

**COMMONWEALTH OF PENNSYLVANIA**  
Pennsylvania Milk Marketing Board

**In the Matter of: December 6, 2017 Over-Order Premium Hearing**

**Surrebuttal Witness and Exhibit List**

The Pennsylvania Association of Milk Dealers (PAMD) will participate in the hearing by and through the undersigned counsel and is expected to offer two witnesses for surrebuttal.

Evan Kinser, Vice President – Milk Supply for Dean Foods Company is expected to testify as an expert in milk marketing and agricultural economics in accordance with the attached pre-submitted surrebuttal testimony and exhibits.

John Pierce will offer insight into the competitive nature of packaged milk sales at wholesale presently and is expected to discuss how the Farm Bureau request for an extra 25-cents beyond the PAMD requested 75-cent Over Order Premium creates a significant risk with respect to current activity in the marketplace.

Respectfully submitted,

/s/ Wendy Yoviene

Wendy M. Yoviene

**CERTIFICATE OF SERVICE**

On this 22nd day of November, 2017, I, Samira Fredericks, a secretary in the law office of Baker Donelson, hereby certify that I have served on this day true and correct copies of the foregoing on behalf of the Pennsylvania Association of Milk Dealers by e-mail to the following persons:

**INTERESTED PARTIES**

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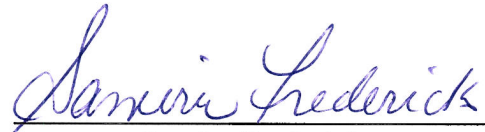
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Samira Fredericks  
Samira Fredericks

In re: Over-Order Premium Hearing December 6, 2017

Surrebuttal Testimony of Evan Kinser

Dean Foods cannot allow itself to become uncompetitive and put any amount of Class I volume in our Pennsylvania facilities at risk. Increased RFP activity from retailers is putting our plants at risk of losing business, specifically volume that today we pay the PMMB Class I over-order premium on. Some may view the premium adjustment that the PAMD has proposed as being too steep of a cut. However, the \$0.75/cwt that Dean, and the PAMD, proposed was the result of a compromise with other interested parties, and represents the outer limit of what fluid milk processors believe can stem the need to replace Pennsylvania produced milk with cheaper out-of-state milk in order to keep Pennsylvania's fluid milk plants competitive. The data I presented on October 24 along with the pressure in the wholesale marketplace supports a premium level well below \$0.75/cwt. Farm Bureau's rebuttal proposal understandably seeks to cushion the blow of reducing the over-order premium in seeking to retain an extra 25-cents, however, the risk to fluid milk plants and their farm suppliers is too great to grant their request. There is a real risk that substantial volumes of Pennsylvania produced milk could end up with no mandated premium or worse.

In recent weeks, the case for reducing the Pennsylvania PMMB over-order premium to \$0.75/cwt was further bolstered by government and private announcements. As provided in PAMD Surrebuttal Exhibit 1, On November 9, the Federal Order 1 Market Administrator's office announced they would allow for the dumping of surplus milk from November 15, 2017 through January 8, 2018. Had the dump provision not been extended and there is an issue with the milk salvaging I discussed in my initial hearing submission, it could extend the hardship for dairy farmers. Absent the dump provision, a handler unable to get milk into a plant would have no assistance from the pool.

Recently, it was brought to our attention that a [BEGIN CONFIDENTIAL ATTORNEY EYES ONLY MATERIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL ATTORNEY EYES ONLY MATERIAL]

This marketing fee increase effectively represents a negative premium to the Cooperative's membership and reinforces the severity of the premium situation. If a cooperative can effectively impose a negative premium, this is further indication of just how low premiums are in the marketplace. Therefore, as much as Dean Foods and PAMD understand the difficulty Farm Bureau may

have with the request for a 75-cent over-order premium, we cannot emphasize enough just how important it is that the Board understand any further compromise above 75-cents represents what PAMD (and presumably PADDC), as marketers of the milk, believe to be a severe threat to Pennsylvania produced milk given the continuing surplus situation facing the Northeast and Mideast and the fact that wholesale customers are seeking to take advantage of the situation.

Thank you for the opportunity to comment further.

