



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-896

Posted: January 30, 1998
Effective: February 6, 1998

**ORDER ADOPTING CLASS I DIFFERENTIALS
IN MILK MARKETING AREAS NOS. 1 - 5**

NOW, this 30th day of January 1998, the Commonwealth of Pennsylvania, Milk Marketing Board 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 February 6, 1998, and will remain in effect through March 31, 1998.

SECTION I

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 II

(a) Section D, Provision 1 of Official General Order A-890 Amended, governing Milk Marketing Area No. 1, is amended to read as follows:

The minimum Class I price for the months of February and March 1998 shall be the second previous month's basic formula price as announced by the United States Department of Agriculture, plus \$3.03 per hundredweight, plus any Board-mandated premium. The amounts added onto the basic formula price shall apply only to milk produced, processed, and sold in Pennsylvania.

For each month, the minimum class prices other than the Class I price for each hundredweight of milk containing 3.5% butterfat delivered or made available on consignment or otherwise to milk dealers to be sold, resold, or utilized shall be the prices established, announced,

and published under federal law and the federal regulations applicable to the milk being priced under the governing federal order.

(b) Section D, Provision 1(a) of Official General Order A-882, governing Milk Marketing Area No. 2, is amended to read as follows:

The minimum Class I price for February and March 1998 shall be the second previous month's basic formula price as announced by the United States Department of Agriculture, plus \$2.75 per hundredweight or \$13.25, whichever is greater, plus any Board-mandated premium. The amounts added onto the basic formula price shall apply only to milk produced, processed, and sold in Pennsylvania.

(c) Section D, Provision 1(a) of Official General Order A-878A, governing Milk Marketing Area No. 3, is amended to read as follows:

The minimum Class I price for February and March 1998 shall be the second previous month's basic formula price as announced by the United States Department of Agriculture, plus \$2.57 per hundredweight, plus any Board-mandated premium. The amounts added onto the basic formula price shall apply only to milk produced, processed, and sold in Pennsylvania.

(d) Section D, Provision 1(a) of Official General Order A-876, governing Milk Marketing Area No. 4, is amended to read as follows:

The minimum Class I price for February and March 1998 shall be the second previous month's basic formula price as announced by the United States Department of Agriculture, plus \$3.03 per hundredweight, plus any Board-mandated premium. The amounts added onto the basic formula price shall apply only to milk produced, processed, and sold in Pennsylvania.

(e) Section D, Provision 1 of Official General Order A-887, governing Milk Marketing Area No. 5, is amended to read as follows:

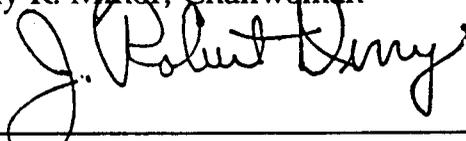
The minimum Class I price for the months of February and March 1998 shall be the second previous month's basic formula price as announced by the United States Department of Agriculture, plus \$2.00 per hundredweight, plus any Board-mandated premium. The amounts added onto the basic formula price shall apply only to milk produced, processed, and sold in Pennsylvania.

For each month, the minimum class prices other than the Class I price for each hundredweight of milk containing 3.5% butterfat delivered or made available on consignment or otherwise to milk dealers to be sold, resold, or utilized shall be the prices established, announced, and published under federal law and the federal regulations applicable to the milk being priced under the governing federal order.

