

Esteemed members of the Milk Marketing Board.

My name is John Lawrence. I represent the 13<sup>th</sup> legislative district in the Pennsylvania House of Representatives.

For the past ten years, I have advocated for transparency and accountability around the MMB over-order premium. The OOP is set by you, the board, as a state-mandated milk premium. For decades, the Pennsylvania fluid milk consumer has paid hundreds of millions of dollars in state-mandated over-order premiums one gallon of milk at a time, with the idea that these monies would support our Pennsylvania dairy farmers. But no one in this room can tell me how much money has been collected, how much of that money went back to Pennsylvania dairy farmers, how much of that money went to New York dairy farmers, how much of that money went to dairy farmers of some other state, or frankly how much of that money didn't go to dairy farmers at all, but instead went to a corporate bottom line or a shareholder dividend.

In recent years, there has been a renewed and vocal interest from dairy farmers across the Commonwealth to bring real transparency and accountability to each MMB OOP dollar. With great respect, the proposal before the board today does not propose any additional measures around transparency and accountability. It simply advocates a continuance of existing policy.

I appreciate the submitted testimony of the petitioner, who testifies on behalf of the Pennsylvania State Grange. However, I must take issue with several claims made in his testimony.

### **OVER ORDER PREMIUM DOLLARS ARE GOING OUT OF STATE**

First, the petitioner's testimony states in part:

*As a member of Mount Joy Farmers Co-Op, which is affiliated with Dairy Farmers of America (DFA), my fellow producers and I receive a blended price for the milk that is shipped... (b)ecause we are part of a co-op, the over-order premium is spread across all members, regardless of the milk's class, processor location, and final destination.*

I would like to elaborate on the statement "*the over-order premium is spread across all members*" of the DFA cooperative. A June 24, 2015 letter from DFA to the House Agriculture and Rural Affairs Committee sheds additional light on how MMB OOP dollars are distributed by DFA. The DFA letter states in part:

*When DFA Northeast collects over-order premiums from the sale of milk, they are combined in one pool of money and lose state identity. In other words, there is no special*

*account for PMMB premiums, New Jersey premiums, New York premiums, Class 1 premiums, manufacturing premiums or other premiums, etc. Once all of these premiums are collected, and after marketing expenses are paid, the premiums are all paid to Northeast DFA members in the form of market driven premiums – base premiums, competitive premiums, volume premiums, quality, etc.*

When the petitioner states in his testimony, “*the over-order premium is spread across all members*” of the DFA cooperative, he is correct. But the 2105 DFA letter clarifies that the Pennsylvania Milk Marketing Board Over-Order Premium is spread across all DFA members in the Northeast United States, not just DFA members in Pennsylvania.

In my view, this is not the intent of the MMB OOP. The MMB OOP is not a tool to increase a pool of available money to be distributed to out-of-state dairy farmers. The intent is to benefit Pennsylvania dairy farmers – period. It is legal and I am sure convenient to take the MMB OOP and other non-state mandated, industry driven milk premiums and combine them into “*one pool of money*” that “*lose(s) state identity.*” But this is not the intent of this board today or when the OOP was first instituted decades ago.

### **OVER ORDER PREMIUM DOLLARS ARE BEING DIVERTED AWAY FROM THE PENNSYLVANIA DAIRY FARMER TO PAY FOR UNRELATED EXPENSES**

The petitioner states in part:

*“The funds generated by the over-order premium are returned to our members in a variety of ways. Some funds are distributed directly to each member. Funds may also be used to subsidize or bolster quality premiums, or other benefits. Some cooperatives may use these funds to defray the costs of transportation, or perhaps office expenses. It is a business decision to be made by the cooperative leadership, which is elected by the cooperative members.”*

I have heard many embrace the ideal that the MMB OOP is an additional cost for fluid milk that is borne by the Pennsylvania consumer to directly benefit the Pennsylvania dairy farmer. With respect, it is troubling to me to see that the petitioner is justifying continuance of the current MMB OOP with language such as “*(funds may be used to subsidize or bolster quality premiums, or other benefits.*” It is not the intent of the MMB OOP to subsidize quality premiums; those premiums are market-driven – the MMB OOP is a state-mandated premium. There is a material difference. Petitioner further states that OOP dollars may be used for “*office expenses,*” which in my view is far afield from the intended use of the premium. Even more troubling is the language stating that the petitioner believes the MMB OOP may be utilized for nebulous “*other benefits,*” a

term so broad that it could include almost anything. With respect, it is not a picture of transparency and accountability that should come with a state-mandated premium.

