft of the final form regulation, asking for additional input. PADC was the only party that provided additional input. Based on that additional input, the Board added a subsection to address situations where cooperatives are not paid over-order premium during a month and how that

should be reported to that cooperative's members. The additional PADC input also suggested the rounding concept adopted in subsection (c) in the final form regulation.

*Comments regarding calculation of the line item*

Representative John Lawrence recommended that the Board change the regulation to require that cooperatives provide a line item to each cooperative member detailing the specific amount of over-order premium that member's milk generated. Regarding the proposed regulation, Representative Lawrence commented "[t]he definition in paragraph (b) would result in a listing on each farmer's milk checks of total dollar value of over-order premiums paid to the entire cooperative for a given month. This is very different from the information provided by milk dealers to their farmer members – where a milk check shows the amount of over-order premium dollars paid to each individual farmer." (Underscores in original). Milk price regulation is a complex subject and the Board believes that Representative Lawrence was missing a key piece of information when he submitted his suggestion. The Board Chairman explained that concept to Representative Lawrence and the Board believes that if Representative Lawrence had that information his suggestion would not have been made. IRRC also commented that providing an average over-order premium paid to the entire cooperative would not alleviate the concerns of cooperative members who do not believe they are receiving what they are entitled to receive. The calculation in section (b) to determine the over order premium rate for cooperative members is essentially the same calculation, mandated by Board official general order, used by milk dealers to specify over-order premium rate paid to independent farmers. This is an important issue and is explained in detail below.

The over-order premium is calculated on an individual handler pool basis based on each dealer's Class 1 utilization. This means that the over-order premium rate paid to producers differs among Class 1 processors, based on the ratio of the Pennsylvania producer milk they receive to the total producer milk they receive and the amount of packaged milk they sell in Pennsylvania. Each producer supplying a particular Class 1 processor receives the same over-order premium rate as every other producer supplying that same particular Class 1 processor, but remember that each processor pays a different over-order premium rate to its producers.

The over-order premium rate paid by each processor and received by each producer supplying that particular processor is essentially an average of the total over-order premium generated by each producer's shipments to the processor. Class 1 processors do not account for the utilization of each supplying producer's individual milk shipments. A producer's milk may today be packaged and sold to a Pennsylvania retailer (generating an over-order premium obligation), tomorrow be packaged and sold to an out-of-state retailer (not generating an over-order premium obligation), and the next day be diverted to a cheese plant (not generating an over-order premium obligation). Regardless of the ultimate use of each shipment, every producer supplying a particular Class 1 processor is paid the same over-order premium rate per hundredweight as every other producer supplying the particular Class 1 processor. In other words, producers supplying Class 1 processors are not paid individual rates based on the over-order premium generated by their particular milk shipments, but rather are paid an average rate based on the plant's utilization.

Since each Class 1 processor has a different Pennsylvania Class 1 utilization, each Class 1 processor pays a unique over-order premium rate. Producers supplying a processor with high Pennsylvania Class 1 utilization are paid a higher over-order premium rate than producers supplying a processor with a lower Pennsylvania Class 1 utilization.

The Board's proposed regulation treats the milk marketed to a cooperative by its members analogously to how milk marketed by independent producers to Class 1 processors is treated. Class 1 processors calculate and itemize the over-order premium based on the total utilization of the plant with no regard to where each supplying producer's milk ended up on any particular day. Similarly, the proposed regulation requires cooperatives to calculate and itemize the over-order premium with no regard to where an individual member's milk was shipped on any particular day. Each Class 1 processor pays a unique average over-order premium rate based on its utilization. The proposed regulation would require cooperatives to essentially do the same.

Subsection (b) has been expanded to make clear the requirement that the over-order premium rate calculated by cooperatives be applied to the pounds of milk marketed by each member to show an amount received specific to each member based on the amount of pounds marketed to the cooperative. This mirrors the requirement that Class 1 processors show the amount received by producers in their statements by applying the processor's particular rate to the pounds of milk marketed by each individual producer.

