



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-877 AMENDED

Posted: December 7, 1994
Effective: December 15, 1994

OVER-ORDER PREMIUM

NOW, this 7th day of December, 1994, the Commonwealth of Pennsylvania, Milk Marketing Board, hereby amends, re-enters and re-issues the following Official General Order to be designated as Official General Order No. A-877 Amended.

SECTION I

The Findings of Fact and Conclusions of Law attached hereto as Exhibit B are incorporated herein by this reference as though fully set forth in this document.

SECTION II

The Official General Price Orders for Milk Marketing Areas 1, 2, 3, 4, 5 and 6 are amended as follows:

(a) By adding or including in the calculation of the Class I price established by those orders an over-order premium of \$0.80 per hundredweight; and

(b) By adding the following additional terms to the "Definition" Section of each order:

Diversion - Any transaction involving the purchase of milk or milk products from a producer in which the milk thus purchased does not enter the purchasing dealer or handler's plant. Whether milk enters the plant of the purchasing dealer or handler will be determined on the basis of United States Department of Agriculture guidelines.

Over-Order Premium - An amount, over and above the applicable federal order or Board established base price, which the Board mandates be paid to producers for all milk produced in the state and included in the Pennsylvania Class I utilization of Pennsylvania dealers.

SECTION III

Calculation/Application Of Over-Order Premium

(a) Diversions

Diversions of milk or milk products, other than Class I diversions, shall be eliminated or excluded from the calculation of the over-order premium to be paid to Pennsylvania producers. Once the total premium due has been calculated, it shall be payable to all Pennsylvania producers regardless of whether the actual milk they supplied was diverted.

(b) Losses On Surplus Or Distressed Milk Sales

With regard to the recovery of losses on sales of surplus milk and milk products as provided for under Section 143.43 of the Regulations of the Pennsylvania Milk Marketing Board (7 Pa. Code §143.1 et seq.), credits against any over-order premium (or any other payment mandated by the Board) otherwise due to producers shall be permitted only to the extent such losses exceed profits on such sales during the four (4) month periods extending from January 1 through April 30, from May 1 through August 31 and from September 1 through December 31 of each year, and then, only in the same proportion as receipts of Pennsylvania produced milk to total receipts.

In netting profits and losses on sales of surplus or distressed milk or milk products, the following procedure shall be used. A net profit or loss figure for all applicable sales shall be calculated each month. The amount of any profit or loss shall be subject to this initial netting calculation in the month in which such profit or loss occurs. (If not initially netted in that month, any loss shall be excluded from further netting calculations.) Any net loss resulting from this initial netting calculation must be taken as a credit in that month to the maximum extent permitted, but in no event shall credits against net losses exceed \$0.20 per hundredweight in any month.

Any net losses in excess of the \$0.20 per hundredweight limit shall be incorporated into the netting calculation performed during the following month, except when that following month falls into a new four month netting period (i.e. January, May and September). In those instances, any losses in excess of the \$0.20 limit shall be excluded from further netting calculations. Although excluded from further netting, losses not fully deducted during the prior netting period because of the \$0.20 cap may be "carried-over" into the new period and taken as a credit. In applying this carry-over, such losses must be taken as credits in the first month of the new period (and any subsequent months) to the maximum extent permitted, subject to the \$0.20 per hundredweight limit per month, until they are fully and completely utilized. (Examples of the application of this procedure are attached as Exhibit A).

Thrice each year, in calculating the April, August and December final payments, the net profit and/or loss figures from the relevant four month period shall themselves be netted. Based on that thrice yearly recapitulation, any excess credits taken in the prior four months shall be repaid to producers.

(c) Adjustments For Purchases From Other Dealers, For Shrinkage And For Inventory Variation

The calculations specified in Subparagraphs (a) and (b) above shall be performed only after proper adjustments have been made in the utilization calculation to account for purchases from other dealers, for shrinkage and for inventory variation.

SECTION IV

Effect On Any Over-Price Supply Premium

(a) Calculation Of Over-Price Supply Premium

The over-price supply premium shall continue to be calculated as set forth in the Official General Price Order for each milk marketing area (i.e. the premium shall continue to be the difference between the total amount paid and the mandated minimum price). The amount added to the Class I price pursuant to this Official General Order as an over-order premium shall be included in the computation of the minimum amount due for purposes of calculating the over-price supply premium under each Official General Price Order for each milk marketing area.

(b) Area Specific Inclusions Or Exclusions

In Milk Marketing Area 1, any amounts paid for Class II or Class III milk in excess of the mandated minimum price as well as any quality or service premiums shall continue to be excluded from the calculation of the over-price supply premium.

