

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Agriculture

(2) Agency Number:

Identification Number: 02-177

IRRC Number: 3035

(3) PA Code Cite: 7 Pa. Code Chapter 107

(4) Short Title: Pennsylvania Preferred Trademark Licensure Program

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Lela Reichart, Director, Bureau of Market Development, Telephone: (717) 783-8462

Secondary Contact: Bryan Keister, Bureau of Market Development, Telephone: (717) 783-8462

(6) Type of Rulemaking (check applicable box):

XXXX Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation will establish the standards pursuant to which the Pennsylvania Department of Agriculture (Department) will license third party "qualified entities" to use the Pennsylvania Preferred® trademark with respect to fluid milk. It will supplant Interim Guidelines on this subject (published at 42 Pa. Bulletin 2752, May 19, 2012) that would otherwise expire as of January 1, 2014.

"Qualified entities" are persons who process Pennsylvania-produced fluid milk or that promote or market Pennsylvania-produced fluid milk from such a processor. "Fluid milk" consists of milk, skimmed milk, cream, sour milk, buttermilk, and all other fluid derivatives of milk.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The regulation is authorized under the Pennsylvania Preferred Act (3 Pa.C.S.A. §§ 4601 – 4611)(Act), which (at 3 Pa.C.S.A. § 4611) requires the Department to promulgate rules and regulations necessary to promote the efficient, uniform and Statewide administration of that statute. That same provision authorizes the use of Interim Guidelines, but provides that these expire no later than December 31, 2013.

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the regulation is not so mandated. It is an exercise of the duty and discretion afforded the Department under the Pennsylvania Preferred Act (at 3 Pa.C.S.A. § 4601).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed in order to supplant existing Interim Guidelines on the subject that expire no later than December 31, 2013.

The Act provides the Department the discretion to determine whether a person is a qualified entity (3 Pa.C.S.A. § 4605(a)(4)) – an entity eligible to be licensed to make use of the Pennsylvania Preferred® trademark. It also requires the Department to consider the extent to which the agricultural commodity with respect to which the Pennsylvania Preferred® trademark would be used is “... to the maximum extent possible given production season restrictions or market availability ... a Pennsylvania-produced agricultural commodity” (3 Pa.C.S.A. § 4604(2)(iii)).

Fluid milk includes whole milk, reduced fat milk, skim milk, flavored milk, cream, buttermilk, half-and-half and similar products. Pennsylvania’s dairy producers produce fluid milk in quantities that exceed the year-round needs of Pennsylvania’s milk processors and milk consumers; and this surplus Pennsylvania-produced fluid milk supply generally remains available on the Pennsylvania market throughout the year. Against this backdrop, the regulation prohibits (with several exceptions) the use of the Pennsylvania Preferred® trademark with respect to fluid milk that is not entirely *Pennsylvania-produced* fluid milk.

The regulation acknowledges that there may be exceptions to the prohibition described above, such as where there is a Statewide shortage of fluid milk or where a processor commingles Pennsylvania-produced fluid milk with other fluid milk on an incidental, emergency or short-term-basis.

Pennsylvania’s dairy producers will benefit from the regulation. There are currently four dairy producers or dairy processors that are licensed by the Department to use the Pennsylvania Preferred® trademark with respect to their Pennsylvania-produced fluid milk, and the Department expects more such licensees in the future.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

There are other States that use trademarks or slogans to help promote their agricultural products. The regulation is rather simple and straightforward and does not appear to be appreciably better or worse than regulations on comparable subject matter in other States.

The regulation is not expected to have any appreciable impact on Pennsylvania's ability to compete with other States.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Participation in the Pennsylvania Preferred Trademark Licensure Program is entirely *voluntary* on the part of the licensee (who must be a person that produces, processes, prepares or markets Pennsylvania-produced agricultural commodities). Licensees are free to discontinue the use of this trademark if they perceive it is not in their interest to use it in connection with their Pennsylvania-produced agricultural commodities.