Broadly speaking, the cooperative business model provides for pooling revenues and paying money back to members per the agreement between members and the cooperative. Cooperatives receive over-order premium payments, along with other mandated minimum payments and voluntary premiums. Those revenues are pooled and paid back to members. Part of the payment to members is, therefore, attributable to the Pennsylvania over-order premium in an amount based on the premium received by the cooperative and the pounds of member milk marketed by the cooperative. Just as the over-order premium is not paid by processors to independent producers based on the over-order premium generated by each producer's individual milk shipments throughout the month, the proposed regulation does not require cooperatives to track and account for the over-order premium generated by each member's individual milk shipments throughout the month. Therefore, for the purpose of providing information regarding the over-order premium paid, the regulation treats cooperative member milk marketed to a cooperative the same as independent dairy farmer milk marketed to a Class I processor.

#### *Fiscal impact*

The proposed amendments would have little fiscal impact on the 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 the notice of proposed rulemaking, published at 49 Pa. Bulletin 5455 (September 21, 2019) 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 the 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 \_\_\_\_\_, 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 \_\_\_\_\_ and approved this final-form rulemaking.

#### *Contact person*

Interested persons may obtain information regarding this final-form rulemaking by contacting Doug Eberly, Chief Counsel, Pennsylvania 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 Board at 717-787-4194 or the PA Relay Service for TDD Users at 800-654-5984.

#### *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 in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The regulation 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 143, are amended by adding § 143.15 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 1200 days following publication in the Pennsylvania Bulletin.

Robert N. Barley  
Chairman

**Pennsylvania Milk Marketing Board Regulation 47-20**

No commentator expressly asked for information regarding the Final Form submission. Regardless, the Board emailed the Final Form submission packet to

Representative John Lawrence [jlawrence@pahousegop.com](mailto:jlawrence@pahousegop.com)  
Pennsylvania Association of Dairy Cooperatives [mbeshore@johnsonduffie.com](mailto:mbeshore@johnsonduffie.com)  
Pennsylvania Farm Bureau [Jdmontenegro@pfb.com](mailto:Jdmontenegro@pfb.com)  
Pennsylvania Association of Milk Dealers [wyoviene@bakerdonelson.com](mailto:wyoviene@bakerdonelson.com)  
Pennsylvania Food Merchants Association [allen.warshaw@gmail.com](mailto:allen.warshaw@gmail.com)  
Pennsylvania Department of Agriculture [johoward@pa.gov](mailto:johoward@pa.gov)  
Nelson Troutman [jt3@evenlink.com](mailto:jt3@evenlink.com)

The Board also posted the Final Form submission packet at  
<https://www.mmb.pa.gov/Consumer/PublishingImages/Pages/default/Cooperative%20over-order%20premium%20line%20item%207%20Pa%20Code%20143.15.pdf>.

**PENNSYLVANIA MILK MARKETING BOARD**  
**7 PA. CODE SEC. 143.15**  
**TRANSACTIONS BETWEEN DEALERS AND PRODUCERS**  
**PAYMENT**

§ 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

(1) deriving an over-order premium rate by dividing the total Pennsylvania over-order premium paid to the cooperative by the total cooperative Pennsylvania member pounds marketed,

(2) multiplying the rate derived in (b)(1) by the Pennsylvania member pounds marketed.

(c) The amount calculated in subsection (b) shall be expressed on dairy farmer monthly statements in cents/hundredweight. When the result of the calculation in (b)(1) falls between cents, the rate reported to dairy farmers shall be rounded down to the lower cent.

(d) If a cooperative is not paid over-order premium during a month, such cooperative shall disclose on its monthly statement that no over-order premium was received.

(e) Other than setting forth the calculation of value in subsection (b), nothing in this section shall require reduction or alteration of amounts, content, or format of information about cooperative premium programs on the monthly statements to dairy farmers.

