



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-1015

Posted: December 14, 2022
Effective January 1, 2023

OVER-ORDER PREMIUM

NOW, this 14th day of December 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 January 1, 2023, and will expire at 12:00 midnight on June 30, 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 January 1, 2023, through midnight on June 30, 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

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Kristi Kassimer Harper, Consumer Member

Date: December 14, 2022

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-ORDER PREMIUM HEARING
December 7, 2022

FINDINGS OF FACT

1. On December 7, 2022, 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 52 Pennsylvania Bulletin 7056 on November 12, 2022. Notice of the hearing was also mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1618, dated November 2, 2022.
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 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.
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 \$0.16 per hundredweight of over-order premium. He testified, for his farm, the \$0.16 per hundredweight added \$160.00 to his most recent monthly pay. Mr. Espenshade testified there are many expenses to be met on a dairy farm and the producer can decide which use of the premium best serves his operation.
5. Mr. Espenshade testified that since the most recent over-order order premium hearing on August 30, 2022, Pennsylvania dairy producers are still challenged by high costs of feed, fuel and supplies. He testified that the supply chain issues, record inflation rates, and price increases that have impacted daily life for Americans have hit Pennsylvania's dairy sector very hard. Mr. Espenshade testified that from October 2020 to October 2021 his farm's daily electric usage dropped 11%, but his average daily utility cost rose 23%. From October 2021 to October 2022 his farm's usage was down an additional 7%, but his average daily cost rose 32%. Mr. Espenshade also testified that other expenses have increased, citing fuel, purchased feed, and mastitis treatment as other examples. Mr. Espenshade noted that some economists had predicted Class III and IV futures prices will drop below or hover near \$20.00 per hundredweight for most of 2023, and that the downward trend is be a concern for Class I prices.

6. Doug Sattazahn testified on behalf of Pennsylvania State Grange. Mr. Sattazahn milks 250 cows with a rolling herd average of 25,800 pounds. He farms around 350 acres in Berks County in partnership with his brother. The farm employs one full-time and approximately eight part-time employees. Mr. Sattazahn markets his milk to Clover Farms Dairy, the largest independently owned milk processor in Pennsylvania. Mr. Sattazahn testified in support of fixing the over-order premium at \$1.00 per hundredweight for the next six months. He testified that a six month term is necessary to allow time to thoroughly examine viable options regarding changes to the over-order premium.
7. Mr. Sattazahn testified that his over-order premium for September 2022 was \$0.38 per hundredweight, adding over \$2,000.00 to his milk check. It is the only premium he receives. Mr. Sattazahn testified that his farm has seen rising costs of production. The price of off-road diesel fuel had increased nearly \$2.00 over the 2021 average. His milk hauling rate has increased 47% over last year's average. "Fuel surcharge" is a standard line item on invoices he receives from custom operators. Equipment costs and purchased feed supplement costs have also increased. Mr. Sattazahn testified that 2022 has been a very positive year for milk prices, but the income was necessary to cover across the board cost increases.
8. Pennsylvania Department of Agriculture ("Department") Secretary Russell Redding testified. Secretary Redding testified that the Department did not oppose establishing the over-order premium at \$1.00 per hundredweight for six months. However, Secretary Redding also testified that the over-order premium cannot continue indefinitely in its current form. Secretary Redding listed three criteria the Department believes are necessary for any premium structure going forward:
 - a. Premium dollars must be uniformly distributed among all Pennsylvania dairy producers;
 - b. The amount charged to Pennsylvania consumers must not be substantially more than what is distributed back to Pennsylvania dairy farmers; and
 - c. The distribution system must not provide incentives for "shell games" by which payment of the premium to Pennsylvania dairy farmers can be avoided by purchasing or selling milk across state lines.
9. Chuck Turner testified as an expert in dairy food quality and safety, raw and packaged milk marketing, plant operations, and milk cost accounting on behalf of Turner Dairy (Turner) and the Pennsylvania Association of Milk Dealers (PAMD). Mr. Turner is President of Turner Dairy Farms (Turner), a family owned and managed milk business in Penn Hills, Pennsylvania, founded by Mr. Turner's grandfather in 1930. Turner purchases milk directly from about three dozen dairy farms in Indiana, Westmoreland, Armstrong, and Cambria counties. Mr. Turner recommended that the over-order premium be set at \$1.00 for six months.

