

TRANSPARENCY AND ACCOUNTABILITY WITH THE PMMB OVER-ORDER PREMIUM

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Listening Session

Good Morning Chairman Barley, Mr. Van Blarcom, and Dr. Hardbarger. I sincerely appreciate the opportunity to offer comments this morning before the board. Before I say anything else, please let me commend the board for providing this opportunity for farmers and other stakeholders to offer their thoughts on the unprecedented challenges facing Pennsylvania's dairy industry. It is a breath of fresh air and much welcomed. On behalf of the people of Pennsylvania, I thank you for your willingness to serve.

I will focus my comments today on one limited topic – accountability for the dollars generated by the Pennsylvania Over-Order Premium. At some point in the future, I would like to discuss the practice of some cooperatives commingling PMMB OOP dollars with other premiums and sending the a portion of this money to out-of-state dairy farmers. However, today I will confine my remarks to the utter lack of transparency of PMMB OOP dollars on the milk checks Pennsylvania Dairy Farmers receive from cooperatives, and what can be done about it.

As you are aware, the Milk Marketing Board established an "over-order premium" in 1998, which is assessed on every gallon of Class 1 fluid drinking milk sold in Pennsylvania. The idea behind the Over-Order Premium is pretty simple: Pennsylvania consumers are willing to pay a little more per gallon to help the Pennsylvania dairy farmer, and thus ensure a steady, reliable source of local milk.

Many family farmers do not know how much, if any, of that state-mandated money is actually getting back to them. Many have said to me that the money is "lost in the system." How can this be?

According to current regulation:

- Milk dealers paying family farmers (producers) must include a line-item on the milk check showing the specific amount of state-mandated premiums contained in the check.

- Milk dealers paying cooperatives (producers) must include a line-item on the milk check showing the specific amount of state-mandated premiums contained in the check.
- Cooperatives paying family farmers are under no obligation to disclose anything on the milk check showing the specific amount of state-mandated premiums contained in the check.

Let me be clear. Certainly, cooperatives play a vital and critical role in the dairy industry. I am not here today to castigate or cast aspersions on dairy cooperatives. However, accountability and transparency with any money resulting from a government mandated tax, fee, premium – whatever word used – accountability and transparency should be a given. A Pennsylvania family farmer should know how much of the payment he is getting for the milk sold off his farm comes from a state-mandated premium, regardless of whether that farmer sells his milk to a cooperative or a milk dealer. And today, that is simply not happening.

I would like to direct the Board’s attention to Official General Order No A-1001 effective October 1, 2018. This order contains language that has been included on every over-order premium Order for quite some time. Section II(b) states:

Milk dealers shall show by line item on their monthly statements to independent producers and cooperatives the specific amount of the Pennsylvania Milk Marketing Board’s over-order premium being paid.

The board rightfully recognizes the importance of transparency with over-order premium dollars when milk dealers pay independent producers and cooperatives.

I would also like to direct the Board’s attention to Article III section 301 of the Milk Marketing Law concerning the Board’s authority to regulate the milk industry in Pennsylvania. I have included the entire section in my written comments but will highlight the portions of interest for the sake of time. It states:

ARTICLE III

GENERAL POWERS OF THE BOARD

§301. Regulation of milk industry

The board is hereby declared to be the instrumentality of the Commonwealth for the purpose of administering the provisions of this act and to execute the legislative intent herein expressed, and it is hereby vested with power to supervise, investigate and regulate the entire milk industry of this Commonwealth, including the production, transportation, disposal, manufacture, processing, storage, distribution, delivery, handling, bailment, brokerage, consignment, purchase and sale of milk and milk products in this Commonwealth, and including the establishment of reasonable trade practices, systems of production control and marketing area committees in connection therewith...

I have included in my written testimony the definition, according to the Milk Marketing Law, of a Producer, a Person, a Cooperative, and a Milk Dealer. I will not read them now for the sake of brevity, but I will note that under the law, a Cooperative is also a Producer, and a Cooperative can also be a Milk Dealer, specifically when it acts as an agent for its members.