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

**I.D. NUMBER: 47-20**

**SUBJECT: Transactions between dealers and producers: Payment**

**AGENCY: Milk Marketing Board**

**TYPE OF REGULATION**

- Proposed Regulation**
- Final Regulation**
- Final Regulation with Notice of Proposed Rulemaking Omitted**
- 120-day Emergency Certification of the Attorney General**
- 120-day Emergency Certification of the Governor**
- Delivery of Tolled Regulation**
  - With Revisions**       **Without Revisions**

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<u>HOUSE COMMITTEE -</u>
		MAJORITY CHAIR _____
		MINORITY CHAIR _____
		<u>SENATE COMMITTEE -</u>
		MAJORITY CHAIR _____
		MINORITY CHAIR _____
		<u>INDEPENDENT REGULATORY REVIEW COMISSION</u>
		<u>ATTORNEY GENERAL</u> (for Final Omitted only)
		<u>LEGISLATIVE REFERENCE BUREAU</u> (for Proposed only)

**Michelle Elliott**

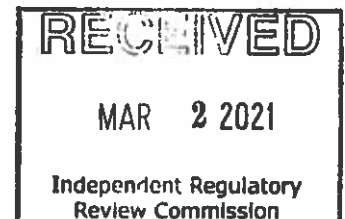
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**From:** Laudenslager, Cara <claudenslager@pasen.gov>  
**Sent:** Tuesday, March 2, 2021 7:33 AM  
**To:** Eberly, Douglas  
**Cc:** Hardbarger, Carol  
**Subject:** Re: Delivery of Milk Marketing Board final form regulation

Good morning, Doug,

Received.

Thank you,  
Cara



On Mar 2, 2021, at 7:27 AM, Eberly, Douglas <deberly@pa.gov> wrote:

Ⓢ CAUTION : External Email Ⓢ

Cara,  
The Milk Marketing Board's final form regulation that would require cooperatives to provide line items on dairy farmer checks regarding the amount of Pennsylvania over-order premium being paid is attached.

The attached memo provides additional detail regarding the regulation.

If you'd reply to this email this morning acknowledging receipt, I'd appreciate it. IRRC requires the acknowledgments of delivery from the Legislative Committees.

Thanks.

Doug

**Douglas L. Eberly** | Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street | Harrisburg PA 17110  
Phone: 717.678.4921 | Fax: 717.705.2712  
[deberly@pa.gov](mailto:deberly@pa.gov)

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<Final Form Packet 47-20.pdf>

<Cover memo - Sen Vogel.pdf>

**Michelle Elliott**

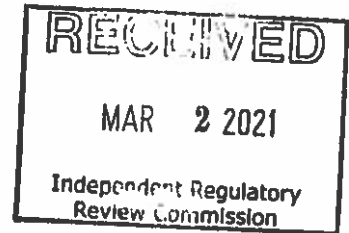
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**From:** Evans, William <William.Evans@pasenate.com>  
**Sent:** Tuesday, March 2, 2021 7:38 AM  
**To:** Eberly, Douglas  
**Cc:** Hardbarger, Carol  
**Subject:** Re: Delivery of Milk Marketing Board final form regulation

Hi Doug

Your email has been received.

Bill



[Get Outlook for Android](#)

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**From:** Eberly, Douglas <deberly@pa.gov>  
**Sent:** Tuesday, March 2, 2021 7:25:55 AM  
**To:** Evans, William <William.Evans@pasenate.com>  
**Cc:** Hardbarger, Carol <chardbarge@pa.gov>  
**Subject:** Delivery of Milk Marketing Board final form regulation  
■ EXTERNAL EMAIL ■