10. Mr. Turner testified that during this current inflationary period some stability is needed and that some months are necessary for the state's dairy industry to discuss possible alternatives or supplements to the current over-order premium, noting that no one had suggested a specific proposal during the past year of discussing the subject.
11. Turner is regulated by Federal Order 33. Mr. Turner testified that normally functioning federal order pools generally take money out of the milk checks of producers shipping to Class I plants and distribute that money to producers shipping to Class II, III, and IV plants. Mr. Turner concluded that federal order pooling provides no incentive for producers to do the extra work required to ship milk to a Class I plant. Mr. Turner testified that, regardless of what was originally intended, the over-order premium functions to restore some of the incentive for a producer to ship to a Class I plant. He testified that the over-order premium is important to Turner because it enables it to recruit and reward high quality dairy farmers and is important to Turner producers so that they can cover the extra costs associated with shipping to Turner.
12. Sara Dorland testified on behalf of PAMD as an expert in milk marketing and raw milk procurement, dairy plant cost accounting and operations including risk management, and the intricacies of regulated milk pricing as it impacts dairy operations. Ms. Dorland is the Managing Partner of Ceres Dairy Risk Management in Sun Valley, Idaho. She recommended that the over-order premium be set at \$1.00 per hundredweight for at least six months.
13. Ms. Dorland testified that the over-order premium helps Pennsylvania's dairy industry. She testified that Pennsylvania has broken dairy industry trends affecting the fluid milk industry in a number of ways: 1. Pennsylvania has 21 Class I processors, which is second only to California's 23; 2. Pennsylvania's fluid milk sector retains a healthy diversity of ownership among its Class I processors; 3. Pennsylvania has lost milk producers at a lower rate than the national average, which is especially striking because Pennsylvania has a high concentration of smaller producers.
14. Ms. Dorland testified that states where she would expect to see robust numbers of fluid milk processors include Wisconsin with three, Illinois with seven, Ohio with 10, New York with 12, Texas with 15, Pennsylvania with 21, and California with 23. She testified that Alabama, Georgia, and Mississippi have no fluid milk plants other than producer-handlers and exempt plants which are small and unable to materially impact the states' fluid milk needs. Ms. Dorland testified that Pennsylvania's Class I plants benefit Pennsylvania dairy producers and consumers.
15. Ms. Dorland testified that Pennsylvania has maintained more diversity among Class I processors with a healthy mix of privately-owned plants not affiliated with a grocery chain or cooperative-owned. She testified that proprietary processors in federal orders are at considerable risk with no ability to mitigate costs or selling price relative to cooperatives or grocery-owned plants. Ms. Dorland further testified that in the federal order system, proprietary processors cannot reduce milk prices to producers below the minimum price and that the over-order premium, when reflective of market conditions,

provides those processors the ability to pay necessary premiums to producers to attract and retain quality milk supplies.

