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Milk Marketing Board  
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Official General  
Order No. A-967

Posted: December 16, 2009  
Effective: January 1, 2010

### **OVER-ORDER PREMIUM**

NOW, this 16<sup>th</sup> day of December 2009, 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, 2010, and will expire at 12:00 midnight on June 30, 2010.

#### **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 I price for milk produced, processed, and sold in Pennsylvania shall include an over-order premium of \$2.65 per hundredweight effective 12:01 a.m. on January 1, 2010, through midnight on June 30, 2010, subject to subsection (b) below.

(b) In all milk marketing areas the over-order premium shall be changed to \$2.15 per hundredweight effective 12:01 a.m. on the first day of the month that the Federal Order Class I Mover effective for that month exceeds \$15.50 per hundredweight. The over-order premium shall then remain at \$2.15 per hundredweight through midnight on June 30, 2010.

(c) 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's 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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Richard Kriebel, Chairman

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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Date: December 16, 2009

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OVER-ORDER PREMIUM HEARING  
DECEMBER 2, 2009**

FINDINGS OF FACT

1. On December 2, 2009, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence concerning the level and duration of the over-order premium.
2. Notice of the hearing was published at 39 Pennsylvania Bulletin 6527 on November 7, 2009, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1457, dated October 23, 2009.
3. Dennis Schad testified as an expert in agricultural economics and milk marketing on behalf of the Greater Northeast Milk Marketing Agency, Dairylea Cooperative Inc.; Dairy Farmers of America, Inc.; Dairy Marketing Services, LLC; Land O'Lakes, Inc.; Maryland and Virginia Milk Producers Cooperative Association, Inc.; and Upstate Niagara Cooperative, Inc. ("Cooperatives"). Mr. Schad recommended that the over-order premium be set at \$2.65 per hundredweight through June 30, 2010, but that the \$0.50 increase granted by Official General Order A-966 cease the first month that the Federal Order Class I Mover exceeds \$15.50 per hundredweight. Mr. Schad also recommended that the over-order premium fuel adjuster, Official General Order A-927, continue unchanged.
4. Mr. Schad testified that favorable weather conditions in Pennsylvania had resulted in increased corn yield, but that current and future feed prices were mixed. Mr. Schad testified that expected increases in milk price in 2010 and high-moderate feed price estimates should provide dairy farmers with incomes over feed costs in the seven dollar range during the first half of 2010.
5. Mr. Schad testified that cow numbers had decreased both nationally and in Pennsylvania between January and September 2009, but there had been little change in milk production. Mr. Schad further testified that ideal weather conditions in the northeast and midwest had resulted in increased milk production in those regions, with Pennsylvania's milk production for September 2009 increasing over September 2008, despite lower cow numbers. Mr. Schad also testified that July 2009 was the first month in almost five years where national milk production began to abate.
6. Mr. Schad testified that most analysts were forecasting higher commodity and milk prices in 2010. Mr. Schad presented testimony showing some degree of disparity among three forecasts for 2010. Mr. Schad concluded that compared to the recent past, milk prices in 2010 are projected to be in the average range.
7. Mr. Schad testified regarding premiums in nearby markets. The Greater Northeast Milk Marketing Agency over-order price for Class I distribution in New Jersey remained at

\$1.37 per hundredweight (including a \$0.17 fuel adjustment); the price for distribution in Maryland and Delaware is \$1.47 per hundredweight. The marketing agency in common in the southeast currently has an over-order price, including fuel adjustment and rBST-free affidavit premium, of \$3.56 per hundredweight, with credits of \$0.40 per hundredweight available. The marketing agency in common in the midwest has an over-order price for October 2009 of \$2.90 per hundredweight (including a fuel adjustment), with credits of \$0.60 per hundredweight available. Mr. Schad testified that the emergency November 2009 and December 2009 premium increase would provide an opportunity for GNEMMA to try to extend that premium outside Pennsylvania, to “buttress” the Pennsylvania premium, but observed that GNEMMA had not increased premiums outside the state.