The regulation essentially restates the standards set forth in Interim Guidelines that have been in effect since May 19, 2012. In the time these standards have been in place, the Department has licensed four qualified entities to use the Pennsylvania Preferred® trademark in connection with Pennsylvania-produced fluid milk. None of these licensees has complained to the Department about any aspect of this trademark licensure program.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

A number of Pennsylvania dairy operations or dairy processors produce or process fluid milk that is entirely produced within the Commonwealth of Pennsylvania. Of these producers or processors of "Pennsylvania-produced fluid milk," *four* are licensed by the Department to use the Pennsylvania Preferred® trademark in connection with their Pennsylvania-produced fluid milk. These licensees are affected in a positive way, in that consumers identify the Pennsylvania Preferred® trademark as a standard of Pennsylvania origin and product quality, making products that bear that trademark more attractive in the marketplace.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

No persons, groups or entities as described above will be required to comply with the regulation. Participation in the trademark licensure program described in the regulation is entirely voluntary, and a trademark licensee is free to discontinue use of the trademark at any time.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As related in response to Question No. 15, above, at least four producers or processors of Pennsylvania-produced fluid milk may benefit from the regulation.

For those producers or processors of Pennsylvania-produced fluid milk that elect to be licensed by the Department to make use the Pennsylvania Preferred® trademark, the fluid milk marketed under this trademark is expected to be more attractive in the marketplace. The trademark is an increasingly-well-known standard of Pennsylvania origin and product quality. These benefits cannot be readily quantified, but if a licensee feels it is not benefitting from the use of the trademark it may discontinue the use of that trademark at any time.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation will not impose any costs on any entity.

The Pennsylvania Preferred Trademark Licensure Program is a purely *voluntary* program. The Pennsylvania Preferred® trademark is an identifier of product origin and product quality that will help facilitate commerce with respect to the fluid milk and agricultural products with which it is associated.

Since participation in this Program is voluntary, a licensee is free to stop using the Pennsylvania Preferred® trademark if it is not satisfied there is a commercial benefit to be derived from its use.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No costs or savings are anticipated as a result of the regulation.

Participation in the trademark licensing program established by this regulation is voluntary. Although an entity that is licensed to use the Pennsylvania Preferred® trademark may incur costs associated with product packaging, advertising, signage and other activities associated with using the Pennsylvania Preferred® trademark with respect to its fluid milk, these costs: (a) are costs that occur in the ordinary course of business; (b) are incurred entirely at the licensee's discretion; and (c) can be avoided or discontinued if the licensee does not perceive that there is an economic benefit to be derived from the use of the Pennsylvania Preferred® trademark in connection with that licensee's Pennsylvania-produced fluid milk.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to result in costs or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to result in costs or savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

With respect to the **regulated community**, the Department has granted four licenses to producers or processors of Pennsylvania-produced fluid milk authorizing each to make use of the Pennsylvania Preferred® trademark in connection with the marketing of this fluid milk. The regulation is not expected to appreciably increase the number of these licensees, or to create or impose any of the procedures or requirements described in Question No. 22.

The regulation will not create any of the referenced legal, accounting or consulting procedures or additional reporting, recordkeeping or paperwork requirements for **local governments**.

With respect to **state government**, the Department has currently granted over 2,000 licenses to third parties allowing each to make use of the Pennsylvania Preferred® trademark in connection with the marketing of agricultural products and agricultural commodities. As related previously, the Department has current license agreements with four producers or processors of Pennsylvania-produced fluid milk, authorizing each to make commercial use of the Pennsylvania Preferred® trademark. Since the regulation will not require the Department to revise or redo these current trademark license agreements, the impact of the regulation on paperwork will be minimal or nonexistent.

