



**Commonwealth of Pennsylvania**  
Milk Marketing Board  
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Official General  
Order No. A-1017

Posted:  
Effective

June 21, 2023  
July 1, 2023

### **OVER-ORDER PREMIUM**

NOW, this 21<sup>st</sup> day of June 2023, 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 July 1, 2023, and will expire at 12:00 midnight on December 31, 2023.

#### **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 July 1, 2023, through midnight on December 31, 2023.

(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

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Robert N. Barley, Chairman

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James A. Van Blarcom, Member

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Kristi Kassimer Harper, Consumer Member

Date: June 21, 2023

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

### FINDINGS OF FACT

1. On June 7, 2023, the Pennsylvania Milk Marketing 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 53 Pennsylvania Bulletin 2677 on May 13, 2023. Notice of the hearing was also mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1629, dated May 4, 2023.
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 70 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.
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 about several challenges dairy farmers are facing.
  - a. First, a heat wave and lack of rain in 2022 negatively impacted his feed inventory. Mr. Espenshade saw a drastic decrease in corn yield. The kernels did not fully develop, leading to lower energy levels in the silage. Growth in hay fields was limited. As a result, Mr. Espenshade testified, he closed the harvest season with lower feed inventory than normal. To account for the lack of energy in his home-grown corn silage, he had to purchase more corn. He testified that the current lack of rain is a concern, milk production this summer will be lower than last year, and a second dry year could be catastrophic for his family business.

- b. Mr. Espenshade testified that milk prices declined sharply in the spring. From January through March his milk price was "rather steady," dropping from \$23.65 per hundredweight to \$22.96 per hundredweight. By May his milk price had dropped to \$17.13 per hundredweight, a decrease from January of over 25%.
- c. Mount Joy and other cooperatives is challenged finding markets for milk. Mount Joy members continue to be assessed a market adjustment fee which is currently \$0.72 per hundredweight. For a farm the size of Mr. Espenshade's, producing 135,000 pounds of milk per month, the fee equates to more than \$950 in lost revenue. The market adjustment fee is in addition to the overproduction assessment which began in April 2020.
- d. Supply chain issues, record inflation rates, and price increases that have impacted Americans' daily life have hit Pennsylvania's dairy sector very hard. Since November 2020 the cost of a box of mastitis treatment has increased from \$40.99 to \$65.00, the cost of a 2.5 gallon container of generic Roundup has increased from \$69.95 to \$159.99. Despite lower usage, Mr. Espenshade's daily electric cost has increased as much as 40% year over year from 2022.
6. John Painter testified on behalf of the Pennsylvania Farm Bureau. Farm Bureau agreed with Grange's recommendation that the over-order premium be set at \$1.00 per hundredweight for six months.
7. In partnership with his brothers Mr. Painter operates Painterland Farms in Tioga County. Painterland Farms is an organic dairy and crop farm milking around 400 cows and farming 5,000 acres. Since there are no organic processing plants in Pennsylvania Painterland Farms does not receive any over-order premium.
8. Mr. Painter testified that he's experienced comparable issues as described by Mr. Espenshade and has observed similar sentiments from farmers in his area of Pennsylvania. Mr. Painter testified that milk prices have dropped steeply over the past couple of months and drought-like conditions have decreased the quality of on-farm crops forcing some farmers to supplement their feed by buying more feed inputs. He testified that while diesel prices have decreased meaningfully from last year's historic highs, electricity and labor expenses have increased over the past year.
9. Chrissie Dewey testified on behalf of Harrisburg Dairies and the Pennsylvania Association of Milk Dealers ("PAMD") in support of setting the over-order premium at \$1.00 per hundredweight for at least six months. Ms. Dewey testified that the over-order premium is very important to Harrisburg Dairies and other PAMD members.
10. Harrisburg Dairies has been in business for over 92 years. Ms. Dewey and her brother are the fourth generation of their family to own Harrisburg Dairies. She testified that the vast majority of its milk comes from independent farmers. Ms. Dewey attributed Harrisburg Dairies' success for so many years to the over-order premium and Pennsylvania's minimum price structure.

