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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGRICULTURE

August 8, 2016

Douglas Eberly, Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg PA 17110

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**RE: Proposed Regulation – Uniform Systems of Accounts: Cost centers and operating accounts; Cooperative cost centers**

Dear Mr. Eberly:

Please accept these comments from the Pennsylvania Department of Agriculture (“Department”) in support of the Pennsylvania Milk Marketing Board’s (“Board”) Proposed Rulemaking entitled *Uniform Systems of Accounts: Cost centers and operating accounts; Cooperative cost centers* which was published on July 9, 2016, at 46 Pa.B. 3655.

These comments are limited to the addition of section 149.46, relating to Cooperative cost centers, to 7 Pa. Code Chapter 149.

As you know, this Proposed Rulemaking is the result of a hearing which commenced in November of 2014 at the request of the Greater Northeast Milk Marketing Agency (“GNEMMA”), which represents cooperatives that market milk for their Pennsylvania cooperative members to Pennsylvania Class I dealers. GNEMMA asked the Board to implement a mandatory cooperative procurement charge for milk supplied to Class I dealers to compensate the cooperatives for procurement costs they incur that are similar to the costs the Class I dealers would incur if purchasing the same milk directly from independent (non-cooperative) dairy producers.

The Department participated in this hearing as an interested party and filed a post-hearing brief generally in support of GNEMMA’s position. (Attachment A) In its brief, the Department agreed that when milk dealers purchase milk from cooperatives: (1) they should have to pay milk procurement costs the same as dealers who purchase milk from independent producers; (2) these costs should be included in the PMMB minimum producer price for those purchases; and (3) dealers should be able to recover these costs through the wholesale and retail cost buildup. The Department took no position as to whether the Board should adopt the cooperative procurement costs presented by GNEMMA’s witness at the hearing, or instead develop its own mechanism for determining these costs.

As the result of that hearing, on November 4, 2015 the Board issued Official General Order No. A-992 in which it took the first step in this process: “The Board finds it is appropriate to develop a framework, set of regulations, and reporting mechanism for cooperatives similar to that in place for milk dealers that will allow us to accurately determine relevant cooperative costs.” OGO A-992, Finding of Fact No. 13

The Department applauded the Board’s decision in a press release on November 16, 2015 (See Attachment B), and further “urge[d] the board to develop the mechanism to accurately determine these costs without delay . . .”

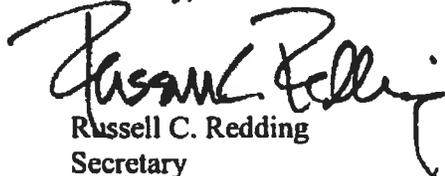
With this Proposed Rulemaking, specifically the addition of section 149.46, relating to Cooperative cost centers, the Board is putting that reporting mechanism in place. The Department believes the Cooperative Cost Centers set forth in section 149.46 are proper and will allow the Board to accurately determine cooperative procurement costs.

In its post-hearing brief the Department said “. . . the cooperative procurement costs should be, as closely as possible identical to . . . the procurement costs incurred by dealers acquiring milk from independent producers.” The Department maintains this position and believes that the limitations included in sections 149.46(a)(9) and 149.46(c) will ensure that only the appropriate costs related to the cooperatives’ milk procurement activities will be captured.

Finally, the Department commends the Board for implementing this process in a very timely manner.

Thank you for the opportunity to provide these comments.

Sincerely,



Russell C. Redding  
Secretary

**ATTACHMENT A**

**Pennsylvania Department of Agriculture Post-Hearing Brief**

**In the Matter of: Over-Price Premium Hearing, Part II**

**Filed July 24, 2015**



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 24, 2015

Luke Brubaker, Chairman  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg PA 17110

**Re: Over-Price Premium Hearing, Part II, All Milk Marketing Areas**

Dear Chairman Brubaker and Members of the Board:

Please accept this letter brief on behalf of the Pennsylvania Department of Agriculture ("Department") with respect to the above-referenced hearing. The Petitioners in this matter, the Greater Northeast Milk Marketing Agency ("GNEMMA"), are requesting (1) that the Board implement "a mandatory cooperative procurement charge for milk from Pennsylvania cooperative farms supplied to Pennsylvania dealers for Pennsylvania class I use," (GNEMMA Br. 3), and (2) that "[t]he over-price premium, embodied in OGO-913A and OGO-925, should be abolished." (GNEMMA Br. 29). The Department generally supports Petitioners on both of these issues.