In other respects the regulation will not create any of the referenced legal, accounting or consulting procedures or additional reporting, recordkeeping or paperwork requirements for state government.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 2009-2010	FY -2 FY 2010-2011	FY -1 FY 2011-2012	Current FY FY 2012-2013
Pennsylvania Preferred Trademark Licensure Program	\$100,000	\$120,000	\$113,600	\$500,000

<p>(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:</p> <ul style="list-style-type: none"> (a) An identification and estimate of the number of small businesses subject to the regulation. (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record. (c) A statement of probable effect on impacted small businesses. (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. <p>The regulation will not have an adverse impact on any small businesses.</p>				
<p>(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.</p> <p>No such special provisions have been developed. The regulation is specifically for the benefit of dairy producers who produce or process Pennsylvania-produced fluid milk (a term defined in the regulation) and who wish to obtain a license from the Department to use the Pennsylvania Preferred® trademark in marketing that fluid milk.</p>				
<p>(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.</p> <p>No alternative regulatory provisions were considered. The regulation is modeled upon the current Interim Guidelines (published at 42 <i>Pa. Bulletin</i> 2752, May 19, 2012) pursuant to which the Department licenses qualified entities to use the Pennsylvania Preferred® trademark with respect to fluid milk.</p>				

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation will have no adverse impact whatsoever on any small business or other business entity. Participation in the trademark licensing program described in the regulation is for the benefit of the licensees and is entirely voluntary. The regulation does not establish compliance requirements, reporting requirements, compliance schedules, compliance deadlines, design or operational standards or the like. At its simplest, the regulation defines what constitutes Pennsylvania-produced fluid milk and affords producers and processors of this product the option to acquire a license to use the Pennsylvania Preferred® trademark in marketing that fluid milk.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data was used as a basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------------|
| A. The date by which the agency must receive public comments: | September 1, 2013 |
| B. The date or dates on which public meetings or hearings will be held: | None will be held. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | December 15, 2013 |
| D. The expected effective date of the final-form regulation: | December 15, 2013 |
| E. The date by which compliance with the final-form regulation will be required: | December 15, 2013 |
| F. The date by which required permits, licenses or other approvals must be obtained: | No such deadline date. |

NOTE: All dates are approximate and will be revised in the version of this regulatory analysis form that is prepared with respect to the final-form regulation.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The efficacy of the regulation will be reviewed on an ongoing basis. The Department has tentative plans to expand the scope of this regulation to address the licensure of third parties to use the Pennsylvania Preferred® trademark with respect to other Pennsylvania-produced agricultural products, such as beef and eggs.

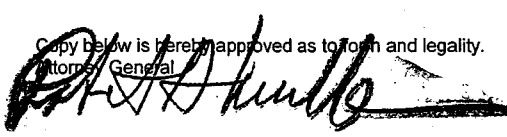
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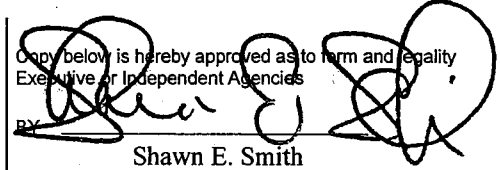
**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

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Copy below is hereby approved as to form and legality.
~~Attorney General~~


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By: _____
(Deputy Attorney General)

(AGENCY)

Shawn E. Smith
SEP 10 2013

DATE OF APPROVAL

OCT 04 2013
DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 2-177

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

DATE OF ADOPTION 7/15/13

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

BY George D Greig
GEORGE D GREIG

Check if applicable
Copy not approved. Objections attached.

TITLE
SECRETARY
Pennsylvania Department of Agriculture

Notice of Proposed Rulemaking

**Title 7 – AGRICULTURE
7 Pa. Code Chapter 107**

Pennsylvania Preferred Trademark Licensure Program

Title 7 – AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 107]

Pennsylvania Preferred Trademark Licensure Program

The Department of Agriculture (Department) proposes to amend Title 7 of the Pennsylvania Code by establishing Chapter 107 (relating to Pennsylvania Preferred Trademark Licensure Program), to read as set forth in Annex “A.”

The proposed regulation would establish the standards under which the Department would license qualified entities to make use of the Pennsylvania Preferred® trademark to promote or market Pennsylvania-produced fluid milk, and would supplant Interim Guidelines on this subject (published at 42 *Pa. Bulletin* 2752, May 19, 2012) that would otherwise expire after December 31, 2013.

