



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-893

Posted: October 10, 1996
Effective: November 1, 1996

OVER-ORDER PREMIUM

Now, this 10th day of October, 1996, the Commonwealth of Pennsylvania, Milk Marketing Board, hereby issues the following Official General Order to be designated as Official General Order No. A-893.

SECTION I

The Findings of Fact and Conclusions of Law attached hereto as Attachment B are incorporated herein by this reference as though fully set forth in this document.

SECTION II

The official general price orders for Milk Marketing Areas 1, 2, 3, 4, 5 and 6 are amended as follows:

(a) By adding an over-order premium of \$.80 per hundredweight to the calculation of the Class I price beginning November 1, 1996, and remaining in effect until April 30, 1997, when the over-premium will be decreased to \$.50 per hundredweight.

(b) By adding the following additional terms to the "Definition" section of each order:

Diversion - Any transaction involving the purchase of milk from a producer in which the milk thus purchased does not enter the purchasing dealer's plant. Whether milk enters the plant of the purchasing dealer will be determined on the basis of United States Department of Agriculture guidelines.

Base Price - The minimum amount, excluding the over-order premium, to be paid producers by dealers using federal or state calculations where applicable.

Over-Order Premium - An amount, over the applicable federal order or state-established base price, which the Board mandates be paid for all milk produced and purchased in Pennsylvania and included in the Class I utilization of the purchasing dealer, calculated in accordance with subsection (c).

(c) The Board will calculate the over-order premium as follows:

- A - Pounds of milk from Pennsylvania producers
- B - Pounds of milk from all producers
- C - Pennsylvania Class I pounds
- D - Non-Class I diversions
- E - Applicable over-order premium rate

The total over-order premium to be paid to Pennsylvania producers by milk dealers located in Pennsylvania is based on the Pennsylvania Class I utilization of the producers' milk. To determine the total premium, the dealer divides the pounds of milk purchased from Pennsylvania producers by the pounds of milk purchased from all producers, net of non-Class I diversions. The resulting fraction expresses the percentage of Pennsylvania receipts. (Note: If the fraction is greater than 1, use 1.) The percentage of Pennsylvania receipts is multiplied by the product of the Pennsylvania over-order premium rate times the Pennsylvania Class I pounds. Calculations and utilization methodologies used to determine the base price (including "base" and "excess" calculations in Federal Order 4) will have no effect on the calculation used to determine the over-order premium to be paid to Pennsylvania producers. Once the total premium due has been calculated, it shall be payable to all Pennsylvania producers regardless of whether the milk they supplied was diverted or used by the purchasing dealer in his own plant.

$$\left| \frac{A}{B - D} \right| \times (C \times E) = \text{Amount due Pennsylvania producers}$$

EXAMPLE 1

- A - 500,000 pounds of milk from Pennsylvania producers
- B - 700,000 pounds of milk from all producers
- C - 350,000 pounds of Pennsylvania Class I
- D - 100,000 pounds of non-Class I diversions
- E - \$0.80 cwt. Pennsylvania premium rate

$$\left[\frac{500,000}{700,000 - 100,000} \right] \times (350,000 \times \$0.80 \text{ cwt.}) = \$2,333.33$$

EXAMPLE 2

- A - 700,000 pounds of milk from Pennsylvania producers
- B - 900,000 pounds of milk from all producers
- C - 500,000 pounds of Pennsylvania Class I
- D - 400,000 pounds of non-Class I diversions
- E - \$0.80 cwt. Pennsylvania premium rate

$$\left[\frac{700,000}{900,000 - 400,000} \right] \times (500,000 \times \$0.80 \text{ cwt.}) = \$4,000.00$$

SECTION III

Losses on Surplus or Distressed Milk Sales

With regard to the recovery of losses on sales of surplus milk and milk products as provided for under Section 143.43 of the Regulations of the Pennsylvania Milk Marketing Board (7 Pa. Code §143.1 et seq.), credits against any over-order premium (or any other payment mandated by the Board) otherwise due to producers shall be permitted only to the extent such losses exceed profits on such sales during the four-month periods extending from January 1 through April 30, from May 1 through August 31, and from September 1 through December 31 of each year, and then only in the same proportion as receipts of Pennsylvania-produced milk to total receipts.

