



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-992

Posted: November 4, 2015
Effective: November 11, 2015

COOPERATIVE COSTS OVER-PRICE PREMIUM

NOW, this 4th day of November 2015, 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 November 11, 2015.

SECTION A INCORPORATION

The attached Findings of Fact, Conclusions of Law, and Discussion are incorporated herein by this reference as though fully set forth in this order.

SECTION B

- a. Official General Order A-925 remains in effect.
- b. The Board will develop a framework, set of regulations, and reporting mechanism for cooperatives, similar to that in place for milk dealers, that will allow us to accurately determine relevant cooperative costs.

**SECTION C
SEVERABILITY**

If any section, provision, subsection, paragraph, or clause of this order is determined to be unconstitutional or otherwise contrary to law, the remainder of the order shall be given effect as though that section, provision, subsection, paragraph, or clause has not been included.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Lynda J. Bowman, Consumer Member

James A. Van Blarcom, Member

Date: November 4, 2015

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FINDINGS OF FACT AND CONCLUSIONS OF LAW
COOPERATIVE COSTS AND OVER-PRICE PREMIUM

FINDINGS OF FACT

1. On June 5, 2013, the Pennsylvania Milk Marketing Board (“Board”) approved a petition from the Greater Northeast Milk Marketing Agency (“GNEMMA”) to hold a hearing to consider terminating the over-price premium and to consider building the cost of procuring Pennsylvania Class I milk by cooperatives into the Class I price of all sales. The Board scheduled the hearing for November 6, 2013.
2. On September 25, 2013, the Board partially granted a request from GNEMMA to postpone the hearing date. GNEMMA requested the postponement to allow it additional time to fully prepare and present the required data for the hearing.
3. The Board identified two issues related to the over-price premium that could be addressed on the originally scheduled hearing date and on September 25, 2013, ordered that Board Staff present evidence on November 6, 2013, regarding those two issues: (1) whether the mandatory \$0.20 per hundredweight processor assessment under the Fluid Milk Promotion Order should be included in the over-price premium and if not, where in the price build up it should be accounted for, and (2) how and to what extent adjustments to the over-price premium that may be necessary from time-to-time are accounted for and recovered.
4. On November 6, 2013, the Board convened the hearing to receive testimony and exhibits concerning the two initial issues identified. As a result of that hearing, the Board issued Official General Order A-989 on December 3, 2014.
5. On November 13, 2014, the Board convened the hearing to consider GNEMMA’s requests concerning the over-price premium and cooperative milk procurement costs. The hearing continued on January 7, 2015, January 8, 2015, February 25, 2015, February 26, 2015, April 1, 2015, and April 3, 2015. Portions of the hearing were conducted *in camera* pursuant to a Protective Order issued by the Board; those portions of the record are sealed and available only pursuant to the terms of the Protective Order.
6. Over the course of the seven hearing days, the Board heard testimony from numerous witnesses. The following witnesses testified in support of GNEMMA’s requests: Dean Ellinwood of Dairy Marketing Services, LLC, as an expert in raw milk marketing, procurement from producers, and sales to handlers, as well as a lay witness; Sharad Mathur, Chief Operating Officer of Dairy Marketing Services, LLC, as a lay witness; John Stoner, CPA, CVA, as an expert in financial analysis and cost accounting; Troye Cooper of Maryland & Virginia Milk Producers’ Cooperative Association, Inc., as an expert in raw milk marketing, procurement from producers, and sales to handlers, as well as a lay witness; dairy farmer Terry Inch; dairy farmer Rodney Smyser; dairy farmer Connie Troutman; and Kurt Williams of Lanco Dairy Farms Co-op, Inc.

