

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

December 2, 2002

Honorable Samuel E. Hayes, Jr., Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-141 (IRRC #2293)
Department of Agriculture
Milk Sanitation

Dear Secretary Hayes:

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
wbg

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

Department of Agriculture Regulation No. 2-141

Milk Sanitation

December 2, 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 Department of Agriculture (Department) 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Section 59.22. Milk dating. - Reasonableness; Implementation procedures; Clarity.

Subsection (e) Monitoring by Department.

There are three concerns with this subsection.

The first sentence of the subsection reads: "The Department will *periodically* sample containers of pasteurized milk in the possession of the processor or distributor" [Emphasis added]. The specific time frame for sampling of product should be included in the final-form regulation.

Second, the final sentence provides that after two or more samples demonstrate a processor cannot produce pasteurized milk that meets the referenced bacterial limits, the processor is required to use a sell-by-date that is less than the new 17-day sell-by date. It is our understanding that a processor may regain use of the 17-day period when it submits samples for additional tests and demonstrates compliance with acceptable standards. The procedure for reestablishing the 17-day sell-by date should be set forth in the final-form regulation.

Third, when a processor cannot produce pasteurized milk within acceptable parameters and is not allowed to use the 17-day sell-by date, the processor is required to "use a sell-by date of something less than the 17-day period described in subsection (a)." We understand the shorter sell-by date period will be determined by specific laboratory test methods. The process for determining the shorter period should be included in the final-form regulation.