"PRODUCER" means a person producing milk.

"PERSON" includes an individual, corporation, association, partnership, limited partnership, or other unincorporated enterprise owned or conducted by or on behalf of two or more individuals or other persons.

"COOPERATIVE" means a cooperative agricultural association or corporation of producers organized under the laws of this Commonwealth or of any other state and engaged in making collective sales or in the marketing of milk for producers under contract with it. A cooperative shall not be deemed a milk dealer or handler, but shall be deemed a producer, except as otherwise provided herein.

"MILK DEALER" or "HANDLER" means any person, who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for processing or manufacture and further sale, within or without the Commonwealth, whether on behalf of himself or others, or both. A producer who delivers milk to a milk dealer or handler only shall not be deemed a milk dealer or handler. If a cooperative distributes or makes available on consignment or otherwise milk within this Commonwealth to stores, as defined in this act, or to consumers, as defined in this act, or to other milk dealers or handlers, as defined in this act, or acts as an agent for its members, it shall be deemed to be a milk dealer or handler as to that part of its business, and shall be governed by the provisions of this act applicable thereto. Such cooperative shall be governed by the applicable provisions of this act as to the prices at which it sells, markets, or bargains to sell or make available on consignment or otherwise milk within this Commonwealth to milk dealers, handlers and others.

Finally, I would like to direct the Board's attention to section 608 of the Milk Marketing Law dealing with statements as it relates to the payment for milk. Again, I have included the full section in my written remarks, but highlight for the sake of brevity:

§608. Payment for milk; statement

Milk dealers shall determine weight, measure and butterfat and appropriate milk component content of milk as provided in this act, or in rules, regulations or orders of the board pertaining thereto and consistent with this act. Payment for milk shall be made either upon the basis of weight, measure or butterfat or appropriate milk component content, or any combination thereof, as the rules, regulations or orders of the board may require.

Milk dealers buying or receiving milk from producers shall furnish to each producer or his agent a written statement showing the amount of milk delivered daily during the period for which payment is made, and, unless the board otherwise provides, the average butterfat or appropriate milk component tests of the milk delivered for such period. Such statement shall set forth such information as may be required by the

board, shall be furnished periodically, at the time of payment prescribed by the board, and in no event less often than monthly...

The law dictates that a milk dealer SHALL FURNISH a written statement to each producer or his agent including information "as may be required by the board." With regard to the Over-Order Premium, this is occurring today when a milk dealer pays an independent producer or a cooperative. However, it is not happening when a cooperative acting as a milk dealer issues a statement to their producers – the Pennsylvania Dairy Farmer.

Perhaps one might make an argument that the legislative intent of the law is that the cooperative (acting as a Milk Dealer) SHALL FURNISH "information as may be required by the board" to itself (the cooperative acting as a producer or his agent.) However, I suggest to the Board that is absurd. Section 1922 of the Statutory Construction Act clearly states:

Presumptions in ascertaining legislative intent

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

No law is necessary to compel an organization SHALL FURNISH information to itself. The clear legislative intent of the law is that the cooperative SHALL FURNISH information to **its producer** – the Pennsylvania Dairy Farmer.

Given that the law vests the Board with broad and clear authority to "regulate the entire milk industry of this Commonwealth...including the establishment of reasonable trade practices", and the law also states "information as may be required by the board" must be included on any statement to a producer, including the statement a cooperative issues to a Pennsylvania Dairy Farmer, I propose that the Board immediately take action, issuing an Official General Order, instructing that any milk check issued to a Pennsylvania Dairy Farmer by a Cooperative include a separate and distinct line item stating exactly how much of the check comes from the MMB Over-Order Premium.

Let me be clear – I am not proposing that the Over-Order Premium is the solution to all of the woes facing our Pennsylvania dairy farmers. It is admittedly a small piece of a much larger pie. But we owe it to our dairy farmers to ensure that this, a government mandated tax, is properly accounted for, and reaching its intended recipients.

Thank you for the opportunity to speak today on behalf of transparency and accountability with these state-mandated funds.