



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-988

Posted:
Effective

November 5, 2014
December 1, 2014

**AN ORDER ESTABLISHING A DIESEL FUEL
ADD-ON TO THE OVER-ORDER PREMIUM**

NOW, this 5th day of November 2014, 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 December 1, 2014.

SECTION I

(a) The attached findings of fact and conclusions of law found in Official General Order A-983 are incorporated herein by this reference as though fully set forth in this order, to the extent those findings of fact and conclusions of law are not inconsistent with Finding of Fact 3 of this Official General Order.

(b) The findings of fact and conclusions of law attached to Official General Order A-982 are incorporated herein by reference as though fully set forth in this order, to the extent those findings of fact and conclusions of law are not inconsistent with this Official General Order.

(c) The attached findings of fact and conclusions of law resulting from the September 3, 2014, over-order premium hearing are incorporated herein by reference as though fully set forth in this order.

SECTION II

In all milk marketing areas the amount of \$0.25 per hundredweight will be added to the Class I over-order premium effective July 1, 2013. This amount shall change monthly pursuant to the methodology set forth in Official General Order A-983 Finding of Fact 25 and the table found in Finding of Fact 3 of this Official General Order.

SECTION III

This order supersedes Official General Order A-983.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Lynda J. Bowman, Consumer Member

James A. Van Blarcom, Member

Date: November 5, 2014

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-ORDER PREMIUM HEARING
SEPTEMBER 3, 2014**

FINDINGS OF FACT

1. On September 3, 2014, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the level and duration of the over-order premium. Evidence was also presented regarding a typographical error in Official General Order A-983.
2. The error involved the table in Finding of Fact 25.
3. The following table replaces the fuel adjuster add-on table found in Official General Order A-983 Finding of Fact 25:

<u>Monthly average diesel fuel price</u>	<u>Class I over-order premium add-on</u>
\$0.00 to \$4.1629	\$0.25
\$4.1630 to \$4.2629	\$0.27
\$4.2630 to \$4.3629	\$0.29
\$4.3630 to \$4.4629	\$0.31
\$4.4630 to \$4.5629	\$0.33
\$4.5630 to \$4.6629	\$0.35

and so on . . .

**OFFICIAL GENERAL ORDER A-983
FINDINGS OF FACT AND CONCLUSIONS OF LAW
MAY 22-23, 2013**

OFFICIAL GENERAL ORDER A-983 FINDINGS OF FACT (REVISED 25)

1. On May 22 and 23, 2013, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the level of the diesel fuel add-on to the over-order premium as provided for in . Official General Order A-927.
2. Notice of the hearing was published at 43 Pennsylvania Bulletin 1678 on March 23, 2013, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1493, dated March 13, 2013.

3. On May 7, 2013, the Board issued a protective order. The protective order was issued to provide parties an opportunity to provide confidential/proprietary evidence in a manner that would protect the information presented from disclosure.
4. Dennis Schad testified as an expert in agricultural economics and milk marketing on behalf of the Greater Northeast Milk Marketing Agency (“GNEMMA”). Members of GNEMMA with producers in Pennsylvania are 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 fuel adjuster remain unchanged.
5. Mr. Schad testified that, as originally implemented, the OGO A-927 fuel adjuster had two components – a hauling component and an on-farm component. He testified that he had seen no evidence that there was a change in the cost of moving milk from the farm. Based on United States Department of Agriculture Economic Research Service data, he testified that increased production at farms since 2004 had influenced the on-farm component and that there could be a reasoned argument to essentially cut the on-farm component in half and use \$0.02 increments to increase the fuel adjuster, rather than \$0.03 increments.
6. Mr. Schad testified that the GNEMMA over-order price in New Jersey included a \$0.17 fuel adjustment on all classes of milk. He also testified that the marketing agency in common over-order price in Ohio fuel adjustment of \$0.24 was on all classes of milk.
7. David DeSantis testified as an expert in milk cost accounting and milk price regulation on behalf of the Milk Marketing Board Staff. Mr. DeSantis is the Board’s Chief of Enforcement and Accounting. Mr. DeSantis offered a methodology for allowing the starting point for the fuel adjuster calculation to be responsive to market conditions and the pressures of inflation over time.
8. Mr. DeSantis testified that Staff periodically evaluates Board orders to determine if they are still reasonable and functioning as they were originally intended. In that vein, Mr. DeSantis reviewed Official General Order A-927. Mr. DeSantis testified that OGO A-927 provided for zero add-on to the premium when diesel prices fall below \$1.40 per gallon and that it was reasonable to conclude that if the Board had intended that there be no add-on when prices fell below \$1.40 nine years ago that the bottom bracket should probably have evolved with fluctuations in the diesel price over time.
9. Mr. DeSantis suggested that one method to allow the starting point to be responsive to market conditions and the pressures of inflation over time would be to use a moving average of the Central Atlantic On-Highway Diesel Price as published by the United States Energy Information Administration using either the past five or 10 years. Mr. DeSantis testified that adjusting the starting point in this manner would still provide relief from fluctuations in fuel prices while incorporating the gradual price changes over time.