PENNSYLVANIA MILK MARKETING BOARD



Beverly R. Minter, Chairwoman



J. Robert Derry, Consumer Member

Luke F. Brubaker, Member

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

EMERGENCY HEARING TO CONSIDER MODIFICATIONS IN THE METHODOLOGY FOR ESTABLISHING CLASS I PRICES PAID TO PRODUCERS--DECEMBER 2, 1997

HEARING TO CONSIDER ESTABLISHING AND POOLING CLASS I DIFFERENTIALS--JANUARY 23, 1998

I. Findings of Fact

1. On December 2, 1997, the Pennsylvania Milk Marketing Board (hereafter "the PMMB") convened an emergency hearing to receive evidence concerning whether, in the wake of a recent federal court order issued by Judge David S. Doty enjoining the United States Secretary of Agriculture from enforcing Class I differentials (see PMMB Exhibit 4 (12/2/97 hearing)), the PMMB should adopt for its own interim use the differentials in the federal marketing orders.
2. On January 23, 1998, the PMMB convened a hearing to receive evidence on establishing and pooling Class I differentials. The hearing call also provided for addressing other issues directly related to the possible deregulation of federal Class I differentials.
3. Notice of the December 2, 1997, hearing was published at 27 Pennsylvania Bulletin 6136 on November 22, 1997, and was sent to everyone on the PMMB's interested persons list by means of Bulletin No. 1263, dated November 17, 1997. In addition, the PMMB inserted legal notices in eight newspapers serving the various milk marketing areas. (PMMB Exhibits 1, 2, 3A, and 3B (12/2/97 hearing))
4. Notice of the January 23, 1998, hearing was published at 27 Pennsylvania Bulletin 6882 on December 27, 1997, and was sent to everyone on the PMMB's interested persons list by means of Bulletin No. 1265, dated December 19, 1997. (PMMB Exhibits 1 and 2 (1/23/98 hearing)).
5. Inasmuch as a stay of Judge Doty's order was entered until February 15, 1998 (see PMMB Exhibit 3 (1/23/98 hearing)), the PMMB issued no

order based on the December 2, 1997, hearing. The record of that hearing was augmented at the January 23, 1998, proceeding.

6. PMMB official general orders establishing Class I prices in PMMB Milk Marketing Area Nos. 1 through 5 reference federal order prices, thus incorporating differentials affected by Judge Doty's order, namely, a differential of \$2.42 in federal order 2, 201 - 210 zone (PMMB Area 3); \$3.03 in federal order 4 (PMMB Areas 1, 2, and 4); and \$2.00 in federal order 36 (PMMB Area 5). Class I prices in all federal orders were determined by adding the fixed differential to the second previous month's basic formula price. Thus elimination of the differentials will result in lowering the federal Class I price to the basic formula price and, in turn, lowering the minimum Class I price in Areas 1 - 5 to that same basic formula price. The estimated effect on Pennsylvania dairy farmers, assuming 50% Class I utilization for the average producer, is on average approximately \$1.20 per hundredweight, a significant loss of about 10% at a time when dairy farmers are already struggling economically. (N.T. 11 - 12, 15 - 17, 42, 48 - 49, 86 - 87 (12/2/97 hearing); N.T. 37, 93 - 94, 197 (1/23/98 hearing))
7. The minimum Class I price established by the PMMB order governing Pennsylvania Milk Marketing Area No. 6 does not incorporate a federal differential. Thus if the PMMB does not maintain the differentials in the other five milk marketing areas, the minimum producer price in Area 6 will be higher than in those other areas; "differences in relative prices...would set up a recipe...leading to disorderly marketing conditions in Area 6." (N.T. 16 - 17 (12/2/97 hearing); N.T. 126 - 30, 152 - 55 (1/23/98 hearing))
8. Inasmuch as Judge Doty's order will, absent extension of the stay beyond February 15, 1998, have the immediate effect of depressing the federal Class I price for February 1998, the order has created an emergency to which the PMMB should respond by setting the minimum Class I price for Areas 1 - 5 in an amount that includes the differentials in effect prior to the judge's ruling. The current emergency is a resumption of the pricing crisis that would have affected November 1997 milk had Judge Doty's order not been stayed. (N.T. 11 - 12, 17, 65 - 66, 87, 91 - 92, 94 (12/2/97 hearing); N.T. 33 - 36, 95, 198 (1/23/98 hearing))

