



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-903 Amended

Posted: August 13, 1999
Effective: September 1, 1999*

**ORDER ESTABLISHING MINIMUM PRICES AND OTHERWISE REGULATING THE
CLASSIFICATION AND MARKETING OF MILK PURCHASED FROM PRODUCERS**

NOW, this 13th day of August 1999, the Commonwealth of Pennsylvania, Milk Marketing Board adopts and issues this Official General Order No. A-903 Amended under the authority of the Milk Marketing Law, 31 P.S. §§ 700j-101 - 700j-1204. Sections D (Provisions 1, 2, and 4) and E of this order replace Sections D (Provisions 1 - 4) and E of Official General Orders A-890 Amended, A-882, A-878 Amended, A-900, A-887, and A-886 Amended. All parts of official general orders that are inconsistent with Sections C - E of this order are superseded. This order will become effective at 12:01 a.m. on September 1, 1999, or, *should implementation of the United States Department of Agriculture's final decision on federal milk marketing reform be delayed beyond October 1, 1999 (*see* Finding of Fact 6), thirty days before the new implementation date.

**SECTION A
SCOPE; INCORPORATION**

This official general order governs the classification of, purchase of, and payment to producers for milk purchased within the Commonwealth. The attached findings of fact and conclusions of law are incorporated herein by this reference as though fully set forth in this order.

**SECTION B
DEFINITIONS**

The following words and terms have the meanings set forth in this section unless the context clearly indicates otherwise:

Board - The Milk Marketing Board of the Commonwealth, as created by Section 201 of the Law (31 P.S. § 700j-201).

Federal milk marketing order - Federal rule governing the purchase of milk from producers.

Law - The Milk Marketing Law (31 P.S. §§ 700j-101 - 700j-1204).

Milk dealer - As defined in Section 103 of the Law.

Over-order premium - A Board-mandated premium paid to Pennsylvania producers for Class I milk processed and resold in Pennsylvania.

Producer - As defined in Section 103 of the Law.

Sales point pricing - Pricing strategy in which producers are paid based on the class of use and the price for that class in the Pennsylvania milk marketing area where the milk was utilized.

USDA - United States Department of Agriculture.

SECTION C CLASSIFICATION OF MILK

Milk is classified in accordance with the terms of the federal milk marketing orders.

SECTION D MINIMUM CLASS PRICES

PROVISION 1 - CLASS AND COMPONENT PRICES FOR MILK SOLD WITHIN PENNSYLVANIA

(a) For each month the minimum class and component prices for each hundredweight of milk priced by a federal milk marketing order which is delivered or made available on consignment or otherwise to milk dealers to be sold, resold, or utilized will be the prices issued under the governing federal order. The Board-mandated price for Class I milk in a Pennsylvania milk marketing area will reflect the highest federal location differential for a county in the area where a Class I plant is located. The price for all Class I milk will be increased by the applicable over-order premium. For Class II, III, and IV milk not priced by a federal milk marketing order, the Board will use the federally announced skim and butterfat prices for federally regulated milk in those classes.

(b) Producers will be paid on a sales point pricing basis (*see* Provision 5). For Class I milk, the price will be the higher of the Board-mandated price, including the over-order premium (*see* subsection (a)), or the federal price.

PROVISION 2 - FLUID MILK SALES OUTSIDE PENNSYLVANIA

The minimum producer price for fluid milk produced, processed, and packaged in Pennsylvania and sold or disposed of outside Pennsylvania as Class I milk will be the prevailing federal price for such milk. For Class I milk sold outside Pennsylvania in areas adjacent to Pennsylvania, not priced by a federal milk marketing order, the minimum producer price will be at least the Class I price of the milk dealer's home area, exclusive of the over-order premium. The minimum producer price for Class I sales in areas not adjacent to Pennsylvania will be the price the milk dealer lawfully pays the producer.

PROVISION 3 - PRICE ANNOUNCEMENTS

For producer class and component prices, the Board will use the federally announced prices on the dates specified by the USDA. For resale pricing purposes, the Board will calculate a Class I and Class II resale price mover using the same methodology used by the USDA to determine Class I and Class II prices, but utilizing the two most recent summaries announced by the National Agricultural Statistics Service before noon on the date of the Board-announced price each month. The Board will announce these price movers on or before the 15th of each month to become effective on the 1st of the following month. To the extent the Board-calculated Class I resale price mover differs from the prices issued by the USDA, the Board will make the necessary adjustments to the Class I price in the next succeeding month. In milk marketing areas using a bracket pricing system, the Board will continue to determine Class II prices using the methodology currently in place.

PROVISION 4 - USE OF EQUIVALENT PRICE

If a price quotation used to determine a class price or the butterfat price is not available, the Board will determine and use an equivalent price.

PROVISION 5 - SALES IN OTHER PENNSYLVANIA MILK MARKETING AREAS

The Board will determine the producer price of milk by identifying the milk marketing area in which the milk is located when it leaves the selling milk dealer's control. That will be the area of utilization for purposes of sales point pricing (*see* Provision 1(b)). Milk will be presumed to leave the selling milk dealer's control upon:

- (a) Arrival at the destination point designated by the buyer if the seller incurs the costs of delivery;
- (b) Placement on the seller's dock if the buyer takes possession using:
 - (1) Equipment owned or leased and personnel employed by the buyer; or
 - (2) A trucking company that is independent from the seller. In determining whether a trucking company is independent from the seller, the Board will consider the totality of the relationship between the seller and the trucking company, including whether the seller:
 - (A) Owns any interest in the trucking company and, if so, the extent of such interest;
 - (B) Shares common directors, officers, management personnel, or employees with the trucking company;
 - (C) Uses equipment or facilities in common with the trucking company;
 - (D) Shares common accounting, purchasing, accounts receivable, or billing operations with the trucking company;
 - (E) Has common financing or credit arrangements with the trucking company.