10. Carl Herbein testified on behalf of the Pennsylvania Association of Milk Dealers as an expert in cost accounting and milk cost accounting. Mr. Herbein recommended that the fuel adjuster starting point be moved to \$2.7640 per gallon with a beginning fuel adjuster of \$0.14 per hundredweight. He further recommended that the initial adjuster or \$0.14 per hundredweight be updated monthly utilizing a bracket based upon a \$0.01 per hundredweight increase for every \$0.10 increase in the diesel cost per gallon.
11. Mr. Herbein based his new starting point on a percentage of change increase to the original OGO A-927 starting point of \$1.40 per gallon. He testified that the fuel cost increased approximately 197 percent from 2004 to May 2013, and the starting point of \$1.40 should be increased the same percentage. Mr. Herbein testified that the passage of time, changes in efficiency, and significant price change require a reset to the bracket system and establishing a new beginning point.
12. Mr. Herbein explained his recommendation of a \$0.01 bracket. The simple average cost of Class I milk in the six Pennsylvania milk marketing areas for May 2013 was \$23.74. Based on the United States Department of Agriculture Prices Paid Indexes and Annual Weights for Input Components and Sub-components Mr. Herbein testified that the diesel fuel cost in April 2013 represented 2.5% of total farm costs. Therefore, the farm diesel cost per hundredweight is \$0.5935 ($\$23.74 \times 2.5\%$). A \$0.10 increase in the current price for a gallon of diesel at the current diesel price would be 2.4%. 2.4% of the cost of diesel per hundredweight is \$0.0142, which would be rounded to a bracket adjustment of \$0.01 to the fuel adjuster for every \$0.10 change in the diesel price.
13. Rob Blaufuss testified on behalf of Dean Foods as an expert in agriculture and dairy economics. Mr. Blaufuss recommended that the fuel adjuster be set to reflect competitive hauling rates as reported by processor representatives and the cooperatives. Mr. Blaufuss testified that while it is common for Class I processors to pay fuel surcharges to suppliers to get milk from the farm to the plant, Pennsylvania is the only place in the country where processors also pay a separate amount associated with on-farm fuel costs.
14. Mr. Blaufuss testified that Mr. Herbein's methodology would be better than Mr. DeSantis's to reset the fuel adjuster moving forward. He testified that using a five year or 10 year average would bring unnecessary noise into the fuel adjuster calculation because of significant high and low price variations between 2008 and 2010. He further testified that it was important for the fuel adjuster to reset using current market conditions and change accordingly.
15. 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 requested that the fuel adjuster remain unchanged. He testified that between 2009 and 2012 his on-farm fuel costs had increased 91 percent. He also

testified that over the years his hauling charge has increased and at times had included a stop charge.

16. Michael Evanish testified on behalf of Pennsylvania Farm Bureau as an expert in dairy farm accounting and dairy farm business analysis. Mr. Evanish is manager of MSC Business Services (“MSC”). MSC provides an array of business services to assist farmers economically manage their farm operations. MSC has contracts with over 1,000 dairy farms. Mr. Evanish testified that since 2004 fuel costs on farms have increased dramatically.
17. Matthew Espenshade testified on behalf of the Pennsylvania State Grange. Mr. Espenshade is a seventh generation dairy farmer in Lancaster County. His family has owned and operated the farm since 1867. Mr. Espenshade requested that the fuel adjuster remain unchanged. He testified that fuel costs continue to be a challenge.
18. Lynne Bohan testified on behalf of the Pennsylvania Association of Milk Dealers’ request to reduce the fuel adjuster to \$0.14 per hundredweight. Ms. Bohan is the Vice President of Public Relations and Government Affairs for HP Hood LLC (“Hood”). Hood owns and operates two plants in Pennsylvania. She testified that cooperatives charge a fuel adjuster of up to \$0.095 per hundredweight in New England and portions of New York.
19. John Pierce testified on behalf of Lehigh Dairies and Swiss Premium Dairy. He testified in support of lowering the fuel adjuster to \$0.14 per hundredweight in conjunction with the Pennsylvania Association of Milk Dealers’ request to reduce the over-all mandated premium by \$1.50. Mr. Pierce supported Mr. Herbein’s analysis regarding the change to the fuel adjuster.
20. Robert K. H. Mertz testified on behalf of Schneider-Valley Farms Dairy and Schneider’s Dairy. Mr. Mertz is the General Manager of Schneider-Valley Farms Dairy and supported lowering the over-order premium and fuel adjuster premium by \$1.50 per hundredweight. He offered no testimony targeted specifically at the fuel adjuster.
21. Dean Ellinwood testified on behalf of GNEMMA as an expert in raw milk procurement, milk marketing, and sales to handlers. Mr. Ellinwood is the Vice President of Sales and Marketing for Dairy Marketing Services (“DMS”). Mr. Ellinwood testified that no reduction in the fuel adjuster was warranted.
22. Troye Cooper testified on behalf of GNEMMA as an expert in raw milk marketing, milk procurement from producers, and sales to handlers. Mr. Cooper is the Director of Milk Marketing for Maryland and Virginia Milk Producers’ Cooperative Association, Inc. Mr. Cooper testified that a reduction in the fuel adjuster would have a direct negative impact on Pennsylvania producers with little or minimal financial impact to Pennsylvania milk dealers.

