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

October 10, 2002

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

Re: Regulation #47-10 (IRRC #2281)
Milk Marketing Board
Milk Marketing Fees

Dear Chairwoman Minor:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, 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. 47-10

Milk Marketing Fees

October 10, 2002

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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. - Direct and indirect costs to the Commonwealth, political subdivisions and private sector; Need; Clarity.

Fee Increases

In the Preamble, the Board states that the current fees will produce a declining balance in the Milk Marketing Fund with an anticipated deficit in the 2005-2006 fiscal year. This rulemaking increases license and certification fees. It also increases the hundredweight fee for milk that has a fixed minimum wholesale price from \$.035 to \$.055 and increases the hundredweight fee for milk that does not have a fixed wholesale price from \$.005 to \$.0064. The Board projects that these increases will produce an additional \$590,000 per year. This would increase the Board's ending balance from \$1,354,000 for the 2003-2004 fiscal year to a balance of \$2,113,000 for the 2006-2007 fiscal year.

The Pennsylvania Association of Milk Dealers (PAMD) objected to the fee increases, in particular, the increase of the hundredweight fees. We also object to the proposed hundredweight fee increases. We believe the revenue generated by these increases is excessive. The Board has failed to explain the need for increasing the projected ending balance in the 2006-2007 fiscal year by \$759,000.

Additionally, the Board has failed to explain why fees should be increased in the 2003-2004 fiscal year when a deficit is not projected until the 2005-2006 fiscal year.

We recommend that the proposed hundredweight of milk fee increases be reduced by at least one half of the planned increases. This will bring the Board's projected revenues more closely in line with their projected expenditures.

If after the reduced fees become effective the Board determines the reduced fee increases do not produce sufficient revenue to meet its funding requirements, a second rulemaking can be initiated at a later date. This will enable the Board to base a subsequent fee increase, if needed, on more recent revenue and expenditure data.

Board forms

Sections 150.13(a), (b) and (c), 150.23(a) and (b), 150.53(a) and 150.72(a) contain the phrase "form provided by the Board." The final-form regulation should designate the form name or form number required by each provision and list where the forms can be obtained.

Further, is it possible to get a form from the Board's website? If so, the Board should include this in the regulation.

2. Section 150.13. Time for payment of fees. - Clarity.

Subsection (b) states, "Fees exceeding \$2,000 may be paid in four substantially equal installments...." The word "substantially" is vague and should be deleted in the final-form regulation.