16. Ms. Dorland testified that the dairy system is like an ecosystem in that it is interdependent, with each group relying on the others for survival. She testified that greater plant numbers translate to lower supply chain risk, greater security, and better service level. She also testified that when competition for milk dwindles due to less processing capacity, processors can reduce milk payments to producers directly or through reduced premiums, increased deduction, and reblends for those allowed to reblend. The costs to service the local market also increases as milk may travel greater distances to find available capacity and balancing.
17. Ms. Dorland testified that recently Illinois, Wisconsin, Alabama, and Mississippi saw fluid milk plants shut down or abandon fluid milk processing. School districts in those states, lacking a local supply of milk for their school lunch programs, had difficulty procuring milk, with some rural schools unable to get milk at all. She further testified that school milk is labor intensive and expensive to service, with several milk plants no longer supplying school milk to optimize margins. She testified that in some cases proximity of a supplier makes a difference to whether a rural school district will be serviced. Ms. Dorland testified that the over order premium establishes a competitive price that allows cost recovery that mitigates margin erosion so that Pennsylvania's local processors are more able to service schools.
18. Ms. Dorland testified that Pennsylvania lost fewer dairy farms between 1990 and 2020 than the national average, with Pennsylvania down 65% compared to 84% nationwide. Ms. Dorland also testified that Pennsylvania producers face significantly higher costs of production than the national average. So Pennsylvania experienced a lower percentage of farm losses than other states with operating cost advantages. She further testified that in 2021 Pennsylvania producers' gross value of production was \$0.12 higher than the national average.
19. Ms. Dorland testified that Lancaster County, Pennsylvania, has the most cows per county east of the Mississippi River, rivaling counties in Colorado, Texas, Idaho, and California. Lancaster County, though, has a higher density of smaller herds than the western counties. Ms. Dorland testified that it is highly unusual for small dairies to thrive in a commodity market. She further testified that the over-order premium stood out when she reviewed what could support Pennsylvania's unique dairy eco-system; she considered other factors, such as religious traditions and farm preservation programs, and concluded the over-order premium had the greatest impact.
20. Ms. Dorland testified that costs have been on the rise for milk producers and are expected to stay high for some time, with input costs rising to and remaining at some of the highest levels in years. Ms. Dorland noted that Mr. Espenshade and Mr. Sattazahn testified that electricity, parts, labor and other costs had increased and that income over feed costs margins may not reflect superior returns as these increased costs have to be recovered. She testified that despite the second-highest milk over feed margins over the last eight years, Pennsylvania's milk production for 2022 through September is 1.3%

less than 2021. She also testified that the dairy herd in September was 1.1% smaller than 2021. Ms. Dorland concluded that these decreases indicated that while margins were higher, they were not in a range to incentivize increased output to capture larger returns, as was seen between 2013 and 2015.

21. Kevin Peter testified on behalf of Wawa Dairy and PAMD. Mr. Peter is Wawa's plant manager. Wawa purchases milk from three dairy cooperatives and has no independent farms. Mr. Peter testified in support of the over-order premium being set at \$1.00 per hundredweight for six months.

Mr. Peter testified that Wawa's raw milk supply comes from within a 50 mile radius of the plant, most from Pennsylvania. That is the closest milk supply for any plant that Mr. Peter has worked at during his 33 year career. He testified that when he worked in Texas, North Carolina, and Virginia most of the milk supply at those plants came from at least 200 miles away. Mr. Peter testified that when customers ask where Wawa's milk comes from, he can give them a map of farms that they can drive by and see. He further testified that consumers prefer that their milk come from close by. Mr. Peter testified that the over-order premium has helped maintain Wawa's close supply and is helping Pennsylvania farms to survive.

22. Dave Schneider testified on behalf of Schneider's Dairy and PAMD. Mr. Schneider is Schneider's vice president. Schneider obtains its milk supply from 30 independent farmers. Mr. Schneider testified in support of setting the over-order premium at \$1.00 per hundredweight for six months.

Mr. Schneider testified that Schneider producers need the \$1.00 over-order premium to incentivize them to accept the burdens and responsibilities Schneider imposes. Schneider farms are expected to be inspection ready 24 hours per day, seven days per week, 365 days per year. Schneider's farm inspector makes unannounced visits to each farm every other week to ensure compliance with Schneider's standards.

Mr. Schneider testified that he supported a six month duration for the over-order premium because it provides some stability and because three months is not enough time to discuss the issues that interested parties have raised regarding the over-order premium.

23. Brittni Treichler-Harris testified on behalf of the Pennsylvania Association of Dairy Cooperatives (PADC). Ms. Treichler-Harris is the eastern region milk supply manager for Land O' Lakes. Members of PADC are Dairy Farmers of America, Inc.; Lanco Dairy Farms Co-op, Inc.; Land O'Lakes, Inc.; and Maryland & Virginia Milk Producers' Cooperative Association, Inc. Ms. Treichler-Harris testified in support of setting the over-order premium at a minimum of \$1.00 per hundredweight. She testified that PADC's advocacy of that level was driven by the same market factors as outlined by Mr. Espenshade and Mr. Sattazahn. Ms. Treichler-Harris specifically pointed out increased costs in fuel, feed, labor, and other inputs. She testified that while milk prices remain robust, recent history demonstrated that prices could fall rapidly and the over-order premium would then be there to provide a safety net to producers.