## **PENNSYLVANIA DAIRY FARMERS ARE STRUGGLING WITH RISING COSTS WHILE OOP DOLLARS CONTINUE TO BE DIVERTED AWAY FROM IN-STATE PRODUCERS**

Petitioner provides a compelling list of increased costs facing Pennsylvania dairy farmers. Utilities, feed, fuel, fertilizer, and almost everything else has seen the dramatic effects of recent inflationary pressures.

These rising input costs provide a compelling argument to ensure that every penny collected by the OOP returns to the Pennsylvania dairy farmers buying the feed, fuel, fertilizer, and paying the utility bill. But that is simply not happening today, and everyone in this room knows it.

Petitioner states *"the premium you approve today will not spend much time in the pockets of the average farmer."* The reality of the situation is that a substantial amount of the premium will **never get to the pocket of the average Pennsylvania dairy farmer at all.** Secretary Redding recently told the House Appropriations committee that tens of millions of OOP dollars are not getting to the pocket of the average Pennsylvania dairy farmer.

## **THE BOARD FACES A DECISION – CONTINUE WITH THE STATUS-QUO OR CHART A NEW PATH TO REFORM THE OVER ORDER PREMIUM**

In the past, I have argued against the elimination of the OOP. I continue to believe that the premium should not be eliminated, and that there is an opportunity for reform. In setting the value and duration of the OOP, the board must consider the lack of accountability, transparency, and clarity surrounding the existing process and act accordingly.

I humbly offer that many producers, many farmers, across the Commonwealth feel there is tremendous inequity and unfairness with the current OOP structure. In fact, the state's leading voice on agriculture, the Pennsylvania Farm Bureau, went so far as to call for the abolishment of the OOP in 2022, as their membership was fed up with decades of doubts as to whose pockets OOP dollars actually end up in. This anger was so palpable that the Farm Bureau came close to recommending the abolishment of the Milk Marketing Board entirely at their 2022 meeting!

This year, the Farm Bureau changed its position on the OOP, calling for reform to the OOP as opposed to abolishing it completely. To me, the frustration of the grassroots membership of the largest organization of farmers in this state is clearly apparent. The palpable cry of the Pennsylvania dairy farmer for reform must be heard.

Farmers have every right to demand accountability and transparency with every dime of the MMB OOP, which is a government mandated fee. It is unquestionably the right thing to do, regardless of where the premium is collected, regardless of whose farm the milk came off, and regardless of who is benefitting and who is losing under the system as it exists today. No other government fee, tax, premium, whatever you want to call it, no other that I know of exists without complete and total transparency and accountability. We know to the penny how much cigarette tax was collected in this state last year, and where it went. We know to the penny the dollars collected by the Marcellus Shale Impact fee, and we know where it went. Is there really any reason that we should not demand that same level of transparency and accountability with the MMB OOP?

More importantly, how can the MMB set the value and duration of the OOP without complete and transparent knowledge of how the OOP is collected and distributed in its totality?

The grassroots is not alone in its call for reform. At a recent hearing of the Senate Agriculture and Rural Affairs Committee, many industry leaders called for reform of the existing process as well. Opinions differ on how to proceed, but clearly the desire for change has become more widespread.

The real decision before the board today is whether to continue to support an over-order premium that:

- 1) Is being utilized to subsidize out-of-state dairy farmers.
- 2) Is being manipulated by corporate retail giants who pocket the OOP with no obligation to pay it back to Pennsylvania dairy farmers.
- 3) Creates incentives for actors to move milk across state lines.
- 4) Cannot be quantified in real total dollars by anyone in this room, or indeed anyone on earth, as to the amount collected, paid to farmers, or "lost" in the system.
- 5) Generates significant controversy in the community of dairy farmers in this Commonwealth.

- 6) Creates winners and losers, and pits farmers against other farmers depending on who markets their milk, how their milk is used, and a host of other factors beyond the control of affected dairy farmers.

## CONCLUSION

As an administrative agency, the Milk Marketing Board is not bound by the rule of *stare decisis*. With that said, an administrative agency must render consistent opinions and should either follow, overrule, or distinguish its own precedent. Bell Atlantic – Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 672 A.2d 352 (Pa. Commw. 1995). The burden on those seeking a change in any policy, particularly a long-standing policy, should be to demonstrate that the precedent under review should be overruled or distinguished.