SECTION E PAYMENTS TO PRODUCERS

PROVISION 1 - PAYMENT CALCULATION AND PROCEDURES

(a) For milk not priced by a federal milk marketing order, a milk dealer shall calculate the amount it owes its producers by:

(1) Adding the number of pounds of skim and butterfat handled, sold, used, or disposed of for each classification of milk in each Pennsylvania milk marketing area (*see* Section C) and adjusting for milk received from sources other than producers as set forth at 7 Pa. Code Chapter 143.

(2) Multiplying the adjusted total pounds of skim and butterfat determined under Paragraph (1) by the prices prescribed in Section D, using the weighted average butterfat test applicable to each classification of milk.

(3) Dividing the total value of all classifications of milk determined under Paragraph (2) by the total pounds of milk received from producers to find the blended rate per hundred pounds of milk.

(b) A milk dealer shall pay its producers in accordance with 7 Pa. Code Chapter 143.

When payment is made under the terms of a federal milk marketing order, the Board will recognize appropriate deviations from the calculations in Subsection (a).

(c) A milk dealer shall furnish a monthly statement to each of its producers. Statements must include the items set out in 7 Pa. Code § 143.14 and, in addition, must show the specific amount of the Board's mandated over-order premium being paid.

(d) A milk dealer may make no deduction from the producer payments mandated by this order unless permission in writing is first received from the producer. Any such deduction shall be itemized in detail on the monthly statement to producers.

(e) The Board will recognize pool debits or credits to the accounts of milk dealers making payments to producers through a marketwide pool. The Board will not recognize payments for marketing services performed by federal market administrators or assessments for order administration as payments to producers.

PROVISION 2 - RECOVERY OF UNDERPAYMENTS AND OVERPAYMENTS

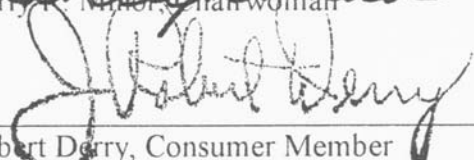
If the Board determines that a milk dealer has underpaid or overpaid a producer under nonfraudulent circumstances, the milk dealer or producer may recover either (1) the amount owing during a period of no longer than two years preceding the date the error is discovered or (2) if the error was caused by a bulk tank that was out of calibration, the amount owing during a period of no longer than two years preceding the date on which the calibration is corrected or during the period between the date of the corrective calibration and the date of the most recent preceding calibration, whichever is shorter. If the Board determines that a milk dealer has underpaid a producer, the milk dealer shall make restitution within 30 days of written notification by the Board. If the Board determines that a milk dealer has overpaid a producer, the milk dealer may, following written notification by the Board, collect an amount not to exceed \$0.20 per hundredweight until the overpayment is recovered. A producer's or milk dealer's rights or obligations under this provision shall terminate two years from the date of the last shipment of milk from the producer to the milk dealer.

**SECTION F
SEVERABILITY**

If any section, provision, subsection, paragraph, or clause of this order is determined to be unconstitutional or otherwise contrary to law, the remainder of the order will be given effect as though the unlawful part had not been included.

PENNSYLVANIA MILK MARKETING BOARD


Beverly R. Minor, Chairman


J. Robert Derry, Consumer Member


Luke F. Brubaker, Member

IF YOU REQUIRE THIS INFORMATION IN AN ALTERNATE FORMAT, PLEASE CALL 717-787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS).

FINDINGS OF FACT AND CONCLUSIONS OF LAW
HEARING FOR ALL MILK MARKETING AREAS
JUNE 2 and JULY 7, 1999

FINDINGS OF FACT

1. On June 2 and July 7, 1999, the Pennsylvania Milk Marketing Board (Board) conducted a hearing for all milk marketing areas to consider (a) adjusting the resale price structure in connection with federal order consolidation, (b) issues directly related to producer pricing under the new federal orders, and (c) current standards for butterfat ranges found on the Board's price sheets and in official general orders for the various milk marketing areas, as compared with standards issued by the United States Department of Agriculture. An order addressing item (c) was issued separately as Official General Order A-902.

2. Notice of the hearing was published at 29 *Pennsylvania Bulletin* 2350 - 51 on May 1, 1999, and at 29 *Pennsylvania Bulletin* 2629 on May 15, 1999. Notice was also mailed to all interested persons by means of Bulletin Nos. 1276 (April 16, 1999) and 1278 (May 6, 1999). (PMMB Exhibits 1 - 4)

3. On August 3, 1999, the Board adopted and issued Official General Order (OGO) A-903, effective September 1, 1999, or, should delay occur in implementing the new federal orders, thirty days before the new implementation date.

4. On August 10, 1999, Board staff filed a petition requesting that the Board amend Section D, Provision 3 of OGO A-903 to include calculation and announcement of Class II resale price movers and continuation of the current methodology for determining Class II prices in milk marketing areas using a bracket pricing system. (Board records)