23. The Board finds that Official General Order A-927 no longer accurately reflects and accounts for current market conditions. While the fuel adjuster provided for in Official General Order A-927 was an appropriate response to conditions at the time it became effective on July 1, 2004, we find that conditions have changed such that it is now necessary to issue a different diesel fuel add-on order.

In so finding, we find more persuasive the testimony of Messrs. DeSantis, Herbein, and Blaufuss to the effect that changes in diesel prices and efficiency and market conditions necessitate a change to the starting bracket for the fuel add-on. We also find persuasive the testimony of Mr. Schad that increased production on farms since 2004 had influenced the on-farm component of the OGO A-927 fuel adjuster such that it would be appropriate to use \$0.02 increments to adjust the diesel fuel add-on.

24. The Board finds that the Class I over-order premium diesel fuel add-on should be at least \$0.25 per hundredweight effective July 1, 2013. In so finding, the Board concludes that the Pennsylvania diesel fuel add-on should be set at a level that more accurately reflects surrounding market conditions. The evidence shows that fuel adjusters in New England, eastern New York, New Jersey, and Ohio range from \$0.09 per hundredweight to \$0.24 per hundredweight.

The Board understands that the over-order premium fuel adjuster is paid only on Class I milk produced, processed, and utilized in Pennsylvania and that the fuel adjuster in surrounding markets is paid on all classes of milk. However, we do not believe that the fuel adjuster for milk other than Class I Pennsylvania produced, processed, and utilized can be accounted for through the mandated Class I diesel fuel add-on to the over-order premium.

The Board is concerned that a combination of factors has conspired to begin to adversely impact in-state sales by in-state dealers. Reduced in-state sales by in-state dealers has a negative impact on all segments of Pennsylvania's dairy industry. We emphasize that we do not believe the mandated premiums are the only factor; in fact, we intend to examine all facets of Pennsylvania milk pricing. However, we believe it is appropriate at this time to adjust the mandated fuel adjuster so that it is more reflective of conditions in surrounding markets and in recognition that it should not be bearing the burden for other classes of milk.

25. The Board finds that the Class I over-order premium diesel fuel add-on should be adjusted monthly based on the Average Retail On-Highway Diesel Price for the Central Atlantic Region, as published by the United States Department of Energy, Energy Information Administration ("EIA"). The Board further finds that the adjustment shall be based on a bracket system, with a \$0.02 per hundredweight adjustment to the add-on per \$0.10 change in the on-highway price, with a minimum add-on of \$0.25 per hundredweight.

The Board finds that, to account for current diesel fuel market conditions, the base of the bracket system shall be \$4.073 representing the 12-month simple average on-

highway diesel price for the Central Atlantic Region from June 2012 through May 2013 as reported by the EIA.

OFFICIAL GENERAL ORDER A-983 CONCLUSIONS OF LAW

1. The May 22 and 23, 2013, hearing on the Class I over-order premium diesel fuel add-on 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. The record of the May 5, 2004, hearing regarding diesel fuel add-ons to minimum wholesale prices and the over-order premium was incorporated by reference in this record.
7. Those portions of the record of the December 5-6, 2012, over-order premium hearing containing the examination and cross-examination of Michael Evanish were incorporated by reference in this record.
8. Those portions of the record of the December 5-6, 2012, over-order premium hearing containing the examination and cross-examination of John Turcinov concerning mailbox prices were incorporated by reference in this record.
9. 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.
10. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

OFFICIAL GENERAL ORDER A-988 CONCLUSIONS OF LAW

1. The May 22 and 23, 2013, hearing on the Class I over-order premium diesel fuel add-on 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

Luke F. Brubaker, Chairman

Lynda J. Bowman, Consumer Member

James A. Van Blarcom, Member

Date: November 5, 2014

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