In netting profits and losses on sales of surplus or distressed milk or milk products, the Board will use the following procedure. A net profit or loss figure for all applicable sales

will be calculated each month. The amount of any profit or loss will be subject to this initial netting calculation in the month in which such profit or loss occurs. (If not initially netted in that month, any loss will be excluded from further netting calculations.) The milk dealer shall take any net loss resulting from this initial netting calculation as a credit in that month to the maximum extent permitted, but in no event shall credits against net losses exceed \$.20 per hundredweight in any month.

The Board will incorporate any net losses in excess of the \$.20 per hundredweight limit into the netting calculation performed during the following month, except when that following month falls into a new four-month netting period (i.e., January, May, and September). In those instances, any losses in excess of the \$.20 limit will be excluded from further netting calculations. Although excluded from further netting, losses not fully deducted during the prior netting period because of the \$.20 cap may be "carried over" into the new period and taken as a credit. In applying this carry-over, the dealer must take such losses as credits in the first month of the new period (and any subsequent months) to the maximum extent permitted, subject to the \$.20 per hundredweight limit per month, until they are fully and completely utilized. (Examples of the application of this procedure are attached as Exhibit A.)

Thrice each year, in calculating the April, August, and December final payments, the net profit and/or loss figures from the relevant four-month period will themselves be netted. Based on that thrice yearly recapitulation, the dealer shall repay to producers any excess credits taken in the prior four months.

SECTION IV

Adjustments for Purchases from Other Dealers, for Shrinkage, and for Inventory Variation

The calculations specified in Section II(c) shall be performed only after proper adjustments have been made in the utilization calculation to account for purchases from other dealers, for shrinkage, and for inventory variation.

SECTION V

Effect on Calculation of Over-Price Supply Premium

The over-price supply premium will continue to be calculated

as set forth in the official general price order for each milk marketing area (i.e., the premium shall continue to be the difference between the total amount paid and the mandated minimum price). The amount added to the Class I price pursuant to this Official General Order as an over-order premium will be included in the computation of the minimum amount due for purposes of calculating the over-price supply premium under each official general price order for each milk marketing area.


Inclusions or Exclusions

In all milk marketing areas, any amounts paid for any milk in excess of the mandated minimum price for that milk will continue to be included in the calculation of the over-price supply premium.

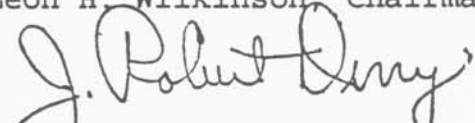
SECTION VI

This Official General Order shall be effective November 1, 1996.

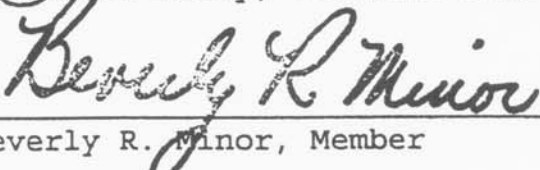
PENNSYLVANIA MILK MARKETING BOARD



Leon H. Wilkinson, Chairman



J. Robert Derry, Consumer Member



Beverly R. Minor, 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).

(Attachment A)

The following examples assume that purchases of milk from producers remain stable. The \$.20 cap on deductions as referenced in the second paragraph of Section III(b) will allow for no more than a \$5,000 deduction from producers in any one month.

	Bulk Milk Sale Loss	Bulk Milk Sale Profit	Amount Deducted
Example 1 -			
Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	8,000.00	0.00	5,000.00
Month 3	0.00	2,000.00	5,000.00
Month 4	<u>0.00</u>	<u>0.00</u>	<u>1,000.00</u>
TOTAL	\$18,000.00	\$ 2,000.00	\$16,000.00

All losses were recaptured in the period in which they were incurred.

Example 2 -

Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	8,000.00	0.00	5,000.00
Month 3	0.00	10,000.00	0.00
Month 4	<u>0.00</u>	<u>10,000.00</u>	<u>0.00</u>
TOTAL	\$18,000.00	\$20,000.00	\$10,000.00

Because profits exceeded losses, the \$10,000 deducted is to be repaid to producers. No profit or loss will be carried into the following period.

