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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 15, 2010

Honorable Russell Redding, Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-160 (IRRC #2777)
Department of Agriculture
Milk Sanitation

Dear Secretary Redding:

The Independent Regulatory Review Commission disapproved your regulation on October 7, 2010. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me, at 783-5506.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Michael W. Brubaker, Majority Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs
Committee
Honorable Michael K. Hanna, Sr., Majority Chairman, House Agriculture and Rural Affairs
Committee
Honorable John A. Maher, Minority Chairman, House Agriculture and Rural Affairs
Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 7, 2010

Arthur Coccodrilli, Chairman
George D. Bedwick, Vice Chairman
S. David Fineman, Esq., by Phone, Dissenting
Silvan B. Lutkewitte, III, Dissenting
John F. Mizner, Esq., by Phone

Regulation No. 2-160 (#2777)
Department of Agriculture
Milk Sanitation

On July 21, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Agriculture (Department). This rulemaking rescinds 7 Pa. Code Chapter 59 and replaces it with a new Chapter 59a. The proposed regulation was published in the August 1, 2009 *Pennsylvania Bulletin* with a 60-day public comment period. The final-form regulation was submitted to the Commission on September 3, 2010.

This final-form rulemaking reflects developments in the dairy industry, brings Pennsylvania's sanitation standards into alignment with federal standards and requirements, and consolidates and updates provisions addressing the production of raw milk for human consumption. After review of the rulemaking, we find that Subchapter F of Chapter 59a, pertaining to raw milk for human consumption, is not in the public interest for the following reasons.

First, we believe that Subchapter F will have a negative fiscal impact on raw milk producers. (71 P.S. § 745.5b(b)(1)). In our comments on the proposed rulemaking, we asked the Department to quantify the costs the rulemaking will have on raw milk producers. The Department quantified the costs related to testing requirements for raw milk. However, the regulated community, through written comments and statements made at the October 7, 2010 public meeting of this Commission, believes Subchapter F will impose a much greater cost than what was estimated by the Department. Of particular concern are the provisions related to mechanical capping of bottles and the need for separate rooms to perform certain tasks associated with the production of raw milk.

Second, the Department has failed to explain the need for the provisions contained in § 59a.410, relating to raw milk packaging. In addition, we find that section of the regulation to be unclear. (71 P.S. § 745b(b)(3)(ii) and (iii)). Of particular concern is why separate rooms are needed to perform certain tasks associated with production of raw milk, when separate rooms would be needed and why some customer-owned containers must be mechanically capped and others do not.

We have determined that this regulation is consistent with the statutory authority of the Department (31 P.S. § 660(c) and 31 P.S. § 20.13) and the intention of the General Assembly. However, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation # 2-160 (IRRC # 2777) from the Department of Agriculture:

Milk Sanitation

was disapproved on October 7, 2010.


Arthur Coccodrilli, Chairman

