



Commonwealth of Pennsylvania

Milk Board

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Official General
Order No. A-1019

Posted:
Effective

June 5, 2024
July 1, 2024

OVER-ORDER PREMIUM

NOW, this 5th day of June 2024, the Commonwealth of Pennsylvania, Milk 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 July 1, 2024, and will expire at 12:00 midnight on December 31, 2024.

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

(a) In all milk marketing areas, the calculation of the Class 1 price for milk produced, processed, and sold in Pennsylvania shall include an over-order premium of \$1.00 per hundredweight effective 12:01 a.m. on Jul 1, 2024, through midnight on December 31, 2024.

(b) Milk dealers shall show by line item on their monthly statements to independent producers and cooperatives the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

(c) Cooperatives shall show by line item on their monthly statements to members the specific amount of the Pennsylvania Milk Marketing Board over-order premium being paid.

SECTION III

All parts of Official General Order A-893 not inconsistent with this order shall continue in effect.

PENNSYLVANIA MILK BOARD

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Kristi Kassimer Harper, Consumer Member

Date: June 5, 2024

FINDINGS OF FACT AND CONCLUSIONS OF LAW OVER-ORDER PREMIUM HEARING

FINDINGS OF FACT

1. On May 1, 2024, the Pennsylvania Milk Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the level, duration, and existence of the over-order premium.
2. Notice of the hearing was published at 54 Pennsylvania Bulletin 1459 on March 16, 2024. Notice of the hearing was also mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1639, dated March 7, 2024.
3. Matt Espenshade testified on behalf of Pennsylvania State Grange. He is the President of the State Grange. Mr. Espenshade is a seventh-generation dairy farmer, with his family owning and operating the farm since 1867. Mr. Espenshade and his father milk approximately 74 cows, with a 20,200 pound rolling herd average. They farm 260 acres, raising their own forages. The farm raises its own replacement heifers. Mr. Espenshade and his father work the farm with no hired help. Mr. Espenshade testified in support of fixing the over order premium at \$1.00 per hundredweight for the next six months.
4. Mr. Espenshade is a member of Mount Joy Farmers Co-op, which is affiliated with Dairy Farmers of America (DFA). The cooperative spreads the over-order premium it receives across all its members, regardless of the milk's class, processor location, and final destination. Approximately 30% - 35% of Mount Joy's milk goes to Class I facilities and is sold within Pennsylvania. Mr. Espenshade testified that his most recent monthly statement indicated he received \$0.14 per hundredweight of over-order premium. Mr. Espenshade testified that the funds generated by the over-order premium are returned to Mount Joy members in a variety of ways. He testified that some funds are distributed directly to each member. He cited other examples of how the cooperative uses the money generated by the over-order premium, including subsidizing quality premiums, defraying transportation costs, and defraying office expenses. In any case, Mr. Espenshade testified that the funds are used to cover costs which would otherwise come out of the pockets of the dairy farmer members.
5. Mr. Espenshade testified that his milk margins peaked in January 2024 and declined in February and March, despite the cost of his dairy complete feed and heifer grower feed decreasing approximately 10% since December 2023. He testified that the decline in milk price this spring triggered Dairy Margin Coverage payments during each of the prior three months. Mr. Espenshade also noted that Dairy Margin Coverage payments triggered 11 months during 2023.
6. Mr. Espenshade testified that supply chain issues and price increases continue to affect Pennsylvania's dairy sector. He noted continuing price increases for many items, including mastitis treatment, seed corn, herbicide, and electricity.

7. Paul Hartman testified on behalf of Pennsylvania Farm Bureau. Mr. Hartman is the Chairman of Farm Bureau's Dairy and Farm Policy Committee. He is an eight-generation dairy farmer from Berks County. His farm has around 2,000 Holsteins, spread across two milking locations, and four heifer facilities. He grows forages and grains on approximately 1,200 acres. Mr. Hartman's milk is shipped to Clover Farms Dairy in Reading and Swiss Premium Dairy in Lebanon, receiving over-order premium from both plants. Mr. Hartman testified in support of establishing the over-order premium at \$1.00 per hundredweight through December 2024.
8. Mr. Hartman testified that he agreed with many of the points made by Mr. Espenshade. He testified that milk income had declined the past few months. Comparing the first quarter of 2024 to the first quarter of 2023 his milk sales value, gross profit, and net income were each down approximately 13%, while expenses were down 8.5%. Mr. Hartman testified that this trend, income trending downward at a greater rate than expenses, is an important reason to set the over-order premium at \$1.00 per hundredweight for the next six months.
9. While noting that expenses have decreased in the aggregate, Mr. Hartman noted some that are trending higher. His labor costs increased 15% in the prior six months. Property taxes increased 7%. Fuel prices had increased nearly 30 cents per gallon. Cow bedding material had increased 13% in the month prior. He testified that these increases appeared to be in line with general inflation and when combined with a general drop in milk income levels the over-order premium helped mitigate some of the pressure.
10. Pennsylvania Department of Agriculture ("Department") Secretary Russell Redding testified. Secretary Redding testified that the Department did not oppose Grange's over-order premium proposal as the Department works with industry and the legislature to address challenges presented by the current over-order premium structure.
11. Drew Frommelt testified on behalf of the Northeast Area of Dairy Farmers of America, Inc. ("DFA"). Mr. Frommelt is the Dairy Economics and Analysis Manager for DFA Northeast Area. Dairy Farmers of America has more than 10,000 farmer-owners, of which 1,028 are located in Pennsylvania. DFA also owns and operates ten milk processing plants in Pennsylvania. Mr. Frommelt testified in support of setting the over-order premium at \$1.00 per hundredweight through December 2024.
12. Mr. Frommelt testified that Mr. Espenshade's testimony described many of the challenges facing dairy farmers, including both increased costs and stagnating milk checks. Mr. Frommelt testified that any reduction in the over-order premium would lead to a decline in monthly revenue for any Pennsylvania farmer paid the premium. He also testified that setting the premium at \$0.00 per hundredweight would exacerbate the trend of continued closure of smaller dairy farms and potentially lead to disorderly marketing conditions.

