



Testimony of Chuck Turner, Jr. On Behalf of

Turner Dairy Farms and the Pennsylvania Association of Milk Dealers

Before the Senate Agricultural and Rural Affairs Committee on April 25, 2023

Thank you, Chairman Vogel and Chairlady Schwank, for your deep concern for the dairy industry and for inviting us to participate in this hearing. I am here on behalf of my own company, Turner Dairy Farms, which employs 210 people, buys raw milk from three dozen dairy farms, and has been in business since 1930, and on behalf of the Pennsylvania Association of Milk Dealers. PAMD, as we call our association, has been supporting fluid milk processors and their dairy farmer suppliers since 1933. Presently, PAMD's membership includes 17 fluid milk dealers that buy raw milk from dairy farmers or cooperatives, process, package, and sell fluid milk products as well as other dairy products and beverages. Most of our members have locations in the Commonwealth, all of our members supply packaged fluid milk and other products within the Commonwealth, and the majority of our members are family-owned businesses that have been in business for three or four generations.

Our members provide hundreds of good, family-sustaining jobs at our plants and in transportation, and we provide good local markets for many dairy farm families in the Commonwealth, which in turn support the economy and infrastructure of Pennsylvania's farming communities. PAMD wants this Committee to know that the Over Order Premium may be misunderstood and maligned, but that does not mean that the Over Order Premium isn't critically needed, and that does not mean it isn't working. We encourage this Committee to resist pressure to abandon something that the empirical evidence shows beyond a shadow of a doubt is working to help the Pennsylvania dairy industry buck the national trends of fluid milk plant closures, dairy farm exits, and declining diversity of ownership and size among fluid milk plants and dairy farms respectively. That is not to say we, as an industry, shouldn't put our heads together to identify ways to supplement the current system, but PAMD is urging that whatever else the Legislature decides to do to help the dairy industry, it supplements as opposed to replaces or materially changes what is currently in place.

Shipping to Turner and other fluid milk plants tends to be more burdensome in that it comes with more risk than shipping to manufacturing plants or shipping through the cooperative. Seasonal and even weekly fluctuation in demand is a big challenge for the fluid milk sector. This requires our suppliers to make adjustments in their herd management and trust the other farmers are doing the same in order to keep milk production in line with fluid milk sales so that we can market any surplus milk. In addition, unlike farmers shipping to their cooperative, the farmers shipping directly to fluid milk plants do not share in the proceeds of other lines of business that cooperative members own because of their cooperative membership. Many cooperatives can be and are profitable, and they share that profit with their members through various distributions, some of which have been called the 13th milk check. When one combines these factors with the fact that the minimum price that our farmers receive through the Federal



Milk Marketing Order (“FMMO”) system is the same as farmers who ship to manufacturing plants, the Over Order Premium has become a critical tool for fluid milk plants to incentivize farmers and cooperatives to put up with the costs and risks of serving a fluid milk plant. FMMOs are set up such that Class I milk processors generally pay some of the fluid milk prices to the Market Administrator for redistribution to dairy farmers that ship their milk to manufacturing plants. The result is that dairy farmers supplying fluid plants receive no more than those supplying cheese or butter plants.

The Over Order Premium is a distinctive benefit for Pennsylvania’s fluid milk plants because *the Over Order Premium affords fluid milk plants an antidote to the burdens the Federal Milk Marketing Order places on fluid milk plants through mandatory regulation and the requirement to subsidize other classes of milk* because it helps Pennsylvania’s plants to recover the premiums that they must pay to attract milk to a fluid milk plant when the FMMO neutralizes that incentive. Without the ability to pass these necessary premiums through in the wholesale and resale minimum prices, fluid milk plants located outside of Pennsylvania have been closing at an astonishing pace as they must compete for a declining share of the consumer’s stomach, but in a market where there is retail consolidation and ultra-competitive price competition leaving only those standing who have ways to manage their costs internally in ways that the traditional fluid milk plant does not. This is especially true of privately owned plants like Turner Dairy and the majority of our PAMD members who do not have tools available to them that cooperatives and vertically integrated plants have to manage the FMMO burden of subsidizing the prices paid for milk used for yogurt, cheese, butter, and powder and still having to pay premiums.

