



Commonwealth of Pennsylvania

Milk Marketing Board
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Official General
Order No. A-1013

Posted:
Effective

March 22, 2022
April 1, 2022

OVER-ORDER PREMIUM

NOW, this 22nd day of March 2022, 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 April 1, 2022, and will expire at 12:00 midnight on September 30, 2022.

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 April 1, 2022, through midnight on September 30, 2022.

(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 MARKETING BOARD



Robert N. Barley, Chairman



James A. Van Blarcom, Member



Kristi R. Kassimer, Consumer Member

Date: March 22, 2022

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-ORDER PREMIUM HEARING
March 2, 2022

FINDINGS OF FACT

1. On March 2, 2022, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the level and duration of the over-order premium.
2. Notice of the hearing was published at 52 Pennsylvania Bulletin 926 on February 5, 2022, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1606, dated February 2, 2022.
3. Matt Espenshade testified on behalf of Pennsylvania 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 75 cows, with a 20,600 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.

Mr. Espenshade is a member of Mt. Joy Farmers Co-op ("Mt. Joy"). He testified that the net price he received on his most recent milk check was \$18.32 per hundredweight. That included a volume premium of 10 cents and an additional 10 cents for being under contract with the cooperative. Mr. Espenshade testified that members of the cooperative receive the Pennsylvania over-order premium regardless of their milk’s class, processor location, and final destination. He testified that on his most recent statement he received 4.5 cents labeled as “special premium” and that the over-order premium is also used to subsidize quality bonuses.

Mt. Joy is affiliated with Dairy Farmers of America and subject to the Base Excess Program implemented by Dairy Farmers of America. Mr. Espenshade testified the Base Excess program has resulted in decreased net payments to farmers due to impacted market conditions for almost two years. He also testified that a "market adjustment" fee has been deducted from his milk check each month since 2014. Mr. Espenshade testified that his purchased feed costs have increased sharply. In addition, the supply chain issues, inflation, and price increases that have affected daily life for Americans have hit Pennsylvania's dairy sector very hard. Mr. Espenshade has experienced cost increases in a mastitis treatment product, an herbicide, and electricity rates.

Mr. Espenshade testified that the over-order premium does not support only farmers, but also supports the businesses farmers depend on. He testified that the over-order premium helps dairy producers maintain farm equity, pay down debt, and put money back into their local communities.

4. Tim Wood testified. Mr. Wood is a dairy farmer in Tioga County. Mr. Wood testified that the over-order premium should be fixed at \$0.00 indefinitely.

Mr. Wood testified that the Pennsylvania Farm Bureau voted to support eliminating the over-order premium at its recent annual meeting. He testified that there was a "basic inequity" in the over-order premium distribution. Mr. Wood cited an article written by the Board's Secretary, Carol Hardbarger. According to Dr. Hardbarger's article, 641 independent producers received \$2,918,482, for an average of \$4,553 per farm, attributable to the over-order premium during the first six months of 2021. During the same period cooperatives received \$3,619,636, which Mr. Wood estimated would result in cooperative members receiving an average of \$905 per farm. Mr. Wood testified that the pricing system creates "winners and losers" among farmers who all face the same challenges in the extremely competitive dairy industry. Mr. Wood also testified that the over-order premium provides an incentive for Pennsylvania Class 1 plants to purchase out-of-state milk, displacing Pennsylvania-produced milk. Mr. Wood testified that his milk check has a \$2.35 marketing deduction and a \$2.00 hauling expense.

5. John Painter, II, testified on behalf of Pennsylvania Farm Bureau. Mr. Painter serves on Farm Bureau's Executive Committee and Board of Directors. He represents Farm Bureau's District 5, which is comprised of McKean, Potter, Tioga, Bradford, and Sullivan Counties. Mr. Painter and his brothers operate an organic dairy and crop farm in Tioga County, milking around 400 cows and farming 5,000 acres. Mr. Painter testified that the present over-order premium framework is inequitable to all dairy farmers, unfair to consumers, and provides opportunities for parties to avoid payment or distribution of the premium. Farm Bureau recommended that the over-order premium should be fixed at \$0.00 unless and until a more equitable system can be implemented.

Mr. Painter testified that the over-order premium meaningfully helps only a small segment of Pennsylvania dairy farmers. Farm Bureau believes this does more harm than good by fomenting strong and emotional dissension among Pennsylvania dairy farmers. Mr. Painter testified that dairy farmers who receive little to no support from the system are indifferent to openly hostile toward the over-order premium.