7. The following witnesses testified in opposition to GNEMMA's requests: Carl Herbein, CPA, as an expert in cost accounting and milk cost accounting; dairy farmer Martin Moyer; Todd Rutter of Rutter's Dairy Company; Cheryl Caruso of Clover Farms; and John Pierce of Dean Foods.
8. David DeSantis, the Board's Chief of Enforcement and Accounting, testified on behalf of Board Staff as an expert in milk industry cost accounting and regulation of the milk market in Pennsylvania.
9. The Board truly appreciates the time and effort expended by all of the witnesses who provided testimony and evidence to us during this hearing. We understand the time commitment preparing and attending a multi-day hearing spread over several months, not only by the witnesses who attended all or several sessions but also by those witnesses who attended a single session. All of the witnesses provided us information that factored into our decisions on the issues presented and we carefully and thoroughly considered and reviewed all of the testimony and evidence as we deliberated the issues and drafted this order. The findings and conclusions below are based on the totality of the evidence and our thorough review and weighing of all of the evidence, without providing detailed summaries of each witness's testimony.
10. Among the dealer costs included in the area minimum resale price buildups are those attributable to what is referred to as receiving, lab, and field work. GNEMMA presented evidence demonstrating that cooperatives provide services to their dairy farmer members that are essentially the same services provided by milk dealers to independent producers for laboratory testing and field work. GNEMMA also presented evidence that cooperatives supply services to their members, such as payroll, that are essentially the same as those provided by milk dealers in relation to their independent producers; the costs attributable to independent payroll, for instance, are also included in minimum resale prices. The Board finds, based on the totality of the evidence presented, that cooperatives provide certain services to their member dairy farmers that are essentially the same as services provided by milk dealers to their independent producers. The Board also finds, based on the totality of the evidence presented that cooperatives incur costs when providing those services.
11. For minimum resale price buildup purposes, milk dealer costs are determined based on extensive milk dealer reporting requirements and Board Staff data collection. Milk dealer reporting and Board Staff data collection are done pursuant to Board regulations. Reported cross section dealer costs are audited by Board Staff to ensure, among other things, adherence to the Board regulations regarding record keeping and reporting and to ensure that costs are characterized accurately and uniformly among and across cross section dealers. Board Staff audits are reviewed by milk dealers. Evidence of the dealer costs is then presented at Board hearings by Board Staff and milk dealers.
12. Mr. Stoner presented evidence relative to the costs incurred by a cross section of six cooperative entities. Cooperatives are not subject to the same record keeping and

reporting requirements for determining their costs for inclusion in minimum resale price buildups as are milk dealers; therefore, and not unexpectedly, costs reported to Mr. Stoner were not necessarily characterized uniformly across the cooperative cross-section. Nor were the cooperative cross-section costs audited or otherwise independently verified by Board Staff. The Board finds that, based on the totality of the evidence presented, we cannot rely on the cooperative costs presented by GNEMMA.

13. The Board finds it is appropriate to develop a framework, set of regulations, and reporting mechanism for cooperatives similar to that in place for milk dealers that will allow us to accurately determine relevant cooperative costs. When we can begin to collect such accurate and uniformly generated data, the Board can decide if and how to recognize cooperative costs.
14. GNEMMA presented evidence that the over-price premium should be eliminated from the minimum resale price buildups. Mr. Cooper testified that the over-order premium, by itself, is sufficient to attract all of the milk that a dealer needs for Pennsylvania Class I sales, and that Pennsylvania dealers with high Pennsylvania Class I sales generally do not need to pay any over-price premium to pay competitive prices to producers. According to Mr. Cooper, the over-price premium is currently being paid by dealers with lower than average Pennsylvania Class I sales, for milk that is most likely ultimately sold for other than Pennsylvania Class I use. Mr. Cooper testified that the amount of over-price premium attributable to that non-Pennsylvania Class I use, though, is passed on to and paid by Pennsylvania consumers through the minimum resale price buildups.
15. The Board finds that the over-price premium should not be eliminated. Regardless whether Pennsylvania milk dealers with high Pennsylvania Class I utilization have to pay an over-price premium to pay competitive prices to producers, some Pennsylvania milk dealers do pay over-price premiums to attract and retain producers. We believe that the over-price premium order, Official General Order A-925, accounts for varying Pennsylvania Class I utilizations by Pennsylvania dealers and provides for the inclusion of an appropriate amount of over-price premium in the area minimum resale price buildups.
16. The Board agrees with the position of the Pennsylvania Department of Agriculture that Pennsylvania consumers should not pay for over-price premiums that are for uses other than the Class I milk in the container that they are buying. Therefore, Board Staff will review the current over-price premium order to determine if any changes to it are necessary to ensure it continues to appropriately reflect those over-price premium payments necessary to attract and retain Pennsylvania producer milk.

CONCLUSIONS OF LAW

1. The hearing was held pursuant to authority granted to the Board in section 801 of the Milk Marketing Law (Law), 31 P.S. § 700j-801.
2. The hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard.
3. In establishing the attached order, the Board has considered the entire record and has concluded that the adoption of this order is supported by a preponderance of the evidence and is reasonable and appropriate under section 801 of the Law, subject to any revisions or amendments the Board may make in the manner set forth in the Law.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

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