Example 3 -

Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	8,000.00	0.00	5,000.00
Month 3	5,000.00	0.00	5,000.00
Month 4	<u>5,000.00</u>	<u>0.00</u>	<u>5,000.00</u>
TOTAL	\$28,000.00	\$ 0.00	\$20,000.00

Losses exceeded deductions by \$8,000 in this period. This loss may be recaptured in the following period. Future profits will not be netted against this \$8,000 carry-over.

ATTACHMENT "B"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OVER-ORDER PREMIUM HEARING

OCTOBER 2, 1996

I. Procedural History

1. The hearing of October 2, 1996 was convened upon motion of the Pennsylvania Milk Marketing Board (Board) in response to petitions filed by the Pennsylvania Farm Bureau, the Pennsylvania Farmers Union and the Pennsylvania State Grange for the sole purpose of considering whether or not to change the level of the over-order premium as set forth in Official General Orders A-888, 889, and 892. (PMMB Exhibits 1-3)

2. Notice of the hearing was published in the Pennsylvania Bulletin, Volume 26, Number 37, on September 14, 1996, and notice of this hearing was sent to all interested parties by Bulletin Number 1250 on September 4, 1996. (PMMB Exhibit 4 and 5)

3. Pursuant to the Notice of Hearing, the Board convened the hearing on October 2, 1996 at 9:00 a.m. and conducted the hearing to completion on the same day.

II. Summary of Testimony

1. Peter Seman, a dairy farmer, whitewasher and member of the board of directors of Susquehanna County Farm Bureau testified that because of the different classes of milk, the farmer receives less than the cost of production for milk and urged the Board to adopt an additional \$.30 per cwt premium. (N.T. 11, 12)

2. Kendall Scott, a dairy farmer from Montrose, Pennsylvania, testified that because of low beef prices for cull cows and calves, high grain prices, this year's poor weather conditions, a wet, cold spring yielding poor quality hay and forage, late corn planting and the high price of grain, the over-order premium should be increased by \$.30 per cwt. (N.T. 13-15)

3. Robert Gabel, chairman of the Pennsylvania State Grange Dairy Committee, testified in support of the \$.30 increase in the over-order premium. He stated that because of erratic weather, depleted corn reserves, escalating grain prices, the poor growing season of 1995, increase of feed costs from 1995 of almost 35%, and increase of other costs on the farm, the increase in the premium is justified. (N.T. 17-20)

4. Mary Ann Keith, of James Creek, Pennsylvania, Agricultural Administrator and Relationship Banking Specialist at Mid-State Bank serving eight counties in central Pennsylvania, testified in favor of the increase of the over-order premium by \$.30 for an indefinite period of time. Farmers' accounts payable have escalated, loans have been stretched to 36 months when they should pay out in less than 12 months, increases in feed prices of 70 to 75 percent (feed prices constituting 35 to 40% of total dairy farm expense), increases in fertilizer prices of 30 to 35%, dramatic increases in feeds and supplements in the early summer of 1995 between 40 and 85%, low cull cow prices, and the low prices from 1995 are all factors to consider in increasing the over-order premium. (N.T. 21-28)

5. Robert C. Junk, Jr., president of the Pennsylvania Farmers' Union, testified in favor of increasing the over-order premium by \$.30/cwt based on the difficulties farmers have had over the past 12 to 18 months. Prices of feed such as shelled corn, soybeans and ear corn from a year ago have increased between 35 and 85 percent. Farmers buy feed in the spring and summer when prices have been the highest. These increased feed prices are from the drought of 1995. Although prices have also increased, the increase has not completely offset the losses due to increased costs. (N.T. 30-35)

6. Mr. Kim Nielsen, an agricultural statistician with Pennsylvania Agricultural Statistics Service reviewed the cost of milk production as set forth in the Pennsylvania Agricultural Statistics Service Special Dairy Report for the second quarter of 1996, that was released in July 1996. (N.T. 38-56)

7. Verdean Keyser, director of Skyview Laboratory in Jennerstown, Pennsylvania, testified as an expert in chemistry and chemical analysis concerning forage quality. Skyview analyzes forage for 5,000 to 6,000 farms located throughout the state having

taken approximately 28,000 samples in 1995 and 19,000 in 1996. According to Ms. Keyser, when the relative feed value is over 100 for forage, farmers feeding this to cows will not lose milk production. Under 75 the farmers will lose production. In 1995, 70% of the samples were over 100, and in 1996, under 40% were over 100. In 1996, 60 percent were under 75, indicating that feeding this low quality forage to animals in 1996 will lower milk production, all other factors remaining the same.

