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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 26, 2001

Honorable Beverly R. Minor, Chairwoman  
Milk Marketing Board  
110 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

Re: Regulation #47-9 (IRRC #2218)  
Milk Marketing Board  
Over-Order Premium Pool

Dear Chairwoman Minor:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

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Enclosure

cc: Honorable Raymond Bunt, Jr., Majority Chairman, House Agriculture and Rural Affairs  
Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs  
Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs  
Committee

## **Comments of the Independent Regulatory Review Commission**

**on**

### **Milk Marketing Board Regulation No. 47-9**

#### **Over-Order Premium Pool**

**November 26, 2001**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Milk Marketing Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by October 22, 2003, the regulation will be deemed withdrawn.

By Order # A-856 issued on August 10, 1988, the Board established this over-order premium on Class I milk that is produced, processed and sold within Pennsylvania. Through promulgation of this proposed regulation, the Board is amending the distribution of the premium and establishing a premium pool. We agree that the Board's action to promulgate a regulation is appropriate. (See *DER v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Cmwlth. 1991), allocatur denied, 600 A.2d 541 (Pa. 1991)). By establishing the pool and providing for distribution of the money collected, the Board is issuing a binding norm with general application and future effect. This rule is binding upon the Board as well as upon all dealers and producers subject to the Board's jurisdiction.

#### **1. Economic and Fiscal Impact; Reasonableness; Feasibility; Clarity.**

The Board states in its Preamble to the proposed regulation:

Currently the...Board places a premium above the Federal order price of Class I fluid milk that is produced, processed and sold within this Commonwealth...This mandated over-order premium is now paid to Class I producers. The Board has determined that 45% of this over-order premium should be placed in a pool and shared with all qualified producers as defined in the proposed rulemaking. The remaining 55% of the over-order premium would continue to be paid to the Class I producers.

In response to Question 13 in the Regulatory Analysis Form, the Board states:

“The beneficiaries of this regulation are those Pennsylvania dairy farmers that currently receive little or no direct benefit from the over-order premium. This represents 50% of dairy farmers or approximately 4,500 dairy farmers.”

In response to Question 14 in the Regulatory Analysis Form, the Board states:

“Approximately 4,500 or 50% of dairy farmers will be adversely affected.”

It is not clear what economic conditions, circumstances, or studies formed the basis of the Board’s determination to pool a portion of the over-order premium and allocate that portion to other classes. In order to evaluate a regulation, we must determine whether the criteria set forth in the Regulatory Review Act are satisfied. Therefore, we need additional information from the Board to measure the economic and fiscal impact, reasonableness, feasibility and clarity of the regulation. Please provide the data upon which the Board determined the allocation of the over-order premium.

## **2. Section 148.1. Definitions. - Clarity.**

### *General clarity*

To improve readability, the word “Pennsylvania” is not needed to preface defined terms. For example, the term “Pennsylvania producer” could be just “producer” since the definition states the producer is located in Pennsylvania. Hence, the shorter term “producer” could be used throughout the regulation.

### *Distributing plant*

There are two concerns.

First, the term “distributing plant” is only used in the definition of “qualified producer.” The definition of “distributing plant” could be deleted. If necessary, clarification could be added to the definition of “qualified producer.”

Second, the phrase “a duly constituted regulatory agency” is vague. If any portion of this definition is retained, the regulation should specify who the Board considers qualified to approve a plant to handle Grade A milk.

### *Diversion*

There are two concerns.

First, the last sentence is substantive. Substantive provisions in a definition are not enforceable. Therefore, this sentence should be moved to the body of the regulation.

Second, a reference to the specific United States Department of Agriculture guidelines the Board will use to make a determination should be added.

### *Pennsylvania Class I Pounds*

This term is not used in the regulation. Should it be “Pennsylvania Class I Utilization” instead?

### *Pennsylvania milk pool or pool*

The second component of this definition is confusing. What does “amount to be redistributed to Pennsylvania producers” define? Is the intent to state, “the sum...that will be redistributed to Pennsylvania producers”?

### *Pool administrator*

There are two concerns.

First, the phrase “The pool administrator” is redundant and should be deleted.

Second, the term “Board” is not defined. For added clarity, this definition should specify the Milk Marketing Board.

### *Qualified pounds*

The second sentence and remainder of this definition are substantive. Because substantive provisions in a definition are not enforceable, these provisions should be moved to the body of the regulation.

### **3. Section 148.2. Pennsylvania over-order premium dealer’s reporting requirements. - Clarity.**

This section is vague. It requires filing of “information contained in forms prescribed and furnished by the Board.” Is this section referring to PMMB 62, as specified in Section 148.6? Section 148.2 should specify the form(s) to be used.

The title of this section uses the phrase “Pennsylvania over-order premium dealer.” The term “dealer” is not defined in Section 148.1. Should the title use the defined term “Pennsylvania Pool Plant”?

### **4. Section 148.3. Calculation of the contributing pool plant over-order premium value. - Clarity.**

#### *Subsection (1)*

Is the term “Pennsylvania Production” a total for all Pennsylvania dairy producers, or just one Pennsylvania dairy producer? The Board should clarify this distinction.

#### *Subsection (2)*

We have three concerns with the example in this subsection.

First, the result of variable “F” in this subsection is unclear. For clarity, the Board should either show how F is calculated, or use numbers that do not appear to be either the sum or difference of other combinations of numbers in the example.

Second, the equation in the example contained in Subsection (2) appears to be inconsistent with other examples given in this regulation. The product of the equation " $E \times F \times D = G$ " is not "\$2,000," but rather \$200,000. The division by 100 is not shown.

Finally, the term "hundredweight" is not mentioned in the text of this subsection. However the term "hundredweight" is used in the text of other sections, such as Section 148.4(3). For clarity, the text of Subsection (2) should include the term "hundredweight."

**5. Section 148.4. Calculation of the pool. - Clarity.**

*Subsection (3)*

The example in this subsection does not show how Dairy C ends up with 192,857 qualified pounds or how its production of 50,000 pounds of Pennsylvania production (A) is considered. The Board should include the formula that results in this figure in the final-form regulation.

**6. Section 148.5. Collection and distribution of the pool. - Clarity.**

*Subsection (2) example*

We have two concerns with this example.

First, there appears to be a math error in the calculation. The answer should be "\$0.8125" not "\$0.5417."

Second, the parentheses in the denominator of the formula at the end of the example are incorrect. It appears the intent is to subtract 100,000 from 300,000 and then divide the difference by 100. However, this is unclear as written in the example.

*Subsection (3)*

The Board has included numerous examples throughout this regulation. However, there is no example for Subsection (3). As the examples in other subsections lend clarity, the Board should consider inserting an example in Subsection (3).

**7. Section 148.6. Pool administrator's reporting requirements. - Reasonableness; Economic impact.**

The dates for reporting requirements set forth in this section and Section 148.2 (relating to Pennsylvania over-order premium dealer's reporting requirements) may be difficult to meet. For example, a Commentator expressed a concern that data required on the sixteenth of the month is not usually available until the twelfth of the month and can't be fully submitted to the Board until the twenty-fifth of the month. The Board should explain how the new reporting requirements can be met, and what economic impact these deadlines will have on pool plants.