



**Commonwealth of Pennsylvania**  
Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

717/787-4194  
717/783-6492

WEB SITE: <http://www.mmb.state.pa.us>

E-mail: [RA-PMMB@pa.gov](mailto:RA-PMMB@pa.gov)

Official General  
Order No. A-999

Posted: September 20, 2017  
Effective October 1, 2017

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**AN ORDER ESTABLISHING A DIESEL FUEL  
ADD-ON TO THE OVER-ORDER PREMIUM**

NOW, this 20<sup>th</sup> day of September 2017, the Commonwealth of Pennsylvania, Milk Marketing Board (Board) adopts and issues this official general order pursuant to the authority conferred by the Milk Marketing Law, 31 P.S. §§ 700j-101 – 700j-1204. This order will become effective at 12:01 a.m. on October 1, 2017.

**SECTION I**

The attached findings of fact and conclusions of law are incorporated herein by this reference as though fully set forth in this order.

**SECTION II**

In all milk marketing areas a diesel fuel add-on shall be added to the Class I over-order premium pursuant to the methodology set forth in this order and the table found in Finding of Fact 14. This amount shall change monthly based on the table found in Finding of Fact 14.

**SECTION III**

This order supersedes Official General Order A-988.

PENNSYLVANIA MILK MARKETING BOARD

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Luke F. Brubaker, Chairman

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Lynda J. Bowman, Consumer Member

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James A. Van Blarcom, Member

Date: September 20, 2017

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**FUEL ADJUSTER HEARING**  
**AUGUST 30, 2017**

FINDINGS OF FACT

1. On August 30, 2017, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the level of the diesel fuel add-on to the over-order premium.
2. Notice of the hearing was published at 47 Pennsylvania Bulletin 4064 on July 22, 2017, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1534, dated July 11, 2017.
3. Carl D. Herbein, CPA, testified for the Pennsylvania Association of Milk Dealers (“Dealers”) as an expert in cost accounting and milk cost accounting. Mr. Herbein recommended that the Board eliminate the \$0.25 per hundredweight minimum add-on provided for in Official General Order A-988 while continuing to use (and expand downward) the brackets adopted in OGO A-988.
4. Mr. Herbein testified that prior sharp increases and significant volatility in diesel fuel prices had led to the Board adopting fuel adjuster orders. He observed that the increases and volatility occurring periodically from 1999 through 2014. Mr. Herbein testified that diesel fuel prices have been persistently lower than they were in 2013 and 2014, being at all times since then below the average prices that existed when the \$0.25 fuel adjuster minimum was established. Mr. Herbein opined that the \$0.25 minimum was not logical or supportable under current market conditions.
5. Mr. Herbein testified that when the \$0.25 per hundredweight minimum was adopted, the 12-month average diesel fuel price was \$4.073 per gallon. He testified that the current average was \$2.6525 per gallon. Mr. Herbein opined that since the Board valued each \$0.10 per gallon of diesel fuel bracket change as requiring a \$0.02 per hundredweight fuel adjustment, and given that the \$0.25 minimum fuel adjustment was established at a time when current low prices seemed inconceivable, the minimum should be reconsidered and removed.
6. Mr. Herbein recommended that the Board continue to use the bracket adopted in OGO A-988 and expand the bracket downward to account for the \$1.4205 per gallon decrease in average diesel prices since the adoption of OGO A-988. This would result in expanding the bracket downward by 14 \$0.10 per gallon increments. It would have the effect of providing a \$0.00 per hundredweight fuel adjuster for monthly average diesel fuel prices below \$2.8630 per gallon. At a monthly average of \$2.8630 - \$2.9629 per gallon, the bracket recommended by Mr. Herbein would result in a \$0.01 per hundredweight diesel add-on, at \$2.9630 - \$3.0629 per gallon the add-on would be \$0.03 per hundredweight, at \$3.0630 - \$3.1629 per gallon the add-on would be \$0.05 per hundredweight, and so on. The current minimum add-on of \$0.25 per

hundredweight would come at an average monthly diesel fuel price of \$4.0630 - \$4.1629 per gallon.

