



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-1007

Posted:
Effective

April 23, 2020
May 1, 2020

OVER-ORDER PREMIUM

NOW, this 23rd day of April 2020, 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 May 1, 2020, and will expire at 12:00 midnight on September 30, 2020.

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 a market relief surcharge in addition to the \$1.00 per hundredweight over-order premium established by Official General Order (“OGO”) A-1005 effective at 12:01 a.m. on May 1, 2020, through midnight on June 30, 2020.

(b) The market relief surcharge shall not apply to milk volumes utilized as packaged donated milk.

(c) The market relief surcharge shall be calculated for May 2020 and June 2020 by subtracting the respective month’s announced Class I mover from \$15.00. The difference shall be the market relief surcharge. The market relief surcharge shall be in addition to the current \$1.00 per hundredweight over-order premium established by OGO A-1005. The sum of the market relief surcharge plus the current over-order premium shall be considered the total over-order premium.

(d) In all milk marketing areas, the calculation of the Class I price for milk produced, processed, and sold in Pennsylvania shall include the over-order premium of \$1.00 per hundredweight established by Official General Order A-1005 effective 12:01 a.m. on July 1, 2020, through midnight September 30, 2020.

(e) 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 or total over-order premium being paid.

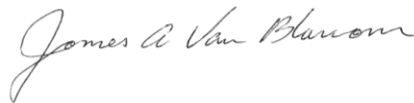
SECTION III

All parts of Official General Order A-893 not inconsistent with this order shall continue in effect.

PENNSYLVANIA MILK MARKETING BOARD



Robert N. Barley, Chairman



James A. Van Blarcom, Member

Date: April 23, 2020

FINDINGS OF FACT AND CONCLUSIONS OF LAW
EMERGENCY OVER-ORDER PREMIUM HEARING
April 20, 2020

FINDINGS OF FACT

1. On April 20, 2020, the Pennsylvania Milk Marketing Board (“Board”) held an emergency hearing for all milk marketing areas to receive testimony and evidence concerning the level and duration of the over-order premium.
2. Due to the emergency nature of the hearing and the short notice available, on April 10, 2020, the Board emailed notice of the hearing to those who have requested emailed notice of Board hearings, to those who have requested that Board price announcements be emailed to them, and to the Board’s press release distribution list. The hearing notice, as Board Bulletin 1574, was also posted on the Board’s website.
3. Steven Zalman testified on behalf of Board Staff as an expert in milk industry cost accounting and regulation. Mr. Zalman testified that during March 2020 COVID-19 started spreading throughout the United States and the economy began shutting down, causing havoc and uncertainty in the nation’s milk markets. He testified that milk is being dumped, there are disruptions in the supply chain, and dairy commodity prices have plummeted.
4. Mr. Zalman testified that the over-order premium is one mechanism the Board has to prevent a possible collapse of the Pennsylvania milk supply. He supported the concept of establishing a variable over-order premium based on the difference between a target Class I mover and the monthly announced Federal Order Class I mover.
5. Kurt Williams testified on behalf of the Pennsylvania Association of Dairy Cooperatives (“PADC”) as an expert in raw milk marketing, procurement from producers, and sales to handlers. PADC consists of Dairy Farmers of America, Inc., Lanco Dairy Farms Co-op, Inc., Land O’Lakes, Inc., and Maryland & Virginia Milk Producers’ Cooperative Association, Inc. As of December 2019, PADC marketed the milk of 3,494 Pennsylvania dairy farmer members. Mr. Williams is Lanco’s General Manager and Executive Vice President.
6. Mr. Williams presented details regarding a pricing concept originated from the Dairy Cooperative Marketing Association (“DCMA”), a marketing agency in common that operates in the Southeast. Lanco has members in Virginia, which provides it the opportunity to participate in DCMA as well as PADC. Mr. Williams testified that the proposal was also being discussed with marketing agencies in common marketing milk in the Southwest, Florida, Mideast, Upper Midwest, and Central/Wisconsin.
7. Mr. Williams testified that the proposal would involve a market relief surcharge established based on a Class I mover target of \$15.00 per hundredweight. Each month, the market relief surcharge would be the difference between the actual announced Class I mover and \$15.00. The market relief surcharge would then be added to the existing

over-order premium to arrive at a total over-order premium for the month. In any month when the actual announced Class I mover was greater than \$15.00 per hundredweight, there would be no market relief surcharge and the over-order premium would be the existing \$1.00 over-order premium. Mr. Williams testified that this method should remain in place through September 30, 2020, to align it with the existing over-order premium order (Official General Order A-1005).

