

PFB EXHIBIT 1

**Surrebuttal Testimony Offered for
Pennsylvania Farm Bureau (PFB)
Before the Pennsylvania Milk Marketing Board
Regarding the Level and Duration
of the Class I Over-Order Premium**

March 2, 2022

**Presented by John Painter II
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Introduction

Good morning, my name is John Painter, and I offer this testimony on behalf of Pennsylvania Farm Bureau (PFB)—the largest general farm organization in Pennsylvania.

I serve on both PFB's Executive Committee and Board of Directors, representing District 5, which is comprised of McKean, Potter, Tioga, Bradford, and Sullivan Counties. Since 2016, I've operated, in partnership with my brothers, Painterland Farms, an organic dairy and crop farm in Tioga County where we milk around 400 cows and farm 5,000 acres. The farm has been in my family for 60 years, originally founded by my father in 1962.

At the onset, Pennsylvania Farm Bureau would like to thank the Pennsylvania Milk Marketing Board (Board) for providing the opportunity to offer surrebuttal to the submitted testimony by the Pennsylvania Department of Agriculture regarding the level and duration of the upcoming over-order premium. We agree wholeheartedly with the Department's tone and perspective that the present over-order premium framework is inequitable to all dairy farmers, generally unfair to consumers, and leaves opportunities for parties seeking to avoid payment or distribution of the premium. However—in contrast to the Department—we believe that unless and until a more equitable system can be implemented that the time has come to eliminate the Class I Over-Order Premium,

and therefore recommend setting the upcoming over-order premium at \$0.00 indefinitely for all milk marketing areas.

Structural Issues

Through no fault of their own, the over-order premium meaningfully helps only a small segment of Pennsylvania dairy farmers. In our view, this means that on balance the present system does more overall harm than good by fermenting strong and emotional dissension among Pennsylvania dairy farmers. The dairy farmers that receive meaningful premium dollars undoubtedly support the present system, but the dairy farmers that receive little to no support from the system range from indifferent to openly hostile toward the system. And while many hearings, reports, studies, and testimony have been held or given in recent years, we believe that the biggest impediment to meaningful reform of the current system is beyond this Board's or even the General Assembly's control.

As this Board knows, the Class I over-order premium is limited—largely due to federal constitutional constraints—to Class I fluid milk that is produced, processed, and sold in Pennsylvania. And past attempts to tinker with any of those elements has been met with swift and successful legal action against this Board. Unfortunately, without legitimate options to alter the over-order premium elements, this legal trinity of sorts creates an environment that's often to the detriment of the majority of Pennsylvania dairy farmers and retail milk consumers.

It is largely accepted as fact that the over-order premium is collected on every gallon of retail fluid milk purchased in Pennsylvania. This means that every Pennsylvania-based fluid milk consumer pays an additional fee intended to ultimately be returned to and benefit the Pennsylvania dairy farmer. But as many know through personal experience, the best intentions don't always come to pass.

To that point, milk that is not processed in Pennsylvania is not subject to the premium. This Board's recent estimates of the total over-order premiums collected from the point-of-sale have ranged from approximately \$8 to \$10 million annually. Yet, this Board further estimates that 20% to 30% of collected premiums are never distributed back to Pennsylvania dairy farmers—an issue informally referred to as “the stranded premium.” And because of the “legal trinity,” regardless of one's actual intent, the practices of simply altering the processed element by sending milk to be processed outside of Pennsylvania or by bringing in milk produced out of state are perfectly allowable methods to avoid distributing premium dollars that have already been collected.

So, in practice, Pennsylvania fluid milk consumers pay a functional tax on every gallon of milk they buy. This “tax,” however, rarely makes it back down to the Pennsylvania dairy farmer in full form. Admittedly, other issues beyond over-order premium elements, such as the role cooperatives play in balancing the milk supply, account for some of this discrepancy. Unfortunately though, as previously

alluded to, PFB does not believe there are viable legal options to tweak the over-order premium elements to create an environment where Pennsylvania dairy farmers and milk consumers are not simply resigned to spectator status in a system that's structurally incapable of meaningful equity and fairness. As a result, PFB believes that, while the over-order premium does benefit some dairy farmers, its time has passed.

As suggested by the Department, ultimate and meaningful change must come from legislative reform. PFB is committed to exploring those options and working with all interested parties on such efforts. However, while PFB is engaged and supportive of state legislative changes to provide a more equitable and fairer system to producers and consumers alike, we also firmly believe that meaningful economic changes for dairy farmers must be sought at the federal level through matters such as federal market order reform. State legislative change may bring much-needed equitable improvements on the margins, but in our view, the fundamental economic changes needed for dairy farmers must be sought on the federal level.

Conclusion

Pennsylvania Farm Bureau understands the gravity of our request and does not make it lightly. Yet, we respectfully submit that an over-order premium system that cannot be meaningfully changed without inviting a swift rebuke by way of the

federal Commerce Clause is not a system capable of structural fairness and equity to all involved in the dairy supply chain. Pennsylvania Farm Bureau therefore requests that the upcoming over-order premium be set at \$0.00 indefinitely for all milk marketing areas.