(N.T. 57-65; PFB Exhibit 3)

8. Joel Rotz testified as a dairy specialist for the Pennsylvania Farm Bureau and was qualified as an expert in matters related to cost and production. For the 12 month period ending June 1996, the Special Dairy Report indicates that the average cost of milk production was greater than the price received by more than \$.05 per cwt. There was a 26% increase in the cost of production attributable to the price of feed for the second quarter of 1996 compared with the same in 1995. This is commensurate with an 11 percent increase in the milk price received. This year farmers experienced a good corn crop but poor hay quality. Additional feed supplements may be needed because of the hay quality. The entire country has been experiencing tight milk supplies. Nationally, average prices have increased \$.30 per cwt. Given all market conditions, he supported a \$.30 add on to the current \$.50 premium.

(N.T. 68-79)

9. Harold Shaulis, a dairy farmer and active member of many dairy related committees, testified for the Pennsylvania Farm Bureau. Premiums surrounding Pennsylvania have come down in response to a decrease in Pennsylvania premiums over the last three years. Costs of certain feeds have increased between 138 and 150% over the last year. Only in the last two months have the farmers come close to breaking even. The futures market indicates a future downturn in price received through April. It also indicates a downturn in grain prices, which prices will still remain higher than in 1995 and in some cases 1996. Forage quality is low which will result in lower milk production. Mr. Shaulis supported the \$.30 add-on to the premium. (N.T. 87-97)

10. Jim Buelow testified for the National Farmers' Organization in favor of increasing the over-order premium to \$.80 per cwt. Farmers are not receiving what it costs them to produce milk. (N.T. 97-100)

11. David DeSantis testified as an expert in milk regulation and milk accounting for the staff of the Pennsylvania Milk Marketing Board as to a method for capturing premiums paid out of state for Pennsylvania farmers. Mr. DeSantis recommended that the premium calculation be modified to account not only for milk produced, processed and sold within Pennsylvania but also for milk purchased from producers in Pennsylvania and utilized in a state that also has a mandated Class 1 premium. The Pennsylvania farmer should get the out of state premium if the milk sale takes place in Pennsylvania. The premium would be based on the Class of milk and area of utilization. No other state currently has an over-order premium to capture. This system will provide a friendlier environment for producing milk in Pennsylvania. (N.T. 100-125)

12. Dennis Schad testified on behalf of Atlantic Dairy Cooperative, Atlantic Processing, Inc., Maryland and Virginia Milk Producers' Cooperative, The Coastal Region of Mid-American Dairymen, and Dairylea Cooperative, Inc. as an expert in milk marketing and dairy economics in support of an increase of the current over-order premium by \$.30 per cwt. For the 12 month period ending July 1996, as reported by the Pennsylvania Agricultural Statistics Service, the cost of milk production increased 7.2% from the same period a year ago. The cost of purchased feed accounts for approximately 20% of the cost of production. The cost of feed increased 26% from the second quarter of 1995 to the second quarter of 1996. Corn and soybean production for 1996 should be approximately 34% above last year's crop. Corn prices increased 66% from August 1995 to August 1996. Soybean prices increased 32% from September 95 to September 96. Hay quality is down. For the period ending July, 1996, cost of production exceeded price received. The witness expected the Basic Formula price to increase through November and then start to decline. PASS reported that milk production increased 2.2% from July 1995 to June 1996, but in reviewing federal orders, production in the Middle Atlantic region is decreasing. For the first six months of 1996 compared with the same in 1995, milk production in the three federal orders fell 2.6%. Milk assigned to Class 1 increased by less than 1%. In the first six months of 1996, premiums have not cost Pennsylvania dealers any appreciable loss of sales in Pennsylvania. (.3 percent lost Pennsylvania sales) Premiums are now being offered to Pennsylvania farmers to supply the southeast and New York. ADC recommends an increase of the premium by \$.30 per cwt. (N.T. 126-166)