Mr. Painter testified that federal constitutional constraints limit the over-order premium to milk that is produced, processed, and sold in Pennsylvania, observing that past attempts to address any of those elements have been unsuccessful. He further testified that the produced, processed, and sold requirement creates an environment that's often to the detriment of the majority of Pennsylvania dairy farmers and retail milk consumers. Mr. Painter testified that the over-order premium is collected on every gallon of milk purchased at retail in Pennsylvania, with that additional cost intended to benefit Pennsylvania dairy farmers. He testified, however, that the intended benefit does not always come to pass. Mr. Painter testified that Farm Bureau believes that, while the over-order premium benefits some dairy farmers, its time has passed. Mr. Painter also testified that the fundamental economic changes needed for dairy farmers must be sought at the federal level.

6. Arden Tewksbury testified on behalf of Progressive Agriculture Organization, South Auburn Grange, Elk Lake School District, Susquehanna County Career and Technology Center, Northeast Intermediate Unit 19, and Farm Women United. Mr. Tewksbury recommended that the over-order premium be fixed at \$1.00 per hundredweight.

Mr. Tewksbury testified that the groups he represents support a \$1.00 over-order premium because neither the United States Congress nor the United States Department of Agriculture have solved the issue of unstable milk prices. Mr. Tewksbury noted that Readington Farms in New Jersey had recently notified its nearly 150 Pennsylvania producers it would close. He testified that Readington had paid a voluntary premium since the early 1980s and that now the majority of those dairy farmers may begin paying a marketing cost instead of receiving that negotiated premium.

7. Troye Cooper testified on behalf of Pennsylvania Association of Dairy Cooperatives as an expert in raw milk marketing and sales of milk from producers to handlers. Members of Pennsylvania Association of Dairy Cooperatives are Dairy Farmers of America, Inc.; Lanco Dairy Farms Co-op, Inc.; Land O' Lakes, Inc.; and Maryland & Virginia Milk Producers' Cooperative Association, Inc. Mr. Cooper recommended that the over-order premium be fixed at \$1.00 per hundredweight

Mr. Cooper testified that there were arguments to be made for both raising and lowering the over-order premium. He testified that the premium level must be supported by the marketplace. Mr. Cooper testified that on every farm in Pennsylvania costs are higher today than they were six months ago. Mr. Cooper also testified that most prominent dairy economists project the Class 1 mover to be \$3.00 to \$5.00 per hundredweight more than it was six months ago for the second and third quarters of 2022. He further testified that fluid milk sales have been declining over the past decade and that competitiveness for a share of those sales is "fierce."

Mr. Cooper testified, though, that chaos in the dairy marketplace continued on the heels of the COVID-19 pandemic. He cited labor shortages, inflationary costs and lack of reliable availability of raw materials, increased costs and lack of reliable availability of supplies and equipment, and the increasing costs and reduced availability of reliable transportation for both raw milk and packaged finished products. Mr. Cooper testified that fixing the over-order premium at \$1.00 per hundredweight for the next six months would likely be the only thing that remains stable for that timeframe.

8. Chuck Turner testified on behalf of the Pennsylvania Association of Milk Dealers. Mr. Turner is the President of Turner Dairy Farms ("Turner Dairy") in Penn Hills, Pennsylvania. Mr. Turner testified in support of fixing the over-order premium at \$1.00 per hundredweight for six months.

Mr. Turner testified that Turner Dairy milk regularly wins awards at national product competitions, that consumer surveys always rank taste as the number one reason people buy the products they buy, that milk needs to taste good the entire time through its best-by date, and that this quality starts on the independent dairy farms that supply Turner Dairy. Mr. Turner testified that Turner Dairy's microbiological quality requirements are

probably its biggest differentiator. Those microbiological standards include three random producer samples tested every month for standard plate count ("SPC") and preliminary incubation count, in contrast to the state requirement of once per month; bacteria count of less than 20,000 SPC, in contrast to less than 100,000 SPC required by the Pasteurized Milk Ordinance ("PMO") and Pennsylvania Department of Agriculture ("PDA"); and testing every load of milk for bacteria before it is received. Turner Dairy expects every load of raw milk it receives to have a bacteria count that meets the PMO and PDA standard for pasteurized milk. Mr. Turner testified that dairy farmers must be financially rewarded for the meticulous cleaning required to meet Turner Dairy's microbiological standards. Mr. Turner explained that the blend price in the federal order system provides no incentive for producers to do the extra work required to ship milk to a Class 1 plant because federal orders generally take money out of milk checks of producers shipping to Class 1 plants and distribute it to producers who ship to Class 2, 3, and 4 plants so that all regulated producers get essentially the same milk price. Mr. Turner testified that the over-order premium restores some of the financial incentive for dairy farmers to produce for a Class 1 plant.