“Fluid milk” consists of milk, skimmed milk, cream, sour milk, buttermilk, and all other fluid derivatives of milk. The entities that will qualify for the referenced licenses are persons who produce or process Pennsylvania-produced fluid milk or that promote or market Pennsylvania-produced fluid milk from such a processor.

Authority

The proposed regulation is authorized under the Pennsylvania Preferred Act (3 Pa.C.S.A. §§ 4601 – 4611)(Act), which (at 3 Pa.C.S.A. § 4611) requires the Department to promulgate rules and regulations necessary to promote the efficient, uniform and Statewide administration of that statute. That same provision authorizes the use of Interim Guidelines through December 31, 2013.

Need for the Proposed Regulations

The Department offers the proposed regulation to supplant the existing *Interim Guidelines for the Pennsylvania Preferred Trademark Licensure Program*, which expire no later than December 31, 2013. The proposed regulation essentially restates those Interim Guidelines.

The Act provides the Department the discretion to determine whether a person is a qualified entity (3 Pa.C.S.A. § 4605(a)(4)) – an entity eligible to be licensed to make use of the Pennsylvania Preferred® trademark. It also requires the Department to consider the extent to which the agricultural commodity with respect to which the Pennsylvania Preferred® trademark would be used is “ ... to the maximum extent possible given production season restrictions or market availability ... a Pennsylvania-produced agricultural commodity” (3 Pa.C.S.A. § 4604(2)(iii)).

Pennsylvania's dairy producers produce fluid milk in quantities that exceed the year-round needs of Pennsylvania's milk processors and milk consumers. This surplus Pennsylvania-produced fluid milk supply generally remains available on the Pennsylvania market throughout the year. Against this backdrop, the regulation prohibits (with several exceptions) the use of the Pennsylvania Preferred® trademark with respect to fluid milk that is not entirely *Pennsylvania-produced* fluid milk.

The regulation acknowledges that there may be exceptions to the prohibition described above, such as where there is a Statewide shortage of fluid milk or where a processor commingles Pennsylvania-produced fluid milk with other fluid milk on an incidental, emergency or short-term-basis.

To date, four dairy operations or dairy processors that produce or process "Pennsylvania-produced fluid milk" (fluid milk that is entirely produced within the Commonwealth of Pennsylvania) are licensed by the Department to use the Pennsylvania Preferred® trademark in connection with that milk. The Pennsylvania Preferred® trademark is a recognizable standard of Pennsylvania origin and product quality, making products that bear that trademark more attractive in the marketplace.

In summary, the Department is satisfied there is a need for the proposed regulation, and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Regulation

The proposed regulation supplants and restates the Department's current *Interim Guidelines for the Pennsylvania Preferred Trademark Licensure Program*, which took effect May 19, 2012 and which will expire no later than December 31, 2013.

Pennsylvania's dairy producers produce fluid milk in quantities that exceed the year-round needs of Pennsylvania's milk processors and milk consumers; and this surplus of Pennsylvania-produced fluid milk supply generally remains available on the Pennsylvania market throughout the year. Against this backdrop, the regulation prohibits (with several exceptions) the use of the Pennsylvania Preferred® trademark with respect to fluid milk that is not entirely *Pennsylvania-produced* fluid milk.

The regulation acknowledges that there may be exceptions to the prohibition described above, such as where there is a Statewide shortage of fluid milk or where a processor commingles Pennsylvania-produced fluid milk with other fluid milk on an incidental, emergency or short-term-basis.

Proposed § 107.2 (relating to definitions) repeats several defined terms from the Act, and defines "fluid milk" and "Pennsylvania-produced fluid milk."

Proposed § 107.10 (relating to licensure of the Pennsylvania Preferred® trademark with respect to fluid milk) presents the Department's determination that there is an

adequate supply of Pennsylvania-produced fluid milk and establishes the standards under which the Department will license the use of the Pennsylvania Preferred® trademark for use in marketing Pennsylvania-produced fluid milk.