11. Ms. Dewey testified that Harrisburg Dairies sells 25%-29% of its milk in Pennsylvania each month, generating over \$229,000 in over-order premium over the past 12 months which was paid directly to 24 independent producers. She testified that with the over-order premium being part of the minimum price structure in Pennsylvania, Harrisburg Dairies can focus on the quality of its products and the service level to both in-state and out-of-state customers. This has allowed Harrisburg Dairies to set itself apart from non-Pennsylvania competitors when purchasing decisions can be determined by fractions of pennies. Ms. Dewey testified that minimum prices are, in effect, maximum prices and the over-order premium helps Harrisburg Dairies pay a premium to its producers.
12. Ms. Dewey testified that fluid milk plants that supply fresh local milk and provide an outlet for independent farmers are becoming a dying breed outside Pennsylvania. Ms. Dewey testified that the over-order premium should be the highest it can be for her producers, but reasonable enough that Harrisburg Dairies can compete with it built into minimum wholesale prices. She did not detect a competitive threat from setting the over-order premium at \$1.00 per hundredweight.
13. Pennsylvania Department of Agriculture ("Department") Secretary Russell Redding testified. Secretary Redding testified that the Department supported setting the over-order premium at \$1.00 per hundredweight.
14. Secretary Redding testified that the dairy industry is currently experiencing increased production but decreasing prices. Secretary Redding testified that farmers were seeing some price relief in feed bills due to bumper corn and soybean harvest in Brazil, but that most Pennsylvania dairy farmers' milk price was well below their cost of production.
15. Representative John Lawrence testified. Mr. Lawrence represents Pennsylvania's 13<sup>th</sup> legislative district. Mr. Lawrence testified to several issues with the over-order premium and concluded that if the Board chooses to set the over-order premium effective July 1 it should give great thought to the dollar amount and duration.
16. Mr. Lawrence identified the following issues with the over-order premium:
  - a. over-order premium dollars go to out-of-state producers;
  - b. over-order premium dollars are diverted by cooperatives away from Pennsylvania dairy farmers to pay for unrelated expenses;
  - c. Pennsylvania dairy farmers face rising costs while some over-order premium dollars are not paid to those Pennsylvania dairy farmers;
  - d. a lack of transparency and accountability as to the over-order premium;
  - e. the over-order premium creates incentives for movement of milk across state lines;
  - f. it generates significant controversy in the dairy farmer community;
  - g. it creates winners and losers;
  - h. it does not directly benefit every Pennsylvania dairy farmer.

17. The Board finds that the over-order premium should be fixed at \$1.00 per hundredweight for six months effective July 1, 2023.

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. Painter, Ms. Dewey, and Secretary Redding, each of whom testified in support of an over-order premium level of \$1.00 per hundredweight.

Mr. Espenshade and Mr. Painter testified that the over-order premium should be effective for six months, while Ms. Dewey testified the over-order premium should be effective for at least six months. Secretary Redding did not offer testimony regarding the duration of the over-order premium. We rely on the credible and persuasive testimony of Mr. Espenshade, Mr. Painter, and Ms. Dewey to set the over-order premium duration at six months.

18. The Board gives great thought to every order it issues and to every issue it decides. We appreciate Representative Lawrence's concerns and recognize that many people share some or all of those concerns. The Board shares some of those concerns. We are confident the parties that testified in support of establishing the over-order premium at \$1.00 per hundredweight for six months are also aware of the issues and concerns Representative Lawrence raised. The Pennsylvania Senate Agricultural and Rural Affairs Committee has begun to look at those issues and we expect that they will be addressed. In the meantime, taking into consideration the entire record of this hearing, we conclude that setting the over-order premium at \$1.00 per hundredweight is appropriate.

## CONCLUSIONS OF LAW

1. The June 7, 2023, 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

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Robert N. Barley, Chairman

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James A. Van Blarcom, Member

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Kristi Kassimer Harper, Consumer Member

Date: June 21, 2023

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I disagree with the majority's decision to establish any level of over-order premium for any duration at this time.

The over-order premium is a Board-mandated premium added to the producer price. The mandated Board over-order premium, as part of the minimum producer price, eventually becomes part of the minimum retail price. Every Pennsylvania consumer pays the premium when they purchase fluid milk in Pennsylvania. I continue to have several concerns regarding the current over-order premium system. Representative Lawrence described several issues in his testimony. The issues Representative Lawrence discussed, which mirror the concerns I have, are

1. more over-order premium is collected at retail through the minimum retail price than is distributed to Pennsylvania farmers;
2. over-order premium dollars go to out-of-state producers;
3. Pennsylvania dairy farmers face rising costs while some over-order premium dollars are not paid to those Pennsylvania dairy farmers;
4. a lack of transparency and accountability as to the over-order premium;
5. the over-order premium creates incentives for movement of milk across state lines;
6. it generates significant controversy in the dairy farmer community;
7. it creates winners and losers;
8. it does not directly benefit every Pennsylvania dairy farmer.

Because of these and other concerns with the current over-order premium system, I would find that the record of this hearing does not support any level of over-order premium for any duration. I encourage the legislature to strongly consider Secretary Redding's three criteria for a mandated premium above federal order minimum prices as a good framework that would address the concerns I have.

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James A. Van Blarcom, Member

Date June 21, 2023