13. Mr. Frommelt testified that the over-order premium did not lead to a retail milk price that is too costly for Pennsylvania consumers. He testified that beginning in May 2020 Philadelphia retailers have consistently charged a price for a gallon of whole milk well above the minimum retail price. He testified that this suggested that the current over-order premium is not a burden on Philadelphia consumers.
14. John Painter testified. Mr. Painter and his family own and operate Painterland Farms, milking 450 organic dairy cows. Painterland Farms crop farms 5,000 total acres. The original farm was purchased in 1940 and a fifth generation is currently growing up on the farm. Mr. Painter testified that the over-order premium should be set at \$0.00 per hundredweight through December 2024.
15. Mr. Painter testified that Painterland Farms is an example of one of many family dairy farms across Pennsylvania. He testified that the over-order premium has become one of many things working against Pennsylvania farmers. He further testified that while once helpful, the over-order premium had become a "thorn in the dairy industry's side due to many market forces," citing milk crossing state lines to neighboring state plants, balancing milk for plants in other states, and the increased size of dairy farms in Pennsylvania.
16. Mr. Painter testified that since the over-order premium's inception in 1988 the Pennsylvania dairy industry has changed. The over-order premium was once a good program but now does not work for the majority of Pennsylvania dairy farmers and is no longer fair and equitable.
17. Mr. Painter testified that for the past three years the legislature has looked at changing the over-order premium system with little or no apparent progress. Mr. Painter testified that the issue has continued to be pushed into the future and that setting the over-order premium at \$0.00 per hundredweight would bring the parties together to develop a solution.
18. The Board finds that the over-order premium should be fixed at \$1.00 per hundredweight for six months effective July 1, 2024.

In finding the over-order premium should be set at \$1.00 per hundredweight the Board relies on the credible and persuasive testimony of Mr. Espenshade, Mr. Hartman, Secretary Redding, and Mr. Frommelt. Their testimony demonstrates that the over-order premium is valuable and needed to address the economic conditions expected to continue to confront Pennsylvania dairy farmers.

We are not persuaded that the over-order premium should be set at \$0.00 per hundredweight. We believe that doing so is likely to cause at least as many issues as are purportedly caused by setting the over-order premium at \$1.00 per hundredweight, while at the same time taking revenue from Pennsylvania dairy farmers.

CONCLUSIONS OF LAW

1. The May 1, 2024, over-order premium hearing 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 1 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 BOARD

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Kristi Kassimer Harper, Consumer Member

Date: June 5, 2024

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I disagree with the majority's decision and would set the over-order premium at \$0.00.

In Official General Order A-1014 (effective October 1, 2022) the Board explained the over-order premium is the method the Board has chosen to attempt to meet the Milk Marketing Law's requirement that minimum producer prices allow Pennsylvania producers to recover their cost of production plus a reasonable profit (Finding of Fact 43). The Board also explained the over-order premium is intended to provide all producers a minimum price that attempts to meet Section 801's minimum producer price requirement. The over-order premium is a component of minimum producer prices. The entire over-order premium is passed through our price build-ups into the minimum retail price. Therefore, Pennsylvania consumers pay the entire over-order premium when they purchase packaged fluid milk.

The Commerce Clause of the United States Constitution prohibits the Board from regulating transactions that take place outside Pennsylvania. Milk must be produced, processed, and sold as a Class I product in Pennsylvania to receive payment attributable to the over-order premium. There has never to my knowledge been testimony that any producer receives the entire over-order premium. None of the three producers who testified at this hearing receive even a quarter of the over-order premium. Mr. Frommelt acknowledged that over-order premium payments that Dairy Farmers of America receives are paid to members outside Pennsylvania.

Consumers pay the entire over-order premium when they purchase milk, but producers receive less, in many cases much less, than the entire over-order premium. This is not fair to consumers or producers and it is long past time to change this situation.

I find Mr. Painter's testimony to be the most credible and persuasive of the testimony we received at this hearing. Mr. Painter's experiences and testimony track closely with what I have seen and heard. Mr. Painter personally went to Pennsylvania Walmart stores to determine the milk they were selling was processed in New York. He also learned that milk being sold in a Sam's Club store in Northeast Pennsylvania was processed in Louisiana. This milk is being sold in Pennsylvania, Pennsylvania consumers are paying the entire over-order premium for this milk, and none of that over-order premium is required to be paid to a Pennsylvania producer. Mr. Painter also testified that milk being processed in a Williamsport, Pennsylvania, plant was produced in New York; once again, if that milk is packaged and sold in Pennsylvania, Pennsylvania consumers will pay the entire over-order premium without any requirement that the over-order premium be paid to Pennsylvania producers.

Mr. Painter testified that the industry and legislature have had 30 months to address the obvious issues with the over-order premium, but no apparent progress has been made. He recommended that the premium be set at \$0.00 per hundredweight to encourage real progress. I find this testimony to be very credible and persuasive and would set the over-order premium at \$0.00 per hundredweight until the legislature and dairy industry develop a fair and accountable reform of the over-order premium system that benefits the entire dairy industry.

James A. Van Blarcom, Member

June 5, 2024