In Milk Marketing Areas 2, 3, 4, 5 and 6, any amounts paid for any milk in excess of the mandated minimum price for that milk shall continue to be included in the calculation of the over-price supply premium.

SECTION V

The Milk Marketing Board may convene a hearing at another time upon its own motion or the petition of an Interested Party to examine the producers' costs of production, the market situation or any other factors affecting the milk industry of the Commonwealth to determine whether any of the provisions of this Official General Order should be modified.

SECTION VI

This Revised Official General Order shall be effective December 15, 1994, and shall remain in effect for an indefinite period of time. Any calculations required by this Order shall commence with the next final payment due after the effective date of this Order. With regard to the six month recapitulation or netting of profits and losses on sales of surplus or distressed milk to be performed with the December, 1994 final payment, the netting calculation outlined in Section III(b) of this Order shall include only those months for which the final payment was due after the effective date of this Order.

SECTION VII

If any section, provision, part or clause of this Official General Order shall be determined to be unconstitutional or contrary to law, the remainder of the Official General Order shall be given effect as though such section, provision, part or clause had not been included.

PENNSYLVANIA MILK MARKETING BOARD



Leon H. Wilkinson, Chairman



J. Robert Derry, Consumer Member

Donald E. Lanius, Member

IF YOU REQUIRE THIS INFORMATION IN AN ALTERNATE FORMAT, PLEASE CALL 717-787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS).

The following examples assume that purchases of milk from producers remain stable. The \$0.20 cap on deductions as referenced in the second paragraph of Section III (b) will allow for no more than a \$5,000.00 deduction from producers in any one month.

	Bulk Milk Sale Loss	Bulk Milk Sale Profit	Amount Deducted
Example 1 -			
Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	\$ 8,000.00	\$ 0.00	\$ 5,000.00
Month 3	\$ 0.00	\$ 2,000.00	\$ 5,000.00
Month 4	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 1,000.00</u>
TOTAL	\$ 18,000.00	\$ 2,000.00	\$16,000.00

All losses were recaptured in the period in which they were incurred.

Example 2 -

Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	\$ 8,000.00	\$ 0.00	\$ 5,000.00
Month 3	\$ 0.00	\$10,000.00	\$ 0.00
Month 4	<u>\$ 0.00</u>	<u>\$10,000.00</u>	<u>\$ 0.00</u>
TOTAL	\$ 18,000.00	\$20,000.00	\$10,000.00

Because profits exceeded losses, the \$10,000.00 deducted is to be repaid to the producers. No profit or loss will be carried into the following period.

Example 3 -

Month 1	\$10,000.00	\$ 0.00	\$ 5,000.00
Month 2	\$ 8,000.00	\$ 0.00	\$ 5,000.00
Month 3	\$ 5,000.00	\$ 0.00	\$ 5,000.00
Month 4	<u>\$ 5,000.00</u>	<u>\$ 0.00</u>	<u>\$ 5,000.00</u>
TOTAL	\$28,000.00	\$ 0.00	\$20,000.00

Losses exceeded deductions by \$8,000.00 in this period. This loss may be recaptured in the following period. Future profits will not be netted against this \$8,000.00 carryover.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
STATEWIDE HEARING
OF OCTOBER 6, 1994
CLARIFICATION OF OVER-ORDER PREMIUM,
OFFICIAL GENERAL ORDER A-877

I. Procedural History

1. The hearing of October 6, 1994, was called in response to a Petition of the Pennsylvania Milk Marketing Board to clarify Official General Order No. A-877.

2. Pursuant to Notice given by the Pennsylvania Milk Marketing Board ("Board") at a regularly scheduled Sunshine Meeting, a Notice of Hearing was published in the Pennsylvania Bulletin, Vol. 24, No. 39, dated September 24, 1994, setting a date and time for the hearing. (PMMB-1)

3. On September 14, 1994, a Notice of Hearing, Deadline for Requests of Data, Presubmission Schedule and Pre-Hearing Conference was mailed to all those who receive the price list from the Pennsylvania Milk Marketing Board. (PMMB-2)

4. A Pre-Hearing Conference to establish the order of testimony was held on October 5, 1994 at 2:00 p.m. at the Offices of the Pennsylvania Milk Marketing Board.

5. Pursuant to the Notice of Hearing, the Board duly convened the hearing for clarification of OGO A-877 on October 6, 1994 and conducted the hearing to completion on the same day, which hearing was conducted at the Agriculture Building, Harrisburg, Pennsylvania.