Persons Likely to be Affected

The proposed regulation is not expected to have an adverse impact on any group or entity.

Any impact of the proposed regulation will be positive, and will be upon those producers or processors of Pennsylvania-produced fluid milk that elect to be licensed by the Department to make use the Pennsylvania Preferred® trademark. The fluid milk marketed under this trademark is expected to be more attractive in the marketplace. The trademark is an increasingly-well-known identifier of Pennsylvania origin and product quality. Although the use of the trademark should make the fluid milk more attractive in the marketplace, if a licensee feels it is not benefitting from the use of the trademark it may discontinue the use of that trademark at any time.

Fiscal Impact

Commonwealth

The proposed regulation will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed regulation will have no appreciable fiscal impact on political subdivisions.

Private Sector

The proposed regulation will have no appreciable fiscal impact upon the private sector. Those eligible producers or processors of Pennsylvania-produced fluid milk who wish to obtain a license from the Department allowing the use of the Pennsylvania Preferred® trademark in marketing that Pennsylvania-produced fluid milk are free to apply for that license and are free to discontinue use of that trademark at any time.

General Public

The proposed regulation will have no appreciable fiscal impact on the general public.

Paperwork Requirements

The proposed regulation will not result in an appreciable increase in the paperwork handled by the Department. The Department has current license agreements with four producers or processors of Pennsylvania-produced fluid milk, authorizing each to make commercial use of the Pennsylvania Preferred® trademark. Since the regulation will not require the Department to revise or redo these current trademark license agreements, the impact of the regulation on paperwork will be minimal or nonexistent.

Effective Date

The proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period / Contact Person

Interested persons are invited to submit written comments regarding the proposed regulation within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Market Development, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Lela Reichart, Director.

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on October 11, 2013, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days of the close of the public comment period.

The notification shall specify the regulatory criteria that have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

GEORGE D. GREIG, *Secretary*

Annex "A"

DEPARTMENT OF AGRICULTURE
Title 7 – AGRICULTURE
PART IV. Bureau of Market Development
[7 PA. CODE CH. 107]

Pennsylvania Preferred Trademark Licensure Program

§ 107.1. Purpose.

This chapter describes the circumstances under which the Department will license third parties to use the Pennsylvania Preferred trademark with respect to fluid milk; establishes standards and procedures to promote the efficient, uniform and Statewide administration of the Act; and clarifies the conditions under which a person who produces or markets milk is a qualified entity for purposes of the Act.

§ 107.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act - The Pennsylvania Preferred Act (3 Pa.C.S.A. §§ 4601 - 4611).

Department - The Department of Agriculture of the Commonwealth.

Fluid milk – Milk, skimmed milk, cream, sour milk, buttermilk, and all other fluid derivatives of milk. The term includes milk from any hooved mammal species.

Licensee - A qualified entity that is subject to a current Pennsylvania Preferred trademark license agreement with the department.

Pennsylvania-produced fluid milk – Fluid milk that is entirely produced within the Commonwealth of Pennsylvania.

Pennsylvania Preferred trademark - One or more trademarks that consist of the phrase "Pennsylvania Preferred" or "PA Preferred," and that may include specific graphic designs or artwork as part of the trademark registration.

Person - An individual, partnership, corporation, association or any other legal entity.

Qualified entity - A person that produces, processes, prepares, sells, offers for sale, markets, promotes or is involved with any aspect of production, processing, preparation, promotion, marketing, sale or offering for sale of Pennsylvania-produced agricultural commodities.

§ 107.10. Licensure of the Pennsylvania Preferred trademark with respect to fluid milk.

(a) *General availability of Pennsylvania-produced fluid milk.* The Department has determined that fluid milk is an agricultural commodity that is, in general, produced by Pennsylvania dairy producers in quantities that exceed the year-round needs of Pennsylvania's milk processors and milk consumers; and that this surplus Pennsylvania-produced fluid milk supply generally remains available on the Pennsylvania market throughout the year.