7. John D. Rutherford, Jr., testified on behalf of the Pennsylvania Association of Dairy Cooperatives (“PADC”) as an expert in agricultural economics. PADC agreed with Dealers that the diesel fuel add-on should be adjusted and that \$0.10 per gallon movements in diesel fuel price should equate with \$0.02 per hundredweight changes in the add-on. However, Mr. Rutherford opined that the base for the diesel fuel add-on should be set at a level comparable to the fuel surcharge in neighboring states at the current average diesel fuel price. This would result in a \$0.10 per hundredweight diesel fuel add-on in a \$2.60 - \$2.699 per gallon diesel fuel price bracket. The add-on would change in \$0.02 per hundredweight increments up or down with corresponding \$0.10 per gallon up or down changes in average diesel fuel prices.
8. Mr. Rutherford testified the current fuel surcharge to plants in Ohio and New Jersey ranges from \$0.085 - \$0.17 per hundredweight. Mr. Rutherford noted that the diesel fuel add-on adopted by the Board in OGO A-983 was set at a level that more accurately reflected surrounding market conditions at the time. Therefore, he recommended that the add-on in this order be based on prevailing market conditions at the current diesel fuel price level.
9. Mr. Herbein agreed that the Board took into account cooperative fuel surcharges in areas outside Pennsylvania when establishing the current fuel adjuster. However, Mr. Herbein testified that the cooperative announced fuel adjusters at that time were a competitive factor that tended to support a reduction in the Pennsylvania-mandated diesel fuel add-on from \$0.80 per hundredweight to \$0.25 per hundredweight. He testified that the Board should not now rely on cooperative fuel surcharges outside Pennsylvania without more information. In Mr. Herbein’s opinion, the labels given to premiums by cooperatives cannot be relied on now the way they used to be, explaining that he reviews cooperative invoices for much of his work and he had concluded that cooperatives and dealers care about the total or net premium. Mr. Herbein testified that line items, such as “fuel adjuster,” can be just another way to adjust the total premium and do not necessarily mean what they say.
10. Rob Blaufuss testified as an expert in agricultural economics and milk economics on behalf of Dean Foods Company. He testified in support of Dealers’ proposal.
11. Mr. Blaufuss testified that fuel costs have declined dramatically in recent years and that current futures prices provided little indication that a notable swing higher would occur any time soon. He testified that with the generally lower fuel costs and stability that has been shown in diesel prices for some time, classified prices and voluntary premiums have had the opportunity to account for current fuel prices.
12. Mr. Blaufuss agreed with Mr. Herbein’s characterization of premium charges. He testified that regardless of what level of detail or what line item charges are with respect

to premiums charged, the only number of concern is the total premium charged in any given month to a fluid processor.

13. The Board finds that the diesel fuel add-on to the over-order premium should be adjusted to more accurately reflect and account for current conditions in the diesel fuel market. In so finding, we rely on the credible testimony of Mr. Herbein, Mr. Rutherford, and Mr. Blaufuss that the add-on should be adjusted.
14. The Board finds that the fuel adjuster should be set at \$0.00 per hundredweight based on the 12-month average for the United States Department of Energy, Energy Information Administration (“EIA”) Average Retail On-Highway Diesel Price for the Central Atlantic Region as of July 2017. In so finding, we rely on the credible testimony of Mr. Herbein, Mr. Rutherford, and Mr. Blaufuss as explained below.

We find Mr. Rutherford’s testimony regarding cooperative fuel surcharges in Ohio and New Jersey credible. However, we find credible and persuasive the testimony of Mr. Herbein and Mr. Blaufuss regarding the relevance of how line items are or are not characterized or named in relation to the total or net premium. Therefore, we find that we should not rely on the fuel surcharges outside Pennsylvania to establish the Pennsylvania fuel adjuster.

We rely on the credible and persuasive testimony of Mr. Blaufuss that diesel fuel prices have been stable for a prolonged period such that classified prices account for current diesel fuel prices.

We rely on the credible and persuasive testimony of Mr. Rutherford that the current at the time of the hearing average diesel fuel price was \$2.6588 per gallon.

We conclude, then, that the diesel fuel add-on should be set at \$0.00 per hundredweight in a bracket of \$2.60 - \$2.699 per gallon diesel fuel price. Mr. Herbein, Mr. Rutherford, and Mr. Blaufuss testified that the add-on should not go negative, and that \$0.02 per hundredweight adjustments in the add-on should be made for \$0.10 per gallon changes in the average diesel fuel price. Therefore, we find that the bracket below should be used to adjust the diesel fuel add-on to the over-order premium:

Monthly average diesel fuel price	Diesel fuel add-on to the over-order premium
\$0 – 2.699	\$0.00
\$2.70 - \$2.799	\$0.02
\$2.80 - \$2.899	\$0.04
\$2.90 - \$2.999	\$0.06
\$3.00 - \$3.099	\$0.08
\$3.10 - \$3.1999	\$0.10
and so on . . .	

CONCLUSIONS OF LAW

1. The August 30, 2017, hearing on the Class I over-order premium diesel fuel add-on was held pursuant to the authority granted to the Board in sections 801 and 803 of the Milk Marketing Law (Law), 31 P.S. §§ 700j-801 and 700j-803.
2. The hearing was held following adequate notice and all interested parties were given a reasonable opportunity to be heard.
3. All parts of Official General Order No. A-893 not inconsistent with the attached order will continue in effect.
4. In accordance with Official General Order No. A-894, milk dealers shall continue to show by line item on their monthly statements to independent producers and cooperatives the specific amount of the Pennsylvania Milk Marketing Board's over-order premium being paid.
5. In accordance with Official General Order No. A-894 (Supplemental), the over-order premium will continue to apply only to Class I milk produced, processed, and sold in Pennsylvania.
6. In adopting this order, the Board considered the entire record and concludes that the order is supported by a preponderance of credible evidence and is reasonable and appropriate under sections 801 and 803 of the Law.
7. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD

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Luke F. Brubaker, Chairman

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Lynda J. Bowman, Consumer Member

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James A. Van Blarcom, Member

Date: June 19, 2013

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