**Recovery of Cooperative Procurement Costs**

When milk dealers buy milk from independent dairy producers, they incur the costs of providing services associated with procuring this milk, such as field services, laboratory testing, arranging for transport of milk to the plant, payment to producers, balancing the supply of milk with daily processing needs, and administrative services to support all of these activities. On the other hand, when milk dealers buy milk from

cooperatives, the cooperatives provide all of these milk procurement services, and bear all the related costs. Since the PMMB minimum producer price is the same whether milk is purchased from a cooperative or an independent producer, the cooperatives' individual producer-members end up bearing these costs. While it is true that cooperatives may be able to recover some of these costs through billing of service charges and the like, the fact remains that the current PMMB producer pricing "guarantees" one group of producers the PMMB minimum producer price, while the other group must fend for itself in attempting to negotiate a comparable price. The result of current Board policy is a disparate treatment of cooperative producers compared to independent producers, which should not be allowed to continue.

The Department agrees with Petitioners that when milk dealers purchase milk from cooperatives, they should have to pay these milk procurement costs, just as milk dealers who purchase milk from independent producers do, and that these costs should be included in the PMMB minimum producer price for those purchases. The Department also agrees that these costs should be included in the wholesale and retail cost buildup so that dealers can recover these costs.

The Department offers no opinion as to whether the Board should adopt the costs as determined and presented at the hearing by GNEMMA's expert witness, John Stoner, on an interim basis as proposed by Petitioners, (GNEMMA Br. 27), or whether the Board should instead first develop its own process for determining these costs and including them in the price build-up during the cost replacement process as described by GNEMMA on pages 27-28 of its brief. Suffice it to say that the cooperative procurement costs should be, as closely as possible identical to, and as quickly as possible reimbursed

to the same extent as, the procurement costs incurred by dealers acquiring milk from independent producers.

**Elimination of the Over-Price Premium as Currently Operating**

Approximately two years ago, the Board held a hearing, the result of which was a significant reduction of the diesel fuel add-on to the Class I over-order premium. (OGO A-983, July 1, 2013). In doing so, the Board expressed concern that “a combination of factors has conspired to begin to adversely impact in-state sales by in-state dealers.” (Id., Finding of Fact 24). The Board further stated “[w]e emphasize that we do not believe the mandated premiums are the only factor; in fact, *we intend to examine all facets of Pennsylvania milk pricing.*” (Id., emphasis added). Finally, the Board concluded that it was appropriate to lower the fuel adjuster, partly “in recognition that it should not be bearing the burden for other classes of milk.” (Id.) In the current proceeding, the Board is being asked to examine another facet of Pennsylvania milk pricing, the over-price premium, that may be unnecessarily adding to the wholesale and retail prices, and specifically one which may be “bearing the burden for other classes of milk” other than milk for Pennsylvania Class I use, as it is currently operating.

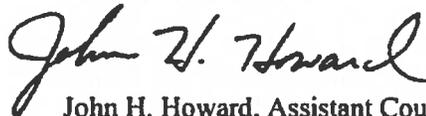
Petitioners presented credible evidence and testimony that the over-order premium, by itself, is sufficient to attract all the milk a dealer needs for Pennsylvania Class I sales, and that Pennsylvania dealers with high Pennsylvania Class I sales generally do not need to pay any over-price premium to pay competitive prices to producers. The evidence showed that currently the over-price premium is being paid by dealers with lower than average Pennsylvania Class I sales, for milk that is most likely ultimately sold for other than Pennsylvania Class I use. (GNEMMA Exhibits 15-17;

Troye Cooper testimony, N.T. 682-687, 715-717). This amount is then passed on to the consumer through the wholesale and retail price buildup (Cooper, N.T. 716), and in 2012, according to PMMB's 2012 monthly price announcements, amounted to between \$.02 and \$.05 per gallon. (GNEMMA Br. 33).