Evan Kinser





United  
States  
Department  
Of  
Agriculture

Agricultural Marketing  
Service  
Dairy Programs

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November 9, 2017

**TO:** Northeast Order Pool Handlers  
**FROM:** Erik F. Rasmussen, Market Administrator  
**SUBJECT:** Request to Allow Temporary Dumping of Surplus Milk – *Approved 11/15/2017 – 1/08/2018*

On October 30, 2017, pool handler Dairy Farmers of America, Inc. (DFA) requested that the Market Administrator allow pool handlers to temporarily dump surplus milk at a farm location with any such discarded milk retaining pool eligibility. The time period of the requested authorization would run from November 22, 2017, through January 8, 2018. In a November 3, 2017, letter in support of DFA's request, pool handler Land O' Lakes, Inc. (LOL) asked that the temporary authorization be moved back to the week immediately prior to the Thanksgiving holiday week; thus the requested temporary authorization would commence on November 15, 2017.

During the past four years, pool handlers have requested a similar temporary dumping allowance on several occasions. More recently, temporary authorizations were approved for the periods November 22, 2016, through January 9, 2017; March 1, 2017, through May 31, 2017; and June 1, 2017, through August 31, 2017. Note, during the above approved periods no handler dump milk requests were received specifying that raw milk was being dumped at a farm due to surplus reasons. The only reported requests seeking authorization for dumping raw milk at a farm were caused by snow storm milk pick up complications. Therefore, volumes reported in the Northeast Marketing Area's *Monthly Statistical Report* utilization table under Class IV Minimum Price Class (and often referred to as dumped milk) represent milk that was delivered to a plant, processed to some extent, and then discarded for any number of internal handler specific reasons. Such dumps are an accepted plant utilization under the provisions of the Northeast Order and do not require the temporary on-farm dumping authorization that has been requested.

DFA's submission cites a number of factors regarding the region's milk supply and available plant capacity during the upcoming holiday period as key considerations behind their request. LOL's statement in support of DFA's request notes that this is a period where multiple plants have announced plant shut downs, thereby effectively removing processing capacity from the milk shed. DFA notes that as local processing capacity is filled, milk sometimes is moved out of the region to find available processing capacity, often at considerable cost and discount. In a worse-case scenario, DFA states that it becomes more cost effective to simply dump milk at the farm rather than to find distant outlets if any are even available.

Recent USDA milk production statistics for the month of September indicate that New York State's milk production fell slightly below the production during September 2016, but that the state had approximately 4,000 head of additional dairy cows in September 2017 compared to September 2016. Pennsylvania's September 2017 milk production was 1.7 percentage points above the September 2016 volume. The volume of milk pooled on the Northeast Order has set an all-time record monthly volume (for the 18 years the Northeast Order has existed) in eight of the nine monthly pools completed to date in 2017. The daily production per producer (DDP) through September is averaging 5 percent above the DDP for the same period in 2016. In addition to DFA's request and LOL's requested extension, cooperative handlers Agri-Mark, Inc., Maryland and Virginia Milk Producers Cooperative, Inc., St. Albans Cooperative Creamery, Inc. and Upstate Niagara Cooperative, Inc. submitted comments acknowledging the potential for having milk supplies in excess of

## PAMD SURREBUTTAL EXHIBIT 1

available plant processing capacity during the upcoming holiday period, and were thus supportive of approving the temporary authorization as some measure of relief to pool handlers if necessary

After the consideration of handler comments, market conditions, and the short term supply/demand situation, the Market Administrator agrees to temporarily authorize the pooling of milk disposed or “dumped” at farm or other non-plant locations for the requested period of **November 15, 2017, through January 8, 2018**, provided the following conditions are met:

- Handlers and/or their producers that utilize this temporary policy must have been pooled on the Northeast Order for all of their commercially marketed production for the months of May through October 2017.
- The milk must be picked up at the farm, measured and sampled for payment. The tanker test will be a weighted average of the producer tests.
- Notification should be given to the Market Administrator's office by the next business day, or as soon as practicable, when the milk is dumped. At pool time a separate list must be submitted of all producers whose milk was dumped along with the component tests of the applicable milk (if available), and the physical location and address of where the milk was dumped.

Any such requested dumps will be subject to audit verification by the Market Administrator as a condition to be included as pooled producer milk, during the respective pool period.



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