Since the major bankruptcies of two fluid milk processors in 2020, the diversity of ownership has been reduced as cooperative ownership of fluid milk plants increased substantially. We have cooperative owners within our ranks, and they are good members and contribute positively to the tapestry of the dairy industry, but PAMD believes the industry is better off with greater diversity and having the Turners of the world able to continue to operate as well. According to the expert PAMD hired last summer to participate in hearings before the Milk Marketing Board (“PMMB”), whose name is Sara Dorland, and who could not make this hearing date due to a prior engagement, she found that nationally independent processors dropped from 69% of the total fluid processing assets to 44% since 2020. Whereas, in Pennsylvania, independent processors still represent 62% of the fluid milk processing assets thanks in no small measure to the interplay of the Over Order Premium and wholesale and retail minimum prices. Vertically integrated grocery processors make up the remaining amount. As our expert has explained, consumers and producers are better off with more diversity – diversity ensures that various niches such as school milk and mom and pops will be served, and diversity ensures that dairy farmers have options for where they can sell their milk. The rebuttal testimony of Sara Dorland can be accessed on the PMMB website at <https://www.mmb.pa.gov/Public%20Hearings/SiteAssets/Pages/Over-Order-Premium-Hearings%2019-20/PAMD%20Dorland%20testimony%20and%20exhibits.pdf>



In addition, since 2020, more than a dozen fluid plants have closed across the country. Some states have seen plant closings result in only two or three fluid plants left standing, including the states of Alabama, Mississippi, and Louisiana. Pennsylvania fluid plants have not been among the casualties, and as a result, Pennsylvania consumers, including Pennsylvania schools, have not been faced with an inability to procure milk. Within the past year, in some of the states with plant closures, they found that milk was not available locally and it was too costly to transport half pints in, so school districts had to apply to USDA for waivers from the school lunch program. Sara Dorland's Rebuttal Testimony referenced above includes articles about this. Instead, as the United States continues to see dairy farm numbers decline, Pennsylvania has broken the national trend, and while we have lost farms, we have done so at a slower pace than the national average, and this is especially striking because Pennsylvania has a high concentration of smaller producers which are most at risk and have seen the largest declines nationally, but less so in Pennsylvania.

Recently, some have begun to question how can the Over Order Premium have such far-reaching benefits when the Over Order Premium is only paid on milk volume that serves fluid milk plants? It is because the approximately 641 independent farmers who collect slightly less than half of the Over Order Premium captured in the market, and the cooperatives who collect slightly more than half of the Over Order Premium captured in the market are stronger and serve as a nearby source of high-quality raw milk that strengthens the fluid milk plants, and, in turn, each of these entities strengthen and support many other aspects of the highly interconnected ecosystem of the dairy industry. The farm numbers and percentages are sourced from a December 2021 article in Lancaster Farming by Dr. Carol Hardbarger. Here are some examples of how the OOP makes a difference across Pennsylvania's dairy industry.

- The OOP helps Pennsylvania fluid milk plants to be confident in their ability to attract nearby raw milk because while it fluctuates, it has been a reliable source of revenue for those farms nearby Class I plants.
- The OOP makes it possible for Pennsylvania fluid plants to pay and recoup the cost of the Over Order Premium through wholesale minimum prices, a benefit fluid plants outside of Pennsylvania do not have and have suffered as a result.
- It drives revenue to independent farmers and cooperatives serving fluid plants. Independent farmers use the money to keep up with the cost demands and risks of supplying a fluid milk plant. In the case of cooperatives, who collect the premium on behalf of their dairy farmer members, they receive millions of dollars that can be used for premiums, but also as needed for the good and advancement of the cooperative and their membership. If the cooperative uses the money to defray transportation costs or other costs, the member milk checks are better off than they otherwise would be. As a result, it is entirely possible that cooperative



farmers do not directly feel the benefit of the Over Order Premium but that does not mean it isn't meaningfully impacting them.