9. The severe economic stress experienced by Pennsylvania producers, which formed the basis for the PMMB's decision in October 1997 to increase the over-order premium to \$1.20 per hundredweight, persists. Adoption of the federal differentials will maintain the level of producer prices contemplated by that order. (N.T. 11, 17 - 18, 86 (12/2/97 hearing); N.T. 94 - 95, 196 - 97 (1/23/98 hearing); Official General Order A-895 (Findings of Fact 3 - 14, Conclusion of Law 3))
10. Maintenance of Class I differentials is essential for preserving the stability of milk marketing and pricing in Pennsylvania. Emergency action by the PMMB to adopt the differentials on a two-month interim basis is necessary to avoid a dramatic decrease in producer prices and resulting harm to Pennsylvania's dairy industry. (N.T. 87 (12/2/97 hearing); N.T. 197 - 98, 225 (1/23/98 hearing))
11. Adoption of the federal Class I differentials would result in the following amounts added to the federal basic formula price¹: \$3.03 in PMMB Area 1 (the federal order 4 differential), \$2.75 in PMMB Area 2 (the federal order 4 differential of \$.3.03 minus \$.28), \$2.57 in PMMB Area 3 (the federal order 2 differential of \$2.42 plus \$.15), \$3.03 in PMMB Area 4 (the federal order 4 differential), and \$2.00 in PMMB Area 5 (the federal order 36 differential). (N.T. 18 - 19, 26 - 27, 65, Staff Exhibit 1 (12/2/97 hearing); N.T. 40 (1/23/98 hearing); see also Section D, Provision 1 of Official General Orders A-890 Amended, A-882, A-878 Amended, A-876 Amended, and A-887)
12. The Class I differentials should be applied only to milk produced, processed, and sold in Pennsylvania. (N.T. 36, 95 - 98, 131 (1/23/98 hearing))
13. The federal milk marketing orders provide for marketwide pooling of the Class I differential. The PMMB's maintenance of the differentials without marketwide pooling would have no negative effect on producers who had been paid under the state-regulated system of individual handler pools or whose milk is utilized as Class I. Producers whose milk is not utilized as Class I but who had received payments under the

¹ The existing over-order premium, currently set at \$1.20 per hundredweight, would continue to be added to the Class I price for milk produced, processed, and sold in Pennsylvania. (See Official General Order A-895)

federally regulated system would be disadvantaged; nothing, however, would prevent dealers from paying these producers prices higher than the basic formula price; indeed, market forces could well encourage this result. Overall, maintenance of the differentials without marketwide pooling would be less detrimental to Pennsylvania producers than the alternative of having no differentials in place. ((N.T. 19 - 20 (12/2/97 hearing); N.T. 67 - 68, 78 - 79, 123 - 26, 211 - 13, 238 - 39 (1/23/98 hearing))

14. Inasmuch as the federal Class I differentials have been in place in Pennsylvania for some time, the PMMB's adoption of them for continued application will have no effect on the minimum PMMB-established retail, or consumer, price of milk. (N.T. 73 (12/2/97 hearing)))

II. CONCLUSIONS OF LAW

1. The December 2, 1997, and January 23, 1998, hearings were held pursuant to authority granted the PMMB in sections 801 and 803 of the Milk Marketing Law (hereafter "the Law"), 31 P.S. §§ 700j-801 and 700j-803.
2. The hearings were held following adequate notice, and all interested persons were given a reasonable opportunity to be heard. (Findings of Fact 3 and 4)
3. Adoption of the attached order is supported by a preponderance of the evidence and is reasonable and proper under sections 801 and 803 of the Law, subject to any revisions the PMMB may deem appropriate in accordance with the procedures set out in the Law.