It is the position of the Department that consumers in Pennsylvania should not be paying over-price premiums for milk for uses other than Pennsylvania Class I sales. To the extent that this is happening under the current Board over-price premium orders, this practice should be eliminated. The Department therefore urges the Board to closely examine the over-price premium as it is currently operating to ensure that it is not "bearing the burden" of milk other than that utilized as Pennsylvania Class I, unnecessarily adding to the consumer price, and ultimately having an adverse impact on in-state sales by in-state dealers. (OGO A-983, Finding of Fact 24).

Thank you for your consideration of the Department's position in this matter.

Respectfully Submitted,



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Office of Chief Counsel  
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**ATTACHMENT B**

**Pennsylvania Department of Agriculture News Release**

**Department of Agriculture Applauds Milk Marketing Board Efforts to Establish Equitable  
Pricing for Milk Dealers and Cooperatives**

**November 16, 2015**



**FOR IMMEDIATE RELEASE**

**November 16, 2015**

## **Department of Agriculture Applauds Milk Marketing Board Efforts to Establish Equitable Pricing for Milk Dealers and Cooperatives**

**Harrisburg, PA – Pennsylvania Agriculture Secretary Russell Redding applauded changes to milk pricing announced November 5 by the Pennsylvania Milk Marketing Board (PMMB) benefitting both Pennsylvania dairy farmers and consumers. The changes may adjust prices paid to dairy farmer cooperatives upward and adjust prices paid by consumers downward.**

**"We congratulate the PMMB for acknowledging that the state's milk producer-owned cooperatives, and not just its milk dealers, bear costs for services which ensure a fresh, safe and abundant fluid milk supply is delivered from the farm gate to consumers," said Redding. "Both should be compensated equitably in the setting of producer milk prices."**

**Last week, the Pennsylvania Milk Marketing Board (PMMB) issued an order announcing they would develop a reporting mechanism for cooperative costs similar to that in place for milk dealers that will allow the board to accurately determine relevant cooperative costs in the price to producers.**

**The order was the result of a hearing initiated at the request of Pennsylvania milk cooperatives, who believe the current PMMB producer pricing formula results in inequitable treatment of cooperative member dairy farmers versus independent dairy farmers.**

**When milk dealers buy milk directly from individual dairy farmers for use as fluid drinking milk, the dealers incur the costs of providing field services associated with procuring this milk, which they pass on to consumers through the minimum retail price. But when milk dealers instead buy milk from cooperatives, the cooperatives provide all of those field services.**

**"The field services that cooperatives provide to their members make it unnecessary for milk dealers to incur certain costs, yet the value of those services was not previously being recognized in setting prices," Redding added. "We urge the board to develop the mechanism to accurately determine these costs without delay, and then take the necessary steps to ensure the cooperatives are adequately compensated in the minimum producer price for the costs of the services they provide."**

The cooperatives had also asked for changes to the retail price formula, alleging it currently results in Pennsylvania consumers paying some costs for some fluid milk that ends up being sold out of state.

In its order, the board agreed with the position of the department that Pennsylvania consumers should not pay for costs for that milk and announced that the board will review the current formula to determine whether changes are necessary.

"We also believe that the PMMB championed the interests of Pennsylvania's farmers and consumers in ruling that the retail price should not reimburse dealers for costs incurred to acquire milk that is subsequently shipped out of state," Redding added. "The retail milk price established by the board for Pennsylvania consumers should be calculated precisely enough to eliminate those costs entirely. No amount should be charged to our state's consumers to pay for milk going out of state."

Department officials urged the board to undertake the measures outlined in the November 5 order as soon as possible.

For more information about the Pennsylvania Milk Marketing Board, visit <http://bit.ly/1L1mWCG>.

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