- The Over Order Premium is also something bankers consider when financing farm or plant credit, thus affording farms and fluid plants operating credit or credit that can be directed towards investment.
- Recently and in the past, industry groups have testified that the Over Order Premium has a positive influence on negotiated premiums for milk that is not subject to the Over Order Premium.
- The Over Order Premium is also more timely and relevant than Federal Milk Marketing Orders – it can be adjusted more readily to help producers defray costs or to help plants compete.
- All of this leads to more diversity and plant retention in Pennsylvania. Diversity is important to manage risk by providing the market with breadth of processors and farms that buffer against exposure to any one group – so that even as there are processors that tend to focus on large warehouse business as a cost containment method because serving schools and multiple stops in smaller trucks in smaller packages is costlier, there are local plants that stand willing and able to supply these niche markets.
- More fluid milk processing reduces the risk that it has become increasingly difficult to access cooperatives. At times, access to a cooperative is not available until an existing cooperative member is ready to exit the business or sell their operation so that base can be purchased. If the Over Order Premium goes away and it exposes fluid milk plants to margin erosion and further decline, what will come of the many farmers and multiple families supporting each farm who rely on those markets.
- More fluid milk processing in Pennsylvania enables Pennsylvania's independent dairy farmers *and* cooperatives to sell their milk closer to home to minimize transportation costs.
- More fluid milk processing in Pennsylvania enables more independent *and* cooperative farmers access to FMMO pooling and provides access to federal milk marketing order blend prices.
- More fluid milk processing translates to a higher blend price available to independent *and* cooperative farmers participating in the FMMO.
- More fluid milk processing means more farms have good local homes for their milk and more farms that can weather the cost of farming. Each dairy farm that stays in business helps the broader agricultural infrastructure as they spend dollars in the community that keeps business that are vital to farming in business such as



the veterinarian, the feed mill, the nutritionist, the equipment dealer, the insurance company etc.

- Marketing cooperatives, manufacturing cooperatives and manufacturers benefit from a healthy fluid milk sector because many fluid milk plants sell their excess cream to manufacturing, buy regular or spot milk from cooperatives or manufacturing facilities often at premiums to balance and when fluid milk plants have to sell surplus milk to balance these entities often have the ability to buy at deep discounts thereby lowering their input costs for manufacturing.
- The entire agricultural ecosystem benefits when the fluid milk industry is healthy and the Over Order Premium makes a substantial contribution to that end.

Please don't just take my word for it though. PMMB prepared a nice summary of the work the PMMB does and the benefits of the Milk Marketing Law and the minimum prices that echoes some of these same points. That document can be found as an exhibit in Sara Dorland's Rebuttal Testimony which is referenced above with a link for access.

A concern has been raised that consumers are required to pay the Over Order Premium, but where retailers source their packaged milk from out of state, there is not a mandated passthrough of the Over Order Premium to the Pennsylvania farmer. PAMD is still gathering data right now to evaluate claims about what that percentage might be, but even assuming for argument that percentage is as high as 50%, that fact alone would not support changing the current structure of the Over Order Premium since the empirical facts show that the Over Order Premium is helping the Pennsylvania dairy industry to do better than the national average. PAMD would also note that a substantial volume of the packaged milk that is coming from out of state is largely specialty milk such as extended shelf-life milk, high protein milk, lactose free milk and A2 milk, which are products that Pennsylvania processors are not set up to supply. Our expert, Sara Dorland, has observed that in the case of some of these specialty products the consumer is not being required to pay the Over Order Premium because these products follow national pricing strategies such that the price of Fairlife in Hailey, Idaho (\$4.99) will be the about the same as the price of Fairlife in Red Lion, Pennsylvania (\$4.89) on the same day. The point is that for specialty milk coming from out-of-state, the consumer is not being forced to pay the Over Order Premium when they are buying these specialty milks, but rather they are choosing to pay the national price established because they want that particular product.

One can imagine that these companies would not look favorably on Pennsylvania grabbing a portion of the revenue their R&D and their dairy farmers generated. This is especially concerning in light of a substantial body of case law that holds that the negative aspect of the Commerce Clause of the US Constitution prohibits states from subsidizing their local industry with revenue from their out-of-state competitors. What PAMD does not want to happen



is for the Over Order Premium to be replaced by something that is tested in the courts and potentially subject to a preliminary injunction, and then Pennsylvania would have nothing. We sincerely believe the industry would be better off for any number of reasons to identify a separate mechanism to address the concerns of dairy farmers that do not directly feel the benefits of the Over Order Premium so that we do not lose the benefits of the Over Order Premium that we can objectively observe.

PAMD has begun discussing ideas with industry stakeholders and is committed to doing so. We will be as creative and open-minded as we can, but we are sincerely hoping that stakeholders and this Committee see just how special the Over Order Premium is, even if more help is needed as a supplement, not a change, to the current Over Order Premium.

As this Committee moves forward, we will be happy to provide additional input. The bottom line, however, is that the state cannot and should not meet the challenge of subsidizing all Pennsylvania dairy farmers with proceeds that are generated through the fluid milk market.

Thank you for this opportunity to share these thoughts with the Committee.