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Bill,  
The Milk Marketing Board's final form regulation that would require cooperatives to provide line items on dairy farmer checks regarding the amount of Pennsylvania over-order premium being paid is attached. The attached memo provides additional detail regarding the regulation. If you'd reply to this email this morning acknowledging receipt, I'd appreciate it. IRRC requires the acknowledgments of delivery from the Legislative Committees.  
Thanks.  
Doug  
**Douglas L. Eberly** | Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street | Harrisburg PA 17110  
Phone: 717.678.4921 | Fax: 717.705.2712  
[deberly@pa.gov](mailto:deberly@pa.gov)

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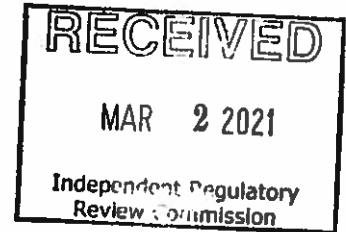
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**Michelle Elliott**

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**From:** Zeiders, Destiny  
**Sent:** Tuesday, March 2, 2021 8:23 AM  
**To:** Eberly, Douglas  
**Subject:** Re: Delivery of Milk Marketing Board final form regulation

Thank you Doug. I have received the final form regulation.  
Destiny Zeiders



On Mar 2, 2021, at 7:27 AM, Eberly, Douglas <deberly@pa.gov> wrote:

Destiny,  
The Milk Marketing Board's final form regulation that would require cooperatives to provide line items on dairy farmer checks regarding the amount of Pennsylvania over-order premium being paid is attached.

The attached memo provides additional detail regarding the regulation.

If you'd reply to this email this morning acknowledging receipt, I'd appreciate it. IRRC requires the acknowledgments of delivery from the Legislative Committees.

Thanks.

Doug

**Douglas L. Eberly** | Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street | Harrisburg PA 17110  
Phone: 717.678.4921 | Fax: 717.705.2712  
[deberly@pa.gov](mailto:deberly@pa.gov)

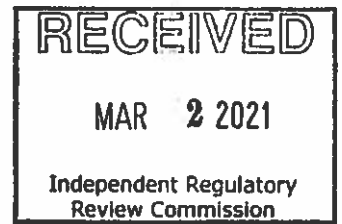
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<Final Form Packet 47-20.pdf>

<Cover memo - Rep Pashinski.pdf>

**Michelle Elliott**

**From:** Kerry Golden <Kgolden@pahousegop.com>  
**Sent:** Tuesday, March 2, 2021 9:40 AM  
**To:** Eberly, Douglas  
**Cc:** Moul, Dan; Hardbarger, Carol; Ashton Cassel  
**Subject:** RE: Delivery of Milk Marketing Board final form regulation



Good morning, Doug,

Thank you for these materials. The House Agriculture and Rural Affairs Committee is in receipt of the PMMB Final Form Regulation ID 47-20, Transactions between dealers and producers: Payment.

Kind regards,

*Ms. Kerry Golden, Executive Director  
Agriculture and Rural Affairs Committee  
PA House of Representatives  
717-787-3396*

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**From:** Eberly, Douglas <deberly@pa.gov>  
**Sent:** Tuesday, March 2, 2021 7:26 AM  
**To:** Kerry Golden <Kgolden@pahousegop.com>  
**Cc:** Dan Moul <Dmoul@pahousegop.com>; Hardbarger, Carol <chardbarga@pa.gov>  
**Subject:** Delivery of Milk Marketing Board final form regulation

Kerry,

The Milk Marketing Board's final form regulation that would require cooperatives to provide line items on dairy farmer checks regarding the amount of Pennsylvania over-order premium being paid is attached.

The attached memo provides additional detail regarding the regulation.

If you'd reply to this email this morning acknowledging receipt, I'd appreciate it. IRRC requires the acknowledgments of delivery from the Legislative Committees.

Thanks.

Doug

**Douglas L. Eberly** | Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street | Harrisburg PA 17110  
Phone: 717.678.4921 | Fax: 717.705.2712  
[deberly@pa.gov](mailto:deberly@pa.gov)

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