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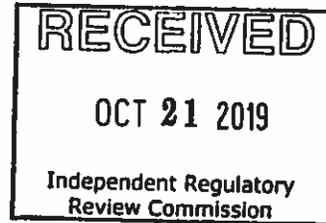
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October 21, 2019

Via Email Only to: ra-pmmb@pa.gov

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



Re: Regulation #47-20: Transactions between Dealers and Producers; Payment
Milk Marketing Board: IRRC Number 3243
Public Comment of Pennsylvania Association of Dairy Cooperatives

Dear Mr. Eberly:

Please accept this letter as Public Comment to the above-referenced proposed regulation on behalf of the Pennsylvania Association of Dairy Cooperatives ("PADC").

The PADC is an unincorporated association comprised of the following dairy farmer cooperatives: Dairy Farmers of America, Inc., Land O'Lakes, Inc., Maryland & Virginia Milk Producers' Cooperative Association, Inc., and Lanco Dairy Farms Co-op, Inc. These cooperatives represent approximately three thousand, three hundred (3,300) Pennsylvania dairy farms.

We are very grateful for the opportunity to comment upon these proposed regulations of the Pennsylvania Milk Marketing Board ("PMMB"). As you can anticipate, and as noted in Items 14 and 19 of the PMMB's Regulatory Analysis Form, the PADC and all other industry stakeholders have been well informed by, and have been provided ample opportunity for input to, the PMMB at every step of the process preliminary to first publication of this proposed regulation. For that, we are very grateful.

The PADC does have a few comments that we hope can help bring clarity to the regulation's requirements for those, like the PADC's members, who have a new obligation to satisfy. We also believe it will provide clarity for those, like the member farmers of all cooperatives in Pennsylvania,

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who are the intended beneficiaries. Lastly, our comments can hopefully also bring clarity to readers of the regulation seeking to understand it.

The PADC cooperatives are uniquely aware of the various business relationships impacted and the financial accounting involved in this regulation through the conduct of their businesses on a daily basis. After consultation amongst its members, the PADC has arrived upon its comments primarily in the form of a small set of relatively unobtrusive proposed amendments.

All PADC's proposed amendments simply seek to serve the purposes of the regulation set forth in the Regulatory Analysis Form. None seek to change or alter any outcome sought to be achieved by the PMMB. The PADC desires to have the regulation accommodate and encompass as many business realities as possible encountered in trying to apply the proposed regulation. On its face, the regulation is relatively simple and straightforward.

§143.15. Cooperative communication of over-order premium.

(a) Cooperatives shall show by line item on their monthly statements to dairy farmers marketing milk through the cooperative the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

(b) For the purpose of this section, "the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid" shall be calculated monthly by each cooperative by dividing the total over-order premium paid to the cooperative by the total cooperative member pounds marketed.

In order to clarify PMMB's ultimate objective, it is instructive to review PMMB's Regulatory Analysis Form, particularly its response to Item (22):

To minimize accounting and other requirements, the Board is prescribing a formula in the regulation for the cooperatives to follow when calculating the amount of over-order premium to be reported to their member producers. Each cooperative will have a cooperative-wide number to report, rather than a member-specific number, vastly decreasing accounting requirements.

In accordance with this objective, the PADC proposes the following amendments to the regulation.

§143.15. Cooperative communication of over-order premium.

(a) Cooperatives shall show by line item on their monthly statements to dairy farmers marketing milk through the cooperative the specific amount of the Pennsylvania Milk Marketing Board over-over premium being paid.

(b) For the purpose of this section, "the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid" shall be calculated monthly by each

cooperative by dividing the total Pennsylvania over-order premium paid to the cooperative by the total Pennsylvania member pounds marketed.

(c) For the purposes of subsection (b), if a cooperative markets milk supplied by a non member producer, the marketing cooperative shall consider the supplying producer as a member under this section.