DISCUSSION

The PMMB convened the December 2, 1997, hearing in response to the emergency created by Judge Doty's order enjoining the United States Department of Agriculture from enforcing federal Class I differentials. (See Exhibit PMMB-4 (12/2/97 hearing)) On December 5, 1997, however, Judge Doty entered a stay of his order effective until February 15, 1998, "so as to allow an expedited appeal and the collection and distribution of November 1997, December 1997, and January 1998 milk proceeds based upon the Class I differentials in effect at those times." (See Exhibit PMMB-3 at 19 (1/23/98 hearing))

In the absence of an extension of the stay of Judge Doty's order or prompt action by the PMMB, the minimum Class I price for February milk will decrease in Milk Marketing Areas 1 - 5 by from \$3.03 to \$2.00 per hundredweight. Only three months ago, the PMMB determined that a \$.40 increase in the minimum Class I price, which included the federal differentials, was compelled by "pronounced disparities between the cost of production and returns to producers." Consequently, the PMMB increased the over-order premium by that amount. (See Official General Order A-895, Conclusion of Law 3a) There is, accordingly, a nexus between cost-of-production considerations and the level of the federal differentials.

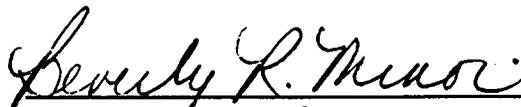
Historically, these differentials plus the over-order premium have on average returned to producers their cost of production and have accounted for average fluctuations in the basic formula price. That is, notwithstanding the fact that the cost of production used to develop the over-order premium represents a statewide average whereas the federal differentials are area specific, the rationale of a system based on averages is that over time and throughout the state, producers will, for the most part and to the extent market conditions allow, recover their costs. The impending disruption of this system and erosion of producer prices by elimination of the differentials constitutes an emergency requiring immediate and decisive action.

The PMMB has determined therefore to maintain the federal differentials as elements of the minimum Class I price for February and March milk. The PMMB's purpose in adopting the differentials for its own interim use is to maintain the integrity of its price orders for Areas 1 - 5 and the continuity of its Class I price structure, which, to repeat, was adjusted only three months ago in response to the economic distress of Pennsylvania producers. The PMMB recognizes that pooling of the differential has been an integral part of federal pricing and that, without pooling, the status quo that prevailed prior to Judge Doty's order will no longer prevail in its entirety. The complexities of pooling, however, cannot be resolved in time to

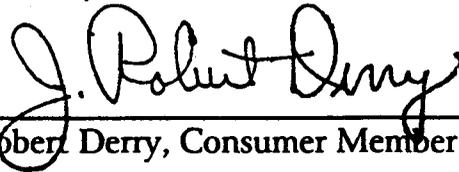
respond to the threat facing February and March producer prices. The PMMB convened the January 23 hearing to, among other things, receive evidence on establishing differentials based on marketing conditions specific to Pennsylvania and on pooling the proceeds. That hearing is scheduled to resume on February 19. Thus, the expeditious action necessary to maintain an adequate minimum Class I price for February and March milk is simply not possible with regard to these more complex issues.

To quote from the brief of Tuscan/Lehigh Dairies, L.P., "all Pennsylvania farmers delivering to Class I plants will probably receive an increase in price [if the PMMB maintains the differentials without pooling]. [That action] can only improve their financial circumstances. These farmers would receive no minimum protection from the elimination of differentials.... [I]t is true that those Pennsylvania producers delivering to Pennsylvania Class II and III plants will not be receiving a price directly based upon a state-mandated differential. However, [if the PMMB does nothing], they wouldn't get anything either." (Brief at 6, emphasis in original) Tuscan/Lehigh also observes that the proponents of inaction by the PMMB may assume that doing nothing will "spread the misery of deregulation equally across the state." (Brief at 5) Given the circumstances in Area 6 (see Finding of Fact 7), inaction will not produce any perceived condition of equality. More to the point, the PMMB cannot, based on the hearing record, fail to exercise its statutory authority to at least contain that misery.

PENNSYLVANIA MILK MARKETING BOARD



Beverly R. Minor, Chairwoman



J. Robert Derry, Consumer Member

Luke F. Brubaker, Member

Dated: January 30, 1998