I conclude that the board should, at this time, distinguish the proposed renewal of the Over Order Premium from past precedent for at least the reasons previously outlined, and do so in the following manner:

- 1) The board should not rubber stamp any proposal to extend the premium without thoughtful consideration of the above-mentioned factors.
- 2) If the board chooses to extend the premium, the board should give great thought to the dollar amount set per hundredweight, taking into consideration that:
  - a. a higher dollar amount will inject more money into a flawed and unaccountable process with no guarantee of what will actually come back to the Pennsylvania dairy farmer, and
  - b. a lower dollar amount will provide less opportunity for diversion of funds away from the intended recipient, the Pennsylvania dairy farmer, while continuing the premium framework for additional time to allow the board, the General Assembly, and stakeholders to explore and implement real reforms.
- 3) The board should vigorously explore options to revise or reform the OOP to ensure every penny of premium money gets to its intended recipient – the Pennsylvania dairy farmer.
- 4) The board should vigorously explore options to account for every penny generated by the OOP, and every dollar paid back to the Pennsylvania dairy farmer.
- 5) The board should be thoughtful as to the length of any extension.

I appreciate the opportunity to speak to the board on this matter today.



June 24, 2015

House Agriculture Committee  
Martin Causer, Chairman  
41 B East Wing  
Harrisburg, PA 17120

Dear Chairman Causer:

Last week, I had the opportunity to attend and listen to the testimony that was provided in the hearing to consider changes in the PMMB to reflect PMMB payment on cooperative milk checks. In an effort to reiterate our position stated in the hearing, I wanted to submit some clarifying comments.

During the hearing, DFA Northeast's Co-Chairman - Bill Beeman - made the statement that we send Pennsylvania money out of the state followed by a statement that New York money flows into Pennsylvania. In this statement, Mr. Beeman was trying to explain that all of the premium dollars we collect are blended together. Unfortunately, this was not fully explained and we are concerned that your committee may not understand how DFA collects premiums from the marketplace and pays out over-order premiums to members. The following is an explanation we hope you would share with your committee members.

When DFA Northeast collects over-order premiums from the sale of milk, they are combined in one pool of money and lose state identity. In other words, there is no special account for PMMB premiums, New Jersey premiums, New York premiums, Class I premiums, manufacturing premiums or other premiums, etc. Once all of these premiums are collected, and after marketing expenses are paid, the premiums are all paid to Northeast DFA members in the form of market driven premiums – base premiums, competitive premiums, volume premiums, quality, etc.

With respect to Pennsylvania, we performed a special calculation for the month of April 2015 and found the amount of the market driven premium dollars paid to Pennsylvania farms was more than double the amount of PMMB premiums / dollars collected for that month. Additionally, we performed the same calculation for August 2014 and the amount of market driven premium dollars paid to DFA members was more than triple the PMMB premiums collected. It is important to note that the founding principles under which a cooperative functions is to pool over order premiums such that members are equitably paid for their milk. We do not penalize a farm for being further away from a Class I plant than its neighbor nor do we penalize farms in a location where their milk may never touch a Class I plant because of distance or decisions we make dispatching the milk. Instead, Cooperatives pool premium dollars to benefit all members. In summary, we want all farms to have the benefit of the diverse market in the Northeast regardless of their location.

In Pennsylvania, we consistently pay more in market driven over-order premiums to our members than the specific PMMB premium dollars, and we maintain our position that this proposed legislation would disrupt the way dairy farmers conduct business in Pennsylvania. This proposed legislation would also add additional administrative costs since we balance the majority of the excess milk in Pennsylvania, causing a substantial portion of Pennsylvania milk to be delivered to plants outside Pennsylvania.

More Cooperative.



To track the movement for more than 1,500 farms and identify the PMMB premium collected on Pennsylvania milk, which is a minimal percent of the overall premiums paid, and then determine what milk is delivered to Pennsylvania plants for payments to those members would not be an economic gain to farms, and in fact would create additional administrative work.

In summary, DFA continues to oppose the proposed legislation because it does not benefit our members, it disrupts the way we conduct business and ample transparency and accountability already exist today.

Sincerely,

A handwritten signature in black ink, appearing to read 'John T. Siglow', is written over a light blue horizontal line.

**John Siglow**  
Dairy Farmers of America, Inc.  
Northeast Area

More Cooperative.

5001 Brittonfield Parkway • East Syracuse, NY 13057 • p. 315-431-1352 • f. 315-433-2345 • [www.dfamilk.com](http://www.dfamilk.com)