

SILVAN B. LUTKEWITTE III, CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
ARTHUR COCCODRILLI  
S. DAVID FINEMAN, ESQ.  
JOHN F. MIZNER, ESQ.  
KIM KAUFMAN, EXECUTIVE DIRECTOR  
LESLIE A. LEWIS JOHNSON, 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 20, 2010

Honorable Michael J. Folmer  
Senate of Pennsylvania  
170 Main Capitol  
Harrisburg, PA 17120

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

Dear Senator Folmer:

Thank you for your letter of December 15, 2010 regarding the Milk Sanitation regulation. We appreciate your input and your letter was provided to our commissioners for their consideration and has been added to our website [www.irrc.state.pa.us](http://www.irrc.state.pa.us) along with all of the comments we have received regarding this regulation.

As you correctly noted in your letter, IRRC must approve or disapprove a regulation in its entirety. We have no authority to approve portions of a regulation while disapproving other sections of the same regulation. Similarly, while IRRC may disapprove a regulation because we find it inconsistent with our statutory criteria, we have no authority to unilaterally change the regulation or rewrite areas that cause us concern.

Although both standing committees previously deemed this regulation approved, IRRC disapproved this regulation by majority vote after hearing hours of public comment at its meeting on October 7, 2010. IRRC determined that due to the negative fiscal impact on the regulated community and the unexplained need for the provisions relating to raw milk packaging, the regulation was not in the public interest pursuant to the criteria in the Regulatory Review Act. Following a meeting convened by the Department of Agriculture (Department) with the regulated community, the Department delivered a revised final-form regulation in response to IRRC's disapproval order. After hearing from the regulated community and the Department at IRRC's December 16, 2010 public meeting, the regulation was approved by unanimous vote.

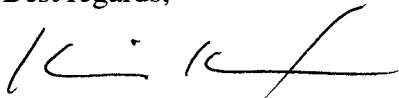
Due to *sine die*, we cannot deliver our approval order to the standing committees and the Department until January 24, 2011 or the date when the committees are designated in the next legislative session, whichever is later. Upon receipt of our order, the standing committees will have 14 days to consider the regulation. 71 P.S. § 745.7(c.1), (d); 1 Pa. Code § 311a.8. If the

Senator Michael J. Folmer  
Page 2  
December 20, 2010

committees approve the regulation or take no action, the Department may proceed with promulgation of the regulation. In order to stop the regulation, a committee must vote out a concurrent resolution which is adopted by both chambers and presented to the Governor for consideration. 71 P.S. § 745.7(d). The authority to stop a regulation rests with the legislature and accordingly, is beyond IRRC's granted authority.

We appreciate the concerns raised in your letter and have taken the liberty of forwarding your correspondence to the Department for their consideration as they proceed with the regulation. If you have any questions, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read 'Kim Kaufman', written in a cursive style.

Kim Kaufman  
Executive Director  
sfh