II. Findings of Fact

1. Official General Order A-877 establishes an over-order premium of \$.80 per cwt. (N.T. 13)

2. The premium must be paid to Pennsylvania producers for milk bottled and sold in the state. (N.T. 13)

3. A diversion of milk occurs when milk is purchased from producers by one dealer and shipped to another dealer's plant. This milk never actually enters the purchasing dealer's plant. (N.T. 13)

4. Inclusion of diversions of milk in the calculation of the over-order premium partially circumvents the payment of the premium. (N.T. 13)

5. Diversions are currently identified on the monthly reports of the dealers. (N.T. 60)

6. The amount of the over-order premium to be paid to producers is based on the Class I utilization of the producers' milk. To determine the rate of premium, the dealer's pounds of milk sold in Pennsylvania are divided by the total pounds of milk received by the dealer, and that fraction is multiplied by the premium in effect to get the appropriate premium level. Then that level is multiplied by the total pounds of milk sold in Pennsylvania.

An increase in the pounds sold and a commensurate increase in Class III utilization does not decrease the level of premium on Class I milk.

Premiums are only paid on receipts from producers in Pennsylvania. To calculate the premium on Class I milk when some of the milk comes from out of state producers the following calculation is made:

Class I pounds/total pounds received x
Pennsylvania producer milk/total pounds
received x the premium in effect gives the
rate of premium. This rate is then
multiplied by the pounds of Pennsylvania
producer milk received by the dealer.

The premium is diluted solely because diversions are included in the calculation of the premium. (Exhibit Staff-1; N.T. 14-16)

7. Because of the diluting or diminishing effect of including diversions in the premium calculation, the Board finds that diversions of all but Class I milk should be omitted from the calculation of the premium to be paid. This will ensure that Pennsylvania producers will receive the same level of premium regardless of the number or volume of diversion activity by dealers.

8. The Board finds that using the above calculations to determine the premium to be paid to producers will accomplish the Board's original intent in enacting OGO A-877.

9. The Board finds that employing the above suggested methods of calculation eliminates the incentive that dealers now have to divert milk solely to circumvent the over-order premium.

10. Section 143.43 of the Regulations of the Pennsylvania Milk Marketing Board states that milk dealers may request a credit against payment obligations for losses on bulk sales of surplus or distressed milk to other licensees engaged solely in the manufacture of dairy products. (N.T. 18)

11. In those milk marketing areas of the state where a federal milk marketing order also pertains, dealers purchase milk from producers at federal minimums and pay over that federal order price only where the Pennsylvania mandated premium applies. Where this is the case, the only producer payment obligation from which to deduct an allowance for losses on bulk sales is from that premium. (N.T. 18) In those areas of the state where no federal order is in place, losses on sales of surplus milk may be deducted both from the premium and from the underlying Board determined base price due producers. (N.T. 81)

12. To the extent that those losses on bulk sales were at least partially created by milk purchased from out-of-state producers, only that portion of the loss attributable to Pennsylvania produced milk should be taken as an allowance on the premium paid to Pennsylvania producers. The same should apply to profits. (N.T. 18, 19)

13. To date, only losses on bulk sales have been accounted for in this process, not profits. (N.T. 65)

14. To account fairly for the profits and losses on bulk sales each month, these should be netted over a period greater than one month, preferably four months. (N.T. 19, 20)

15. The Board finds that adjustments should be made in January, May and September.

16. Net losses on bulk sales should be taken from the over-order premium when that is in effect and if there is no premium, then such losses should be taken from the price paid. (N.T. 81)

III. Conclusions of Law

A. The October 6, 1994 hearing to determine issues concerning purchases of out-of-state producer milk diversions of the milk as well as the offsetting of bulk sale losses against profits statewide, was held pursuant to authority granted the Board in Section 304 of the Law (31 P.S. 700j-304).

B. The hearing was held after adequate notice, and all interested parties were given a reasonable opportunity to be heard.

C. The Law provides that the Board, any member thereof, or any special agent or examiner designated by the board, shall hold such hearings at the Capitol or elsewhere, as the board deems necessary or appropriate to carry out the provisions of this act... (31 P.S. Sec. 700j-304)

D. The Board concludes that, as a matter of law, all relevant factors were considered, based upon competent evidence presented at the hearing.

E. The Board concludes that, based upon the record evidence and the Board's Findings of Fact, adoption of the attached Official General Order is reasonable and appropriate subject to any modification which the Board may deem appropriate as a result of the two pre-order conferences and recommendations thereafter made to the Board in the manner set forth in the law.

ORDER

AND NOW, TO WIT, this 7th day of December, 1994, it is hereby ORDERED, ADJUDGED AND DECREED that Official General Order A-877 shall be modified as set forth on the attached Order in accordance with the above Findings and Conclusions.

PENNSYLVANIA MILK MARKETING BOARD

Leon H. Wilkinson
Chairman

J. H. [unclear]
Member

Member