13. Jim Sleper testified on behalf of Milk Marketing, Inc. in support of a total over-order premium of \$.65 for six months, adding only \$.15 to the current \$.50 over-order premium. Mr. Sleper is concerned that Pennsylvania producers may lose Class 1 sales to out-of-state competition. Producer paid price misalignments along borders create disunity and unrest. Producer price misalignments along borders create competitive inequities and disorderly marketing which ultimately has a negative impact on producers. This has a potential negative impact on consumer demand for dairy products. Another disadvantage is the disproportionate distribution of mandated premiums to producers. Premiums in Ohio and western New York are generally lower than \$.80 per cwt at this time. Some of MMI's customers were upset by a \$.20 over-order premium imposed in June of 1996 that their competitors were not required to pay. The competitors were only paying \$.05. He cited the fact that in-state sales have not eroded at the \$.50 premium level. (N.T. 167-191)

14. Robert Allen, Chief Executive Officer of Lehigh Valley Dairies, testified in opposition to the increase of the over-order premium. Pennsylvania's dairy processing and dairy producing industry are being attacked from outside. Increasing the premium gives out-of-state competition more opportunity to invade Pennsylvania markets. Two major dealers in New York are shipping into Pennsylvania. West Virginia is shipping milk into southwest corners of Pennsylvania. (N.T. 194-196)

15. Earl Fink testified for the Pennsylvania Association of Milk Dealers in support of the \$.30 per cwt increase in the over-order premium for six months. He remained concerned that this may cause a loss of business to out-of-state competitors. The premium should be reevaluated in six months (197-199)

III. Findings of Fact

1. Official General Order (OGO) A-889 provides in Section II(a) that the over-order premium shall be \$.50 per hundredweight beginning January 1, 1996. (Document on file with Board)

2. Costs of production have increased substantially from 1995 to 1996, especially in the area of feed costs comprising approximately 35% of the cost of milk production.

3. The wet summer of 1996 produced very poor hay quality, requiring that farmers feed cows expensive feed supplements.

4. Because of poor forage quality, milk production will probably decrease in a tight supply market.

5. The price for milk received by farmers is currently at a high level compared with the past year, but this is expected to decline beginning around December.

6. Pennsylvania dealers lost some business to out-of-state competition when the premium was at \$.80 per cwt in the last half of 1995. This trend slowed in 1996 when the premium went to \$.50 per cwt.

7. Milk supplies are tighter now than they were at the end of 1995.

8. Because milk can be transported over great distances, the over-order premiums in surrounding states affect Pennsylvania milk markets.

9. Premiums in parts of Ohio and western New York range from \$.65 to \$.85 per cwt.

10. The Board finds that the over-order premium should be increased to \$.80 per hundredweight for a period of six months, and at the end of six months shall revert to \$.50 per hundredweight.

IV. Conclusion of Law

1. The hearing on October 2, 1996, was called and conducted pursuant to the provisions of the Milk Marketing Law (Law), 31 P.S. Section 700j-101 et seq.

2. The hearing was held after adequate notice, and all interested parties were given a reasonable opportunity to be heard.

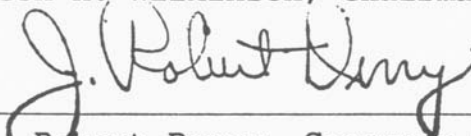
3. Based on the foregoing findings of fact, the Board concludes that the effects of increased costs and market conditions justify an increase of the \$.50 over-order premium to \$.80 for the next six months.

4. Based upon the record evidence and the foregoing findings of fact, the Board concludes that adoption of the attached Official General Order is reasonable and proper under section 801 of the Law, subject to any revisions or amendments which the Board may deem appropriate pursuant to the procedures set out in the Law.

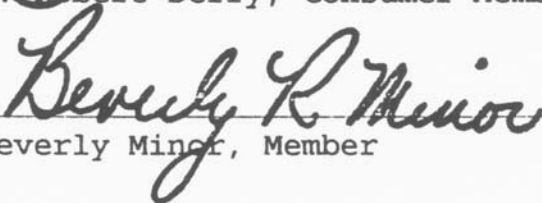
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Dated: October 10, 1996