

Comments of the Independent Regulatory Review Commission



Milk Marketing Board Regulation #47-19 (IRRC #3241)

Milk Marketing Fees

October 30, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the August 31, 2019 *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)) (RRA) directs the Milk Marketing Board (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest; Economic or fiscal impacts; and Compliance with the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF). 71 P.S. § 745.5(a).

The Board's Preamble and responses to several questions on the RAF are not sufficient to allow this Commission to determine if the regulation is in the public interest. In the Preamble and RAF submitted with the final-form regulation, we ask the Board to provide more detailed information related to economic and fiscal impact as required under § 745.5(a) of the RRA.

- In response to Regulatory Analysis Form #28, the Board states even with the proposed fee increase, that there will still be annual deficits, but they will be considerably smaller. In reviewing the "Current and Projected Budget-With Proposed Fee Increase," although the annual deficits for Fiscal Year End (FYE) 20-21 and 21-22 will be substantially less than the annual deficit predicted for FYE 19-20, the projected annual deficit for FYE 22-23 will only be slightly less than the annual deficit projected for FYE 19-20. Based on this data, it seems that in five years the proposed fee package will leave the Board in the same untenable position it is in today. The Board should explain, in the Preamble to the final rulemaking, its rationale for proposing a fee increase that temporarily reduces annual deficits rather than eliminates them.

- The Board explains, in the Preamble to the proposed regulation, that milk subdealers' volume-based fee (designated as the "quart-equivalent fee") will increase by 25% to a maximum of \$1750, and will be calculated on the basis of average quarts of milk *sold* per month, not milk purchased. § 150.22 (relating to Quart-equivalent fee). The Board's description of proposed amendments in the Preamble and its responses to Regulatory Analysis Form (RAF) #15, #17 and #19 do not provide a rationale or explain the need for changing the basis of the quart-equivalent fee assessment. It is also unclear whether this change will have a fiscal impact on subdealers that would be in addition to the volume-based fee increase. The Board should explain, in the RAF and Preamble to the final-form regulation, the need and rationale for the amendment. It should also include any fiscal impacts this change may have on the regulated community.

3. Miscellaneous clarity.

In proposed § 150.22 (relating to Quart-equivalent fee) the range of 120,000-149,999 average quarts sold per month the annual fee is set at \$200.00. Modified forms PMMB -001 and 002 show, for the same range, the annual fee as \$250.00. The Board should amend forms PMMB -001 and 002 to be consistent with the proposed fee schedule in § 150.22.