8. Based on Chicago Mercantile Exchange commodity prices used to calculate the Class I mover and proprietary forecasting models used by consultants and other experts on which he relies, Mr. Williams forecasted the May 2020 Class I mover to be \$13.11 per hundredweight, over \$3.00 less than April's. Mr. Williams's Class I mover forecasts through September 2020 were all less than \$13.00 per hundredweight. Mr. Williams testified that with movers at these levels blend prices would be "incredibly low;" the mover floor could lessen the negative impact to farmers.
9. Mr. Williams testified that DCMA had adopted the plan. He also testified information he received from a participating cooperative was that the marketing agency in common to Pennsylvania's immediate west was moving forward with the plan. Mr. Williams also testified that no pricing agency had retreated, but he acknowledged that farmers who are not members of a cooperative participating in a pricing agency are not subject to marketing agency in common pricing arrangements.
10. Greg Hostetter testified on behalf of the Pennsylvania Department of Agriculture ("PDA"). Mr. Hostetter is Deputy Secretary for Animal Health and Food Safety. Mr. Hostetter also, while not now actively engaged in the dairy business, partnered with his father for 23 years operating a 55-cow dairy.
11. Mr. Hostetter testified that the PADC proposal aligned with PDA's philosophy that COVID-19 is a national crisis that should be addressed with a national solution. To further that goal, Mr. Hostetter testified, PDA believed it was equally important to make full use of all available state and regional pricing authority to complement any forthcoming federal action. He testified that if the Board adopted the PADC proposal, PDA would engage with colleagues in other states and regions to build support for the proposal and to encourage those states and regions to similarly use any pricing authority they have.
12. Mr. Hostetter also testified that during this unprecedented time for milk producers, with them dumping milk, cutting back production as much as 15%, and taking a significantly reduced price for milk, it is critical to put a floor under the producer milk price.
13. Todd Rutter testified on behalf of the Pennsylvania Association of Milk Dealers ("PAMD"). Mr. Rutter is President of Rutter's Dairy. PAMD proposed increasing the over-order premium to \$3.00 per hundredweight for May 2020, to \$4.00 per hundredweight for June 2020, and reverting back to \$1.00 per hundredweight effective July 2020 through September 2020. Mr. Rutter testified that the "emergency" portion of the over-order premium should not apply to milk volume that is used in packaged milk that is donated.

14. Mr. Rutter testified that PAMD is keenly aware of the current dire situation in Pennsylvania's dairy industry, with no market for milk and no option for cull cows either. PAMD also understands that commodities used for producer pricing are spiraling downward.
15. On the other hand, Mr. Rutter testified, several factors influenced PAMD's decision to support a two-month period of increased over-order premium. These included not knowing how far and for what period producer prices would decrease, other states having surplus milk looking for a home, and the fact that marketing agencies in common do not control the pricing of all producer milk. Mr. Rutter testified that PAMD is very concerned about competitive issues from plants in other states, particularly to the west.
16. Mr. Rutter testified that PAMD agrees that dairy farmers need immediate help. He testified, though, that PAMD is concerned about entering into a longer-term pricing plan while conditions change on a daily basis. Therefore, PAMD favored a two-month over-order premium increase to provide flexibility to make future decisions with two additional months of knowledge. Mr. Rutter also testified that PAMD proposed fixed over-order premium amounts because it disfavors formulas for establishing the over-order premium.
17. Mr. Rutter testified that PAMD arrived at the suggested \$3.00 over-order premium for May 2020 by reviewing the data in PADC's submission as well as PAMD's own market data, then essentially adding the \$1.89 market relief surcharge for May calculated on PADC Exhibit 2.3 to the current \$1.00 over-order premium and rounding up. Mr. Rutter testified that PAMD's suggested \$4.00 over-order premium for June 2020 was arrived at by reviewing futures information and drawing a line to come back to the \$15.00 level that is in the PADC proposal; that resulted in around \$3.00 in addition to the existing \$1.00 over-order premium.
18. Bruce Matson testified on behalf of Dean Foods Company ("Dean"). Mr. Matson is Senior Director of Dairy Procurement for Dean. Mr. Matson testified that Ohio has a substantial amount of independent milk and that Dean is concerned that the marketing agency in common which prices cooperative milk to the west would not be able to guarantee high enough pricing in Ohio on enough milk to protect Pennsylvania from competition from cheaper out-of-state milk. Mr. Matson also testified that if Pennsylvania maintains a significantly higher price than Ohio and surrounding states for any sustained amount of time, cheaper packaged and raw milk would find its way into Pennsylvania. Mr. Matson further testified that since plants are experiencing significant school and food service customer losses, packaged milk will move when there are significant price incentives.
19. Mr. Matson testified that Dean thinks a short-term over-order premium increase can be managed with, and explained to, customers better than a longer-term increase, so Dean supports the PAMD proposal for a two-month over-order premium increase. Mr.