(b) *Eligibility.*

(1) A person that processes Pennsylvania-produced fluid milk or that promotes or markets Pennsylvania-produced fluid milk from such a processor is a qualified entity that is eligible to apply to be licensed by the Department to use the Pennsylvania Preferred trademark with respect to that Pennsylvania-produced fluid milk. Examples of fluid milk with respect to which this license may be granted include the following Pennsylvania-processed or Pennsylvania-produced items:

- Whole Milk
- Reduced Fat Milk

- Skim Milk
- Flavored Milk
- Cream
- Buttermilk
- Half-and-Half
- Other beverages comprised in whole or in part of fluid milk
- Other fluid derivatives of milk

(2) A person that processes fluid milk that is not Pennsylvania-produced fluid milk, or that promotes or markets fluid milk from such a processor, shall not be a qualified entity and shall not be eligible to apply to be licensed by the Department to use the Pennsylvania Preferred trademark with respect to such milk.

(3) Except as provided in subsections (c) or (d), Fluid milk marketed under the Pennsylvania Preferred trademark shall not be co-mingled with fluid milk produced outside the Commonwealth of Pennsylvania.

(c) *Exception; short Statewide supply.* Subsections (a) and (b) notwithstanding, if the Department determines that the available supply of Pennsylvania-produced fluid milk is not generally available as described in subsection (a), it shall publish notice of this in the *Pennsylvania Bulletin* and, in that notice, designate a time period – not to exceed one year - within which the Department may license the Pennsylvania Preferred trademark with respect to fluid milk that is not entirely Pennsylvania-produced fluid milk.

(d) *Exception; incidental, emergency or short-term commingling.*

(1) Subsections (a) and (b) notwithstanding, a person that is licensed by the Department to use the Pennsylvania Preferred trademark with respect to Pennsylvania-

produced fluid milk may, on an incidental, emergency or short-term basis, commingle Pennsylvania-produced fluid milk with other fluid milk, provided that the licensee maintains a record of all such commingling, including the dates and the quantities of Pennsylvania-produced fluid milk other fluid milk commingled. Such records shall be retained by the licensee for the current month and each of the preceding 12 months, and shall be made available for inspection by the Department upon written or verbal request of the Department.

(2) The Department may review the referenced records and determine whether the commingling is acceptable under Paragraph (1). If the commingling was not acceptable, the Department shall provide the licensee a written warning to refrain from such commingling again; and may terminate the license if unacceptable commingling occurs a second time.

(3) If a person that is licensed by the Department to use the Pennsylvania Preferred trademark with respect to Pennsylvania-produced fluid milk seeks to commingle Pennsylvania-produced fluid milk with other fluid milk, it may – before the commingling occurs – contact the Department as described in Paragraph (1) for confirmation as to whether the proposed commingling is acceptable to the Department.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 11, 2013

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 107
Pennsylvania Preferred Trademark Licensure Program
I.D. No. 2-177

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the October 26, 2013 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

Dwight-Jared Smith
Assistant Counsel

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 2-177
SUBJECT: PENNSYLVANIA PREFERRED TRADEMARK LICENSURE PROGRAM
AGENCY: DEPARTMENT OF AGRICULTURE

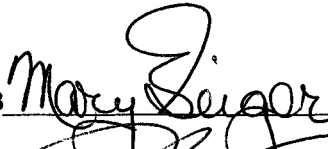

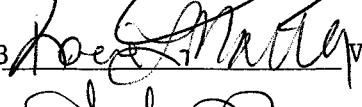
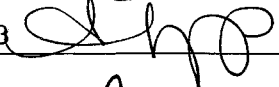


TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

2013 OCT 11 AM 11:36

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
10-11-13		Maher MAJORITY CHAIR John Maher
10-11-13		Petrarca MINORITY CHAIR
		SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
10-11-13		Vogel MAJORITY CHAIR Elder A. Vogel, Jr.
10-11-13		Schwank MINORITY CHAIR
10-11-13		IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10-11-13		LRB LEGISLATIVE REFERENCE BUREAU (for Proposed only)

October 8, 2013