(d) For the purposes of subsection (b), If a cooperative markets milk supplied by another cooperative, the marketing cooperative shall consider the supplying cooperative as a producer.

(e) Other than setting forth the calculation of value in subsection (b), nothing in this section shall require reduction or alteration of amounts, content or format of information about cooperative premium programs on the monthly statements to dairy farmers.

PADC's proposed amendments address three separate issues raised by PADC members after analyzing the application of the regulation as first published to their respective business operations.

- 1. Subsection (b) – addition of “Pennsylvania”:** Subsection (b) does not expressly specify that the over-order premium received by the cooperative is to be divided only by the Pennsylvania member pounds received. The majority of cooperatives impacted by this regulation market milk from members located in other states. The intention is certainly not to arrive at a number that includes all those “out-of-state” pounds. This has been addressed by adding the word “Pennsylvania” to modify member pounds. Additionally, the word “Pennsylvania” has been added to modify over-order premium, simply to assure clarity.
- 2. Addition of new subsections (c) and (d):** Cooperatives impacted by this regulation engage in various business relationships that need to be accounted for and which are not expressly addressed in the proposed language. Two such relationships need to be addressed in our view. The first is marketing milk for non-members. The second is marketing milk for other cooperatives. Application of the proposed calculation to those two factual scenarios would be problematic and likely not have achieved the PMMB's objective. Therefore, we suggest some adjustment to the regulation's language to achieve the PMMB's intent and to provide clarity for all concerned. New subsection (c) expressly provides that non-member pounds be aggregated with member pounds for this purpose. New subsection (d) provides the analogous solution with respect to the production of Pennsylvania farms of a cooperative whose milk is being marketed by another cooperative.
- 3. Addition of new subsection (e) – the over-order premium and cooperative premium payment programs:** As the PMMB states in its Regulatory Analysis Form (“RAF”), the objective of the regulation is to prescribe a formula for cooperatives to express to their members the value of the over-order premium received allocated to the hundredweights of milk marketed for Pennsylvania members. The objective of the regulation is not to arrive upon

Doug Eberly, Chief Counsel
October 21, 2019
Page 4

a “member-specific” payment being made. *See* the PMMB’s response to Items (22) and (26) of the RAF. In essence, subsection (b) creates a substitute for a “member-specific” payment being shown in order to satisfy subsection (a).

Under the Pennsylvania Milk Marketing Law, 31 P.S. 700j-809, cooperatives are affirmatively granted the right to determine within their membership the manner by which the proceeds of sales are divided, i.e. producer pay price programs. The act expressly states that “no provision of this act shall prevent, and no provision contained herein shall be deemed or construed to prevent, any cooperative association... engaged in making collective sales or in the marketing of milk for the producers thereof, from blending the net proceeds of its sales... in all its markets... and paying its producers such blended price....” The PADC cooperatives, and dairy cooperatives universally, blend the proceeds of sales before paying members. In fact, it is essentially infeasible to collectively market milk for multiple farms to multiple buyers without blending proceeds for pay price purposes.

In this context, to avoid any possibility of confusion on a monthly statement between the over-order premium value the subsection (b) calculation produces and the amounts of any direct payments to the individual member under a cooperative’s own internal premium programs, subsection (e) is proposed to be added. It makes clear that the amounts produced by subsection (b)’s calculation are not simply being added to any premiums being paid to the member through a cooperative’s premium program. The value received from Pennsylvania’s over-order premium may, or may not, be incorporated within the cooperative’s other premium program(s). Accordingly, new subsection (e) is intended to make clear that the manner and method by which a cooperative reflects its own premium program is not to be impacted in any way by the new additional expression of value required by subsection (b).

Thank you for the opportunity to comment upon the proposed rule.

Very truly yours,

JOHNSON, DUFFIE, STEWART & WEIDNER



Marvin Beshore

MB/tls

cc: Fiona E. Cormack, IRR
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PADC cooperatives

{all via email only}