

Part II of PMMB hearing  
**Proposal could net  
\$5 mil. for PA farms**

*By Sherry Bunting, Farmshine February 25, 2010*

HARRISBURG, Pa.—When David DeSantis—chief enforcement officer for the Pennsylvania Milk Marketing Board—testified he “firmly believes the proposed calculation change will net more dollars for Pennsylvania dairy farms,” he was talking about \$392,000 per month for a grand total of about \$5 million annually.

This would fluctuate, however, based on the over order premium level that is set at any given time by the PMMB. Currently, it is over \$3.00 per hundredweight including the fuel adjuster, and this translates to 25 cents per gallon embedded into the minimum retail milk price paid by consumers.

As reported in part one last week in Farmshine, these dollars were the subject of a tense eight-hour hearing on Tuesday, February 16. And they represent a fraction of the estimated \$26 million in state Class I over order premiums, which have been identified by the Pennsylvania Department of Agriculture and others as being ‘stranded’ between the consumers who pay the 25 cents per gallon at the store and the dairy producers for whom those quarters are, by law, intended.



In his opening testimony, DeSantis noted Section 805 of the PA Milk Marketing Law states: **“It is hereby declared to be the legislative intent that the benefits of any increase of prices received by milk dealers, by virtue of the minimum price provisions of this article, shall be given to producers.”**

The PA over order premium, since its inception, has been incorporated into the prices received by milk dealers from state retailers. The PMMB staff presented to the board an alternate formula, which would have the following effects: 1) Returns more over order premium to PA dairy farmers than the current formula; 2) Allows the PA milk dealers to recapture all payments and premiums paid to PA farmers in the resale price; and 3) Does not disturb or change current underlying calculations for Class or component prices for any producer regardless of whether they are in or outside of the state.

As was emphasized repeatedly throughout the day's proceedings, the proposal at hand would have no effect—whatsoever—on the Pennsylvania milk dealers that purchase all of their milk from Pennsylvania dairy farms.

Essentially, the proposal the PMMB will vote on in April simply states that any milk dealer sourcing milk both from Pennsylvania farms and out-of-state farms would no longer be able to use the milk from out-of-state farms to dilute their obligation to the in-state farms.

PA Department of Agriculture chief counsel Brooke Duer did not have witnesses, but he cross-examined every witness both for and against. PDA supports the proposed change.

Duer was diligent in his questioning, and at one point asked the dealers' expert witness how he arrived at the lower processor margin because the margin between cost and revenue recovered in the resale price was not adding up. What was revealed is that the witness' figures used a smaller revenue, which had been reduced by a discount given to the retailer for a cost not incurred by the processor. So, the margin really did not change.

If approved by the board, those dealers selling milk within Pennsylvania and sourcing the milk from farms in-state and out-of-state would have to pay the full state over order premium on either the pounds of milk sourced in Pennsylvania or the amount of their Class I utilization in resale within Pennsylvania—whichever quantity is the smaller of the two.

In addition to the testimony and exhibits of the milk dealers, who aggressively opposed the change, testimony was also presented by the cooperatives who supported it. Dennis Schad prepared to testify on behalf of the Greater Northeast Milk Marketing Agency (GNEMMA), but his testimony was cut short before it even began after PMMB chairman Richard Kriebel realized the cooperatives were including in their testimony other aspects of over order premium distribution beyond what was said to be the scope of the Feb. 16 hearing.

The issue deemed outside of the hearing's scope was related to how the over order premium levels are embedded into retail and wholesale prices and paid to the dealers instead of being paid to a "pool" or fund for Pennsylvania dairy farmers. Marvin Beshore, attorney for the cooperatives, defended Schad's right to testify pointing out that the discussion of the handler pool system was "pertinent to the scope of the hearing because the handler pool system does not dedicate the over order premium dollars to the PA producers, but rather to the handlers," he said. "It's a different point in the same concept... a subsection of the larger point."

Chairman Kriebel saw it differently, saying portions of the cooperatives' pre-submitted testimony dealt with "pooling," which he said is "clearly a separate and distinct issue." He allowed Schad's testimony on behalf of GNEMMA to be "submitted as-read," but he sustained the objections to virtually every avenue of questioning Beshore embarked upon.

Possession is nine-tenths of the law, so as long as the premiums are built into the wholesale and retail minimum prices, instead of being committed to a pool for the farmers, the revenue will continue to “belong” to the milk dealers to either pay out or not pay out, depending on how they are sourcing the milk.

Earl Fink’s testimony on behalf of the PA Association of Milk Dealers summed up a key element of this issue and others relating to the PMMB and the over order premium: “We believe it is unrealistic to expect this agency, which sets 13 to 17% of the total Class I price to farmers to solve all the dairyman’s financial problems. It is clear from the further breakdown of the farm price, that the problem for dairy farmers has been a decline in the FMMO minimum price.”

Even though there was no testimony provided from the consumer perspective, comments were made during the sunshine meeting the day of the hearing by representatives of the Philadelphia Mayor’s Office of Consumer Affairs. Lance Haver, director, asked for a hearing concerning the boundaries for the six milk-marketing areas, and an end to the 15 cent per gallon surcharge paid in the Philadelphia area that is not paid elsewhere in the state.

Haver concluded by saying that, “Our consumers want to know that the money they pay that is meant for the farmers, goes to the farmers, not to the shareholders of Dean Foods and H.P. Hood.”