8. Richard Ebert testified on behalf of the Pennsylvania Farm Bureau. Mr. Ebert operates a dairy farm in Westmoreland County with his brother. Mr. Ebert is also Vice President of Pennsylvania Farm Bureau and Chairman of the Pennsylvania Farm Bureau Dairy Committee. Mr. Ebert recommended that the over-order premium be set at \$2.65 per hundredweight through June 30, 2010. Mr. Ebert also recommended that the OGO A-927 fuel adjuster remain in effect.
9. Mr. Ebert testified that price projections showed that prices are finally on the rise. However, he also testified that the increased milk checks will not be enough to quickly reverse the dire situation on most Pennsylvania dairy farms. Mr. Ebert attributed the very serious situation on Pennsylvania dairy farms to extremely low prices in 2006, followed by an inability to catch up during high price years in 2007 and 2008 due to sharp rises in input costs, followed by record low prices in 2009 which were accompanied by higher than normal input costs. Mr. Ebert testified that his October 2009 milk check was 26% lower than his October 2008 milk check and that for January 2009 through October 2009 his milk check (excluding MILC payments) was 35% lower than the same period in 2008. Mr. Ebert also testified that his own financial position now is below where it stood in 2006.
10. Mr. Ebert testified that the continuing low prices had impacted his farm’s operations. Rather than buying roasted soybeans to feed his cows, Mr. Ebert was buying lower cost byproducts. Because of reduced cash flow, he has not purchased high quality hay from the western United States, but instead has made hay from grass on his property. He has purchased feed concentrate at increased protein levels. Mr. Ebert testified that all of those measures had allowed his farm to cut costs, but at the additional cost of a three- to four-pound per day loss in production per cow. Decreased milk production results in a lower milk check. Mr. Ebert testified that he will need to use a line of credit to pay for crop insurance and that with the agriculture industry in a credit crunch, lines of credit are no longer as easy to obtain. Mr. Ebert testified that dairy farmers across Pennsylvania are making the same kinds of difficult decisions that he described and that some have decided to leave the dairy business.
11. Matt Espenshade testified on behalf of the Pennsylvania State Grange. Mr. Espenshade recommended that the over-order premium be set at \$2.65 per hundredweight for six

months and that the over-order premium fuel adjuster remain in effect. Mr. Espenshade and his father operate a dairy farm in Lancaster County, milking 75 cows.

12. Mr. Espenshade testified that his cost of production is approximately \$17.00 per hundredweight, but that his milk price had not been that high since October 2008, and that for the past year his milk check has averaged \$12.89 per hundredweight. Mr. Espenshade testified that he had taken cost saving measures, including reformulating feed rations. He also testified that, despite the cost saving measures, currently he was losing \$4.00 per cow per day. Mr. Espenshade testified that the over-order premium decision would have a direct impact on his family and other farm families across Pennsylvania.
13. The Board finds that the over-order premium should be set at \$2.65 per hundredweight from January 1, 2010, through June 30, 2010, and that the over-order premium should be reduced to \$2.15 per hundredweight effective the first month that the Class I mover exceeds \$15.50 per hundredweight, remaining at \$2.15 per hundredweight until June 30, 2010, in that case. The Board also finds that the over-order premium fuel adjuster should continue.

The Board finds credible and persuasive Mr. Schad's testimony regarding projected milk prices for 2010. The Board also finds credible and persuasive Mr. Schad's testimony regarding premiums outside Pennsylvania and his testimony regarding the effect competitive conditions have on the level at which the Board-mandated premium should be set. The Board further finds credible and persuasive Mr. Schad's testimony that the nature of an emergency decision is that the result should be re-evaluated as the emergency conditions change and accepts his recommendation that the emergency premium increase end when milk prices approach more normal levels.

The Board finds the testimony of Mr. Ebert and Mr. Espenshade regarding the situations on their farms to be credible and persuasive. The Board also finds credible and persuasive their testimony regarding the effect depressed milk prices are having on dairy farmers generally in Pennsylvania and the decisions they are making regarding continuing dairy farming. However, the Board finds more persuasive Mr. Schad's testimony that the recent emergency premium increase should cease when milk prices approach more normal levels, since premiums did not increase outside Pennsylvania with the emergency increase in the Pennsylvania over-order premium.

CONCLUSIONS OF LAW

1. The December 2, 2009, hearing on the over-order premium 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 I 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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Richard Kriebel, Chairman

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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Date: December 16, 2009

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