Mr. Turner testified fixing the over-order premium at \$0.00 would do serious financial damage to hundreds of Pennsylvania farm families and do some financial harm to thousands of Pennsylvania farm families. Mr. Turner also testified that in the absence of the mandated over-order premium Turner Dairy could and would pay a voluntary premium. However, Mr. Turner testified that Turner Dairy would probably not be able to recover the full amount of the premium in its wholesale prices, which would put downward pressure on the amount of premium it could pay and hurt its profitability. Mr. Turner noted that fluid milk plants had closed this year in Ohio and New Jersey and testified that the over-order premium is important to Pennsylvania Class 1 plants and the producers who ship to them.

9. Kevin George testified. Mr. George operates a dairy farm in Indiana County with his brother and their wives, milking 550 cows and farming 1,370 acres. Mr. George testified in support of fixing the over-order premium at \$1.00 per hundredweight.

Mr. George testified that he was facing the following increased costs: urea would increase in 2022 to over \$900 per ton from \$460 per ton in 2021; seed cost; Round-Up would increase 47% from 2021 to 2022; fuel cost; milk hauling rate would increase 5.68%; and health and liability insurance premiums. Mr. George testified that all dairy farmers would experience increased costs.

Mr. George also testified that meeting Turner Dairy's quality standards required him to incur additional costs. Mr. George changes inflations and hoses sooner than necessary, he installed a special hot water system to produce and keep 400 gallons of water at a constant 180 degrees for washing milk equipment, he upgraded milk parlor equipment to enhance cleaning, and he washes milking equipment every 7 ½ hours rather than at the end of all milk groups. Mr. George testified that the over-order premium is important to his ability to meet the demands of shipping to a high quality Class 1 processor. He also testified that his family, his employees, and the businesses they

patronize rely on the over-order premium, with the success of his business positively impacting his community.

10. The Board finds that the over-order premium should be set at \$1.00 per hundredweight from April 1, 2022, through September 30, 2022.

In so finding, the Board relies on the credible and persuasive testimony of Mr. Espenshade, Mr. Tewksbury, Mr. Cooper, Mr. Turner, and Mr. George. The totality of their testimony demonstrated the positive impact the over-order premium has on different segments of Pennsylvania's dairy industry, including independent producers, cooperative producers, and Class 1 processors.

The testimony of Mr. Cooper, Mr. George, and Mr. Espenshade also demonstrated that producer costs are increasing and, as Mr. Cooper testified, the dairy industry continues to face "chaos" following the COVID-19 pandemic. The Board finds particularly important Mr. Cooper's testimony that fixing the over-order premium at \$1.00 per hundredweight would likely be the only thing in the dairy industry that remains stable over the next six months. We believe that this stability is important for the next six months.

Mr. Wood's testimony is credible. Mr. Painter's testimony is credible. The Board understands that they believe the over-order premium is not distributed in a "fair and equitable" way (Mr. Wood) and that the "present over-order premium framework is inequitable to all dairy farmers, generally unfair to consumers, and leaves opportunities for parties seeking to avoid payment or distribution" (Mr. Painter). While there may be issues with the over-order premium, we are more persuaded by the testimony regarding the positive impact of the over-order premium than we are by testimony regarding issues with the over-order premium.

We find that fixing the over-order premium at \$1.00 per hundredweight for six months best addresses the current economic and marketing environment.

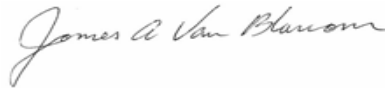
CONCLUSIONS OF LAW

1. The March 2, 2022, 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 MARKETING BOARD



Robert N. Barley, Chairman



James A. Van Blarcom, Member



Kristi R. Kassimer, Consumer Member

Date: March 22, 2022

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