24. Ms. Treichler-Harris testified that while PADC continues to support the concept of a premium for Pennsylvania dairy farmers above the federal minimum price, PADC also had concerns about the current over-order premium structure. She testified that PADC believes premiums paid to Pennsylvania dairy farmers above the federal order price should meet the criteria outlined by Secretary Redding. Ms. Treichler-Harris testified that the current system does not meet those criteria.
25. Ms. Treichler-Harris testified that some time would be needed for potential legislative changes addressing the over-order premium to take place. She testified, though, that a six-month duration for the over-order premium amounted to "kicking the can down the road" and would not adequately convey the sense of urgency needed to address PADC's concerns with the current over-order premium structure. Ms. Treichler-Harris testified that PADC believes that three months is a reasonable timeframe for renewed legislative action.
26. Troye Cooper testified as an expert in raw milk procurement, raw milk marketing, raw milk quality, and logistics on behalf of Maryland and Virginia Milk Producers' Cooperative Association, Inc (Maryland and Virginia). Maryland and Virginia markets the milk of its 940 member owners spanning 10 states along the east coast from New York to South Carolina. 750 of those members are located in Pennsylvania. Mr. Cooper testified that the over-order premium should be set at \$2.00 per hundredweight until a solution is implemented to address issues with the over-order premium that have been raised by some in the industry.
27. Mr. Cooper testified that the over-order premium should be set at \$2.00 to help ensure a reasonable profit to Pennsylvania dairy producers. He testified that Pennsylvania dairy farmers are generally of smaller size than those in surrounding states and thus have production cost disadvantages compared to those larger farms. Mr. Cooper testified that while we have seen robust milk prices throughout 2022, which helped offset inflationary costs, the outlook for 2023 was not as good. He testified that many expert dairy economists are forecasting an average Class I mover for the first half of 2023 15% to 20% lower than 2022's average. Mr. Cooper testified that while the federal order price for milk may be decreasing, the costs of producing that milk are not.
28. Mr. Cooper testified that, despite higher milk prices throughout 2022, Pennsylvania milk production declined as compared to 2021. April 2022 through June 2022 was 1.3% less than the same period in 2021. July 2022 through September 2022 was 0.2% less than the same period in 2021. He testified that production cost for dairy farms was high and would remain high for the foreseeable future and that dairy farm margins are going to be squeezed. Mr. Cooper testified it was clear that Pennsylvania dairy producers need something to help them remain financially viable.
29. Mr. Cooper testified that Maryland and Virginia agreed with the three criteria outlined by Secretary Redding for a regulated premium above the federal order price and that changes to the collection and distribution of the over-order premium are necessary. He

also testified that it is necessary to work within the current system until there is some change to it.

