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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

June 22, 2011

Richard Kriebel, Chairman  
Milk Marketing Board  
110 Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Regulation #47-15 (IRRC #2891)  
Milk Marketing Board  
Electronic Methods for Testing Milk for Fat Content

Dear Chairman Kriebel:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Fiona Wilmarth  
Acting Executive Director

sfh

Enclosure

cc: Honorable Elder A. Vogel, Majority Chairman, Senate Agriculture and Rural Affairs  
Committee  
Honorable Honorable Judith L. Schwank, Minority Chairwoman, Senate Agriculture and  
Rural Affairs Committee  
Honorable John A. Maher, Majority Chairman, House Agriculture and Rural Affairs  
Committee  
Honorable Joseph A. Petrarca, Minority Chairman, House Agriculture and Rural Affairs  
Committee  
Robert A. Mulle, Esq., Office of Attorney General  
Andrew Clark, Esq., Office of General Counsel

# Comments of the Independent Regulatory Review Commission



## Milk Marketing Board Regulation #47-15 (IRRC #2891)

### Electronic Methods for Testing Milk for Fat Content

June 22, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the April 23, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Milk Marketing Board (Board) to respond to all comments received from us or any other source.

#### **1. Section 144.1. Electronic methods – general. – Statutory authority; Consistency with statute.**

Subsection (b) states:

A manufacturer of an electronic testing instrument shall make available upon request to the Board a complete instrument operation and maintenance manual and further information as requested.

We question why the regulation requires actions by manufacturers. We recommend that the Board rewrite this provision so that it requires actions by the entities the Board regulates, such as certified testers. Alternatively, the Board should explain its authority to regulate and take enforcement actions against manufacturers.

#### **2. Section 144.1a. Definitions. – Consistency with statute; Clarity.**

The statute sets forth requirements for certified testers at 31 P.S. § 700j-602, including the requirement that component tests must be “...conducted by a tester certified by the board.” The regulation defines “certified tester” as:

A Board certified technician as referenced in § 144.2 (relating to certification and approval requirements) operating electronic instruments **or a person certified to perform specific reference**

**methods for determining the components in raw milk, or both.**  
(Emphasis added.)

We have two concerns. First, we question how the phrase “or a person certified to perform specific reference methods for determining the components in raw milk, or both” is consistent with the statute at 31 P.S. § 700j-602. Is the person referenced in this phrase also certified by the Board? The Board should explain how this phrase is consistent with the statute and what specific certification it references.

Second, for clarity, we suggest that the definition directly reference 31 P.S. § 700j-602, rather than the general reference to Section 144.2 of the regulation.

### **3. Section 144.6. Required records. – Clarity.**

Subsections (b) through (e) appear to be a list of required records. However, there is no indication after Subsection (a) that Subsections (b) through (e) are the actual list of required records. We recommend that the Board review this section to clarify what records are required.

### **4. Section 144.6. Required records and Section 144.7. Summary record required. - Consistency with statute.**

Under 31 P.S. § 700j-602, the statute states:

The certified tester shall keep an accurate record of all tests made, and copies of such record shall be kept for a period of **two (2) years** by him and by the milk dealer. (Emphasis added.)

However, provisions throughout Sections 144.6 and 144.7 only require records to be kept for at least one year. We recommend that the Board review these one year record retention provisions in the regulation and explain how they are consistent with the statute.

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### Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**Date: 06/22/11**  
**Pages: 4**

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Milk Marketing Board's regulation #47-15 (IRRC #2891). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Timothy Alge **Date:** 6/22/2011