Testimony Offered for
Pennsylvania Farm Bureau
Before the Pennsylvania Senate Committee on Agricultural and Rural Affairs

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Introduction

Chairman Vogel, Minority Chair Schwank, and members of the Committee:

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. Farm Bureau thanks the Committee for providing the opportunity to offer testimony regarding the Class I over-order premium.

I serve on PFB's 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. Our operation is currently part of Organic Valley Cooperative, and our milk is used for fluid milk, yogurt, and ice cream.

As we've testified to in past hearings before the Pennsylvania Milk Marketing Board, we believe that potential reform of the over-order premium must be aimed at three primary goals: (1) uniform distribution among all Pennsylvania dairy farmers; (2) the amount charged to Pennsylvania consumers is not substantially more than what is distributed back to Pennsylvania dairy farmers; and (3) the distribution system must not provide incentives by which payment of the premium can be avoided by moving milk across state lines. While these goals are admittedly high-level in scope, we think that before we can craft specific proposals aimed at them, we first need better data to fully understand the scope of the issue.

Echoing past sentiments by Representative John Lawrence and Secretary Russell Redding, it's shocking that in a state with such a rich dairy history, no one can say with reasonable certainty how much milk is actually sold in Pennsylvania.[1] We can track to the bottle or pack how much alcohol or tobacco products are sold, but despite all the hearings, meetings, and testimony regarding the over-order premium, which now span decades, we still simply don't have a good grasp on how much milk is sold in the Commonwealth.

The Pennsylvania Department of Agriculture, in partnership with Temple University, nobly attempted to close this information gap in advance of hearings before the Milk Marketing Board last year, but even with their combined resources the information gap proved too difficult to overcome and the Department ultimately decided against publishing the results.

To this point, we think that last session's Senate Bills 840 and 841 can assist with providing better data for all interested parties. We thank Senators Vogel and Schawk for indicating their willingness to reintroduce this legislation. The Milk Marketing Board does not currently collect data on distributors who purchase pre-

[1] Some of the informal methods commonly discussed within the industry involve utilizing per capita consumption of milk and dividing by Pennsylvania's population. Obviously, this is an extremely rough calculation and further complicated by factors such as widely available consumption data primarily being based on a national level, rather than by state.

packaged milk from out-of-state sources intended for resale in Pennsylvania. The legislation would license these importing distributors to give the industry a better grasp on how much milk is coming into Pennsylvania from out-of-state sources. While imposing a premium on this milk may prove unworkable due to constitutional constraints, we think that having a better grasp on this data will still help all parties develop sound dairy policy proposals.

Turning to the first of the three mentioned reform elements, we believe that the premium should be uniformly distributed on a hundred-weight basis to all Pennsylvania dairy farmers. Currently, the premium is only applied to Class I fluid milk and distributed back to farmers whose milk is used for Class I purposes. The reasons and types for the ultimate end use of milk involve numerous and complicated factors such as balancing the milk supply, existing contracts, cooperatives' generally limited use of fluid milk, and an individual producer's business strategy. Thus, while the reasons and motivations regarding milk class use and implementation vary greatly, the practical result is that the over-order premium meaningfully helps only a small segment of Pennsylvania dairy farmers.

Unfortunately, as we have stated before, 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. As such, we are seeking a premium structure that while still only applied to class I milk, is distributed uniformly on a hundred weight basis to all Pennsylvania dairy farmers, not just dairy farmers whose milk is ultimately used for Class I purposes.

We understand this may result in the individual pieces of the premium pie being smaller for some dairy famers since the total number of eligible producers will increase while overall premium dollars may generally not, however, given the dissent that the present structure has fermented, we think this a fairer system on balance.

Turning to the next element, 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, or at least perceived, to ultimately be returned to and benefit the Pennsylvania dairy farmer. While many issues surrounding the premium involve the byzantine and historical underpinning of dairy pricing and classes, Pennsylvanians in every county, township, municipality, and city consume milk.

In agriculture, we often talk about bridging the urban-rural divide, and this issue directly affects a large portion of all of your constituents. Regardless of whether milk is purchased in Center City Philadelphia or the most rural part of Tioga County, the premium is functionally a tax premised on the basis that Pennsylvania milk consumers pay more to aid Pennsylvania dairy farmers. That's the essential bargain. So, to the extent that Pennsylvania milk consumers are paying more without actually benefitting Pennsylvania dairy farmers, we think that's not only unfair to dairy farmers but equally as problematic for consumers across Pennsylvania.

Admittedly, I'm a dairy farmer and not an economist or market analyst. And as such, we can't offer specific percentages or amounts as to what's "substantially more" than what's ultimately paid back, but we do agree that this issue is fundamental and important to meaningful over-order premium reform.

Regarding the final point, milk that is not processed in Pennsylvania is not subject to the premium. Thus, although milk might be produced by Pennsylvania dairy farmers and sold in Pennsylvania, simply moving milk to be processed outside of Pennsylvania and then resold in Pennsylvania means that the premium is imposed at retail, and thus an additional charge to the consumer, but that there is no legal obligation for the premium to be returned to the Pennsylvania farmer. We believe this is at odds with the essential bargain and intent of the over-order premium previously discussed. While this is one example of what's informally referred to as the "stranded" premium,[2] the fact is that regardless of one's motivation, be it legitimate business practices or purposeful avoidance of the premium's intent, the current framework provides an obvious and easy incentive to move milk across state lines. If the bargain and benefit is truly between Pennsylvania consumers and Pennsylvania dairy farmers, then we think the premium should be structured as such.

Conclusion

Pennsylvania Farm Bureau supports the mentioned elements to enact a fairer premium structure for all stakeholders. While we commend the Pennsylvania Milk Marketing Board, the Pennsylvania Department of Agriculture, and related parties for their efforts over the past year to bring a much needed and overdue spotlight to these issues, the General Assembly ultimately has the greatest ability to enact material changes to the over-order premium. As this Committee contemplates whether and how to enact such changes in the coming months, Pennsylvania Farm Bureau stands ready and willing to be a constructive partner in such efforts. Again, we thank the Committee for providing the opportunity to testify on these issues. I'm happy to answer any questions this Committee may have.

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[2] *A Study of Pennsylvania's Dairy Industry*, Pennsylvania Legislative Budget and Finance Committee Report, 2019, at p. 108 ("The OOP is considered to be "stranded" when retailers or wholesalers sell milk at Pennsylvania prices, but obtain it from outside Pennsylvania, possibly at a cheaper price."). Another example of the stranded premium involves buying milk from non-Pennsylvania producers but selling in Pennsylvania stores, which results in the premium being functionally applied at retail but lacking any legal obligation to be returned to any dairy farmer, Pennsylvania or otherwise.