Matson also testified that the PAMD proposal is a bridge that provides help to dairy farmers while other national-level solutions are explored.

20. Joe Carson testified on behalf of United Dairy, Inc. (“United”). Mr. Carson is President, CEO, and owner of United. United owns three processing plants – one each in Pennsylvania, Ohio, and West Virginia. Mr. Carson testified that while he wants to help dairy farmers, he did not support PADC’s proposal and believed the proposal would lead to disorderly marketing of both raw and packaged milk to the potential detriment of farmers.
21. Mr. Carson testified, as an Ohio plant owner, that the raw and packaged fluid milk markets just west of Pennsylvania are competitive. He testified that there was nothing in the PADC proposal that convinced him that Ohio’s substantial independent milk supply would follow the additional premiums contemplated by the proposal.
22. Mr. Carson testified, as a Pennsylvania plant owner, that adopting the PADC proposal could result in a serious lack of competitive alignment. Mr. Carson testified that if producer milk were available outside Pennsylvania for two or more dollars less processors, either in-state or out-of-state, would be attracted to the lower priced milk and look for ways to avoid buying higher priced milk. The result would be Pennsylvania farmers and Pennsylvania processors being uncompetitive in their respective marketplaces.
23. Mr. Carson testified that his preference would be action taken at the national level, rather than implementing PAMD’s proposal. However, Mr. Carson also testified that PAMD’s proposal addressed two of his major objections to PADC’s proposal: First, any action taken in Pennsylvania should be short-lived so that wholesale customers do not have time to make major buying shifts, and second, any help from the federal government should supersede or offset a higher Pennsylvania mandated premium.
24. David Graybill testified on behalf of Pennsylvania Farm Bureau. Mr. Graybill is Chairman of Pennsylvania Farm Bureau’s State Dairy and Farm Policy Issues Advisory Committee (“Committee”). Mr. Graybill also serves on the Pennsylvania Farm Bureau’s Board of Directors. Mr. Graybill operates Red Sunset Farms in Mifflintown.
25. Mr. Graybill testified that the Committee was neutral regarding PADC’s proposal to revise the over-order premium, noting several questions the Committee had about the proposal. He testified that dairy farmers are struggling. However, Mr. Graybill also testified that Farm Bureau was concerned that PADC’s plan sends the wrong market signals when there are significant supply issues.
26. The Board finds that a market relief surcharge as presented by Mr. Williams should be implemented for May 2020 and June 2020. The Board finds that the market relief surcharge shall not apply to milk volumes utilized as packaged donated milk.

In so finding the Board finds credible and persuasive the testimony of all witnesses concerning the devastating effects of the COVID-19 pandemic on Pennsylvania’s dairy

industry. The Board finds that immediate producer price action is necessary to help mitigate some of the economic damage.

The Board finds the testimony of Mr. Williams and Mr. Rutter regarding the level of market relief surcharge/over-order premium to be essentially corroborative regarding the levels for May 2020 and June 2020. Mr. Williams testified that cooperative marketing agencies in common in other areas of the country are working to implement the calculation he presented, Mr. Hostetter testified that PDA would engage with other states and regions to build support for the proposal and to encourage those states and regions to similarly use any pricing authority they have. The Board thus finds it better to implement the cooperative proposal. Pennsylvania and the over-order premium historically set a standard for producer milk pricing in the region. Once again, because of our unique regulatory authority, the Board can lead by example to establish a price response to COVID-19 for struggling farmers. The Board also believes that this action will help stimulate a uniform pricing response across markets, benefitting both producers and processors by providing market stability.

The Board credits and finds persuasive the testimony of Mr. Rutter, Mr. Matson, and Mr. Carson regarding potential competitive imbalance, particularly to our west. We also find credible and persuasive their testimony regarding the quickly changing market conditions we are experiencing and are persuaded that an increased producer price at this time should be limited in time. Therefore, we find that the market relief surcharge should be in effect for May 2020 and June 2020, with the over-order premium remaining at its current level of \$1.00 per hundredweight for July 2020 through September 2020.

The Board agrees with Mr. Rutter that the market relief surcharge should not apply to milk volumes utilized as donated packaged milk. By donating packaged milk, processors are providing assistance to consumers adversely impