

**TRANSPARENCY AND ACCOUNTABILITY
WITH THE PMMB OVER-ORDER PREMIUM**

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Before the Pennsylvania Milk Marketing Board
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Good Afternoon Chairman Barley, Mr. Van Blarcom, and Dr. Hardbarger. I sincerely appreciate the opportunity to offer comments regarding the proposed Amendment to 7 Pa Code ch. 143 as it relates to accountability and transparency with the MMB Over-order premium.

As the board is aware, the board has long required milk dealers to include a line-item on producers' milk checks showing the specific amount of state-mandated premiums contained in each check. However, neither law nor regulation currently requires cooperatives to disclose this same information to their producers.

The proposal before the Board today addresses this inequity to ensure transparency and disclosure of state mandated premiums to Pennsylvania dairy farmers. Specifically, the proposal under consideration states:

Cooperatives shall show by line item on their monthly statements to dairy farmers marketing milk through the cooperative the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

**MILK MARKETING BOARD AUTHORITY TO DIRECT CO-OPERATIVES TO DISCLOSE
BOARD MANDATED PREMIUMS TO PENNSYLVANIA DAIRY FARMERS**

Before considering the merits of the proposal, it is important to establish that the Milk Marketing Board does indeed have the authority to implement the proposal. 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.

Article III, section 301 of the Milk Marketing Law outlines 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...*

Section 608 of the Milk Marketing Law deals with "milk checks," or more formally, written statements concerning payment for milk. Again, I have included the full section of the law in my written remarks, but I will highlight the relevant parts 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...

From these sections of the law, it is clear that a Milk Dealer must provide regular statements to each of their producers or his agent, and that this statement must contain any information required by the board. The Milk Marketing Law further states that a cooperative “Shall be deemed a Milk Dealer” on any part of its business when it “acts as an agent for its members.”

In light of the clear language of the authorizing statute for the Milk Marketing Board, it is absolutely clear that the law provides the board with the authority to enact the language contemplated in proposed section 143.15. One might even argue that the board has the obligation under the law to enact such language.

NEED FOR THE PROPOSAL

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.

However, many dairy farmers across Pennsylvania have absolutely no idea how much, if any, of the dollars in their milk check come from this state-mandated premium. I would suggest this is a grave injustice.

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. The proposal before the board will correct the aforementioned grave injustice.

COMMON OBJECTIONS TO THE PROPOSAL

The proposed language before the board is, in my view, plain in its construction and intent. If implemented, it will provide meaningful information to Pennsylvania dairy farmers who deserve

transparency and accountability with a state-mandated premium. However, there have been several objections raised that I would like to address.

OBJECTION #1 – THE PROPOSAL IS NOT NECESSARY

Some have suggested that this regulation is not necessary, and that interested farmers already have this information. With respect, the facts tell a different story.

A joint hearing of the House and Senate Agriculture Committees at Ag Progress Days in August 2016 on this very topic attracted a standing-room only, overflow crowd of farmers showing strong support for additional transparency and accountability with the Over-Order Premium. I testified at this hearing, and I have heard from many of the farmers in attendance that day, most recently a few weeks ago at a hardware store in Bart Township, Lancaster County. Without exception, these farmers have told me that they are desperate for more transparency and accountability with the Over-Order Premium.

Just last month, the MMB presented results of a survey of Pennsylvania dairy farmers to the House Agriculture committee. One of the questions asked dairy farmers if they were receiving the Over-Order Premium – incredibly, nearly one third of farmers surveyed said they did not know. This is astounding and deeply troubling. If one-third of the intended recipients of the Over-Order Premium don't know if they are getting this state-mandated money, that alone speaks volumes towards the need for additional transparency and disclosure.

A cooperative presenting testimony today suggests that this proposal is not necessary, citing letters sent to their farmers since December 2015 providing basic information about how Over-Order Premium dollars are distributed. I suggest to the Board that this actually shows the strong need to implement this proposal. Let us remember that the Over-Order Premium has been in place for decades – but for most of that time, most cooperatives have not provided even basic information about the Over-Order Premium to their farmer producers. Only recently, with the additional spotlight put on this issue in the Capitol, has rudimentary information been provided to dairy farmers. In addition, the letter cited by the cooperative is completely voluntary – the cooperative could decide to halt this practice at any time.

Another supposed argument against the proposal is that it somehow “restricts how communication is handled between cooperatives and their member-owners.” With respect, that statement is baloney. This proposal does not restrict anything, and it certainly doesn't restrict communication between cooperatives and their member-owners. This proposal *encourages* communication between cooperatives and their member-owners – communication that has been lacking for decades.

Would anyone suggest that a state requirement to show tax withholding on a paystub is “restricting communication” between an employer and an employee? Would anyone suggest that the federal requirement for Nutrition Facts or ingredient lists on everything sold in the grocery store “restricts communication” between a seller and a buyer of foodstuffs? Of course not. This proposal is about transparency and accountability, and the attempt to disparage it with fearmongering phrases like “restricting communication” is distracting at best and deceptive at worst.

OBJECTION #2 – THE PROPOSAL IS VAGUE AND UNCLEAR

Various industry representatives have suggested the proposal is flawed since it does not provide specific guidance on how a cooperative should distribute the Over-Order Premium – in other words, should the premium be blended across all producers? Should it be paid solely to farmers whose milk went to Class I fluid drinking milk? Etc.

Far from a flaw, I believe that a strength of this proposal is the flexibility it provides to cooperatives in implementation. The proposal does not state how a cooperative must distribute the Over-Order Premium, it states that the cooperative must disclose how much of the money in a given milk check comes from premium. The method by which the cooperative determines how the premium is distributed is left to the cooperative acting on behalf of its member farmers.

OBJECTION #3 – THE PROPOSAL IS TOO COSTLY

Certainly any new regulation, no matter how well-intentioned, should be considered in light of the burdens it places on private industry. The cost, in both time and money, to implement any new rule can be substantial and must be considered.

With that being said, anyone with even a basic, rudimentary knowledge of milk pricing knows that determining the price a farmer receives for their milk is seemingly one of the most complex processes on earth. Some have suggested an advanced degree is needed to interpret some milk checks. The broad variety of quality and quantity premiums negotiated and paid by cooperatives requires detailed accounting systems to keep track of each penny. The argument that the proposed requirement to breakout the state-mandated premium on a milk check is somehow beyond the technological ability of a dairy cooperative simply doesn’t pass the laugh test.

I do not mean to diminish the potential for costs that may need to be borne to implement this proposal. However, it bears mentioning that we are not discussing a quality or a quantity premium being paid by a private consumer. We are discussing a state-mandated premium. A state-mandated premium is subject to regulation by the state under the law of the state. And the interest of the state must be that premium reaches its intended recipient.

It also bears mentioning that proposal before the MMB is already standard practice for Milk Dealers across the Commonwealth. Apparently Milk Dealers already have accounting software that allows for a breakout of the Over-Order Premium for each dairy farmer. If Cooperatives cannot update their software to comply with this proposal at a reasonable cost, perhaps they should look to the Milk Dealers and utilize their software.

BENEFITS OF THE PROPOSAL

BENEFIT #1 – FARMERS SHOULD SEE THE BENEFIT THAT COMES FROM THE MMB OOP REGARDLESS OF WHO THEY SELL TO

Currently, Pennsylvania dairy farmers marketing their milk through milk dealers know exactly how much of their milk check comes from the MMB Over-Order Premium. Cooperatives marketing milk for Pennsylvania dairy farmers are under no similar obligation. Certainly, all Pennsylvania farmers should see how they benefit from a state-mandated premium.

BENEFIT #2 – PENNSYLVANIA CONSUMERS DESERVE TRANSPARENCY AND ACCOUNTABILITY WITH STATE-MANDATED PREMIUM DOLLARS

The framers of the Milk Marketing Law recognized the importance of both the producer and the consumer, perhaps most notably by reserving one of the three Milk Marketing Board seats for a consumer member. Certainly, all actions taken by the Board aim to ensure the health and viability of both dairy farmers and the dairy-consuming public. The Pennsylvania milk consumer pays the Over-Order Premium each time they pay for a gallon of milk, and is entitled to some assurance that the intended recipients of these monies have basic information.

BENEFIT #3 – GOOD GOVERNMENT DEMANDS ACCOUNTABILITY WITH STATE-MANDATED PREMIUM DOLLARS

As the Board is likely aware, Act 13 of 2012 established an impact fee on unconventional natural gas drilling in the Commonwealth. These state-mandated fees are collected by drillers extracting Marcellus Shale gas and then remitted to the state, which in turn distributes the monies to impacted local communities to offset the effects of gas drilling.

Imagine if Act 13 instead directed gas drillers to collect the impact fee, but never required any transparency or accountability with how those fees were utilized. Never required any information on who got the money, or what was done with it. I cannot believe anyone in this room today would believe that to be appropriate.

Yet that is exactly what is happening with the MMB Over-Order Premium. Good government demands that some level of accountability exists any time state-mandated monies are involved. The Board cannot accept the admonition of “Trust us” from even the most well intentioned dairy cooperative. Instead, the Board should employ the well-worn axiom “Trust, but verify.”

BENEFIT #4 – THE PROPOSAL PROTECTS PENNSYLVANIA DAIRY FARMERS

The Pennsylvania Milk Marketing Board exists to protect and advocate for the Pennsylvania dairy farmer. The proposal before the Board would be of tremendous benefit to Pennsylvania dairy farmers and all dairy consumers across the Commonwealth, providing some level of transparency and accountability with the long-standing Over-Order Premium.

CONCLUSION

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 ask the Board to adopt the proposal before us today 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.