30. Glenn Stoltzfus testified on behalf of Pennsylvania Farm Bureau (PFB). Mr. Stoltzfus operates Pennwood Farms in partnership with his three brothers in Somerset County, milk just shy of 700 cows. Pennwood Farms grows all its own forages and high moisture corn and sells excess corn and hay, farming approximately 1700 acres. Because the farm must support four families, the business operated differently than what might be considered a typical Pennsylvania dairy farm. Pennwood Farms engages in income-producing enterprises such as custom cropping, dairy breeding, and livestock sales. Pennwood Farms ships its milk to Maryland and Virginia. Mr. Stoltzfus testified that the over-order premium should be set at \$1.00 per hundredweight for three months.
31. Mr. Stoltzfus testified that PFB views the current over-order premium structure as deeply flawed and supports Secretary Redding's three criteria. PFB supports setting the over-order premium at \$1.00 to prevent undue financial harm to dairy farmers and to allow time for legislative action to occur. Mr. Stoltzfus testified, though, that PFB believes three months is enough time to allow stakeholders and interested parties to begin working toward a legislative solution. Mr. Stoltzfus testified that PFB understands that passage and implementation of a legislative solution is unlikely to occur in three months, but that a six month duration would indicate that the status quo was acceptable.
32. Mr. Turner testified that a three month over-order premium duration was not enough time for constructive action to supplement or replace the current over-order premium. Mr. Turner further testified that Secretary Redding's three criteria involve serious questions that require serious discussion. He testified that a three month duration would not provide enough time for a substantive Board hearing and would not allow time for thoughtful contemplation by the industry and legislature.
33. Mr. Turner testified that the over-order premium needs to be aligned with premiums paid in other states in order to prevent disorderly marketing of milk. PAMD opposed Maryland and Virginia's recommendation that the over-order premium be set at \$2.00. Mr. Turner testified that he had not seen any increases in raw milk premiums in the Ohio market.
34. Ms. Dorland testified that the \$2.00 premium recommended by Maryland and Virginia, while perhaps justified from a cost perspective in the recent past, was no longer appropriate. She testified that there has been an easing in some costs, like fuel and fertilizer. Ms. Dorland testified that Class III and Class IV milk price forecasts for 2023 indicate that next year's Class III and Class IV milk prices will be the third highest in since 2014 and would be capable of offsetting higher input costs.
35. Ms. Treichler-Harris testified that producer milk supplying the Class I market is not of any higher quality than milk supplying the Class II, III, and IV markets. She testified that all Grade A producers in Pennsylvania are ready to provide milk to the Class I market when demand is high and that Class II, III, and IV plants absorb production

when Class I demand is low. Ms. Treichler-Harris also testified that while Pennsylvania has retained Class I processing in recent years, overall milk production has declined, with Pennsylvania's share of national production declining by 26% between 2003 and 2021 (a 6.07% share of national production in 2003 down to a 4.47% share of national production in 2021).

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

All of the witnesses recommended that the over-order premium be at least \$1.00 per hundredweight. We also heard evidence that would support a higher over-order premium. Mr. Cooper offered evidence supporting a \$2.00 per hundredweight over-order premium. In addition to farm cost of production, Mr. Cooper cited declining Pennsylvania milk production as a concern. Ms. Treichler-Harris and Ms. Dorland also offered testimony regarding Pennsylvania's decreased milk production. We are concerned about Pennsylvania's declining milk production and observe that at times the Board has increased the over-order premium in part due to declining production.

However, we find that, based on the totality of the evidence, the over-order premium should be set at \$1.00 per hundredweight. For instance, the three dairy farmers who testified supported \$1.00 per hundredweight despite citing their increased production costs. The decline in Pennsylvania milk production moderated somewhat for the July 2022 through September 2022 quarter to 0.2% compared to 2021. Mr. Turner testified that market conditions did not support a \$2.00 per hundredweight over-order premium.

In finding that the duration of the over-order premium should be six months, we find that any shorter duration is not sufficient to allow the necessary investigation and analysis of the over-order premium and its relationship and contribution to Pennsylvania's dairy industry. In establishing the six month duration the Board is not finding that the status quo is acceptable and we do not intend to in effect "kick the can down the road." We are acknowledging the interdependent nature of Pennsylvania's dairy industry and the potentially competing interests of different segments of that industry. Parties that testified that the over-order premium should not continue indefinitely in its current form also have offered no concrete alternative suggestions. If the industry, or segments of the industry, believe the over-order premium system should change, the Board believes it would be more productive to devote resources to developing suggested changes than to preparing for another over-order premium hearing three months from now.

CONCLUSIONS OF LAW

1. The December 7, 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 Kassimer Harper, Consumer Member

Date: December 14, 2022

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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 have several concerns regarding the current over-order premium system. While not an exhaustive list, among those concerns are

1. more over-order premium is collected at retail through the minimum retail price than is distributed to Pennsylvania farmers;
2. there is no accounting or way to know currently how much money Pennsylvania consumers pay at retail as a result of the over-order premium;
3. over-order premium dollars that are distributed to Pennsylvania farmers are not distributed fairly.

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 do believe and would find that Secretary Redding's three criteria for a mandated premium above federal order minimum prices are a good framework that would address the concerns I have.

James A. Van Blarcom, Member

Date December 14, 2022