

§ **626.7. Security bonds**

(a) Each milk dealer, as required by this act, shall file with the board a corporate surety bond or collateral bond. The bond shall be on a form prescribed by the board conditioned for the payment by the milk dealer or handler of all amounts due under this act and all other applicable Federal laws in addition to the orders of the board for milk purchased or otherwise acquired from producers by the milk dealer or handler during the license year, which payments shall be made within the time limits specified in this act or the regulations of the board and shall be upon such other terms and conditions as the board may prescribe.

(b) A corporate surety bond shall be executed to the Commonwealth by the milk dealer as principal and by a corporate surety company authorized and regulated by the Commonwealth as surety. The board shall have no power to reject any corporate surety bond which is so executed by a corporate surety company authorized to do business in this Commonwealth as surety, so long as the amount of the bond is equal to or less than the amount the surety company is authorized by the Pennsylvania Insurance Commissioner to execute on a single bond without obtaining collateral security from the principal. The board may reject any bond which exceeds that amount. A collateral bond shall be executed to the Commonwealth by the milk dealer as principal, shall set forth the collateral posted with the bond and shall have attached thereto the collateral properly assigned and transferred to this Commonwealth. The collateral posted with the bond shall be cash in an equal amount of the bond or the bond shall be secured by an actual deposit with a bank, bank and trust company or national bank within the Commonwealth of money to the full amount of the bond or securities to the amount of the bond consisting of interest-bearing obligations of the Federal Government or an irrevocable letter or letters of credit for the account of the milk dealer authorizing the board to draw on a bank or a trust company or banks or trust companies located within and authorized to do business in this Commonwealth.

(c) The bond shall be filed in accordance with the following:

(1) Except as set forth in paragraph (2), a milk dealer shall file with the board a bond equal to a minimum of 75% of the highest aggregate amount owed by the milk dealer to all producers for a 40-day period during the preceding 12 months.

(2) A vested milk dealer shall file with the board a bond in a sum equal to a minimum of 30% of the highest aggregate amount owed by the vested milk dealer to all producers for a 40-day period during the preceding 12 months.

(3) A milk dealer licensed on the effective date of this paragraph, other than a vested milk dealer, may petition the board to file a bond in an amount less than that required by paragraph (1) and to participate in the security fund as a vested milk dealer under section 9. The board shall act upon the petition within 60 days of the date of filing the petition. When considering the petition, the board shall require that the milk dealer provide adequate reason and documentation for the

request and may hear testimony from all interested persons potentially affected by the request. To ensure the level of protection for producers contemplated by this act, the board shall impose such conditions as it deems appropriate, including, but not limited to, the following minimum conditions:

(i) Higher per hundredweight contributions to the security fund.

(ii) More frequent payments to producers.

(iii) The filing of a bond greater than 30% of the highest aggregate amount owed to producers for a 40-day period during the preceding 12 months.

(4) A milk dealer filing a petition under paragraph (3) may request that the board enter an order requiring that confidential financial information only be disclosed to the board. Such confidential financial information shall be deemed to have been provided to the board pursuant to section 310 of the act of April 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law.

(d) Milk purchased, acquired or received by a milk dealer or handler from producers outside this Commonwealth and sold or distributed by the dealer or handler as fluid milk within this Commonwealth shall be included in computing the amount of the dealer's or handler's bond, except where the dealer or handler has filed a bond or other security for the protection of the producers with the state wherein the milk is purchased, acquired or received.

(e) The obligation of a surety on a bond is a separate and distinct obligation independent of any obligation incurred by the debtor.

§ 626.8. Bonds

Surety bonds or securities for the license year shall be filed with the board on an annual basis not later than the 15th of the month before the beginning of such license year.

§ 626.9. Security fund

(a) Each vested milk dealer shall, in addition to a bond, when less than 75% of the maximum amount owed, also be required to pay monthly 2 per hundredweight to the board on all milk purchased from producers during the prior month. The board shall maintain the moneys received in an interest-bearing account and the moneys, including interest, shall be credited to the account of each individual paying vested milk dealer. In the event a vested milk dealer defaults in payment to producers, the moneys submitted by the defaulting vested milk dealer, including interest, shall be made available to the producers shipping to the defaulting vested milk dealer.

(b) At the time the value of the bond and the security fund moneys credited to each vested milk dealer shall equal the total amount owed for the above mentioned 40-day payment period, the payments to the fund shall cease or may, with the approval of the board, be used to decrease the value of the bond at the end of the license year. Should the vested milk dealer agree to post a bond for a minimum of 75% of the highest aggregate amount owed for the 40-day pay period, payment to the security fund shall not be required.

(c) Nothing shall prevent any vested milk dealer from increasing the vested milk dealer's bond beyond the 30% nor increasing the amount paid into the security fund credited to the vested milk dealer to provide additional protection for the vested milk dealer's producers.

(d) At the time a vested milk dealer discontinues purchasing milk from producers, after all the producers are paid in full, the moneys, including interest and minus the administrative fee, as provided for in subsection (e), shall be returned to the vested milk dealer.

(e) The board may impose an administrative fee on the security fund moneys on an annual basis at not more than .5% of the total fund.

(f) Any security fund established and maintained under this section shall be considered a security trust fund for the exclusive benefit of producers supplying milk to the vested milk dealer paying into the fund. No claims of the Commonwealth or any other person may be made against the fund until all amounts due to producers for supplying milk to the vested milk dealer have been paid. Amounts paid into the security trust fund shall be considered an expense to the vested milk dealer necessary for maintaining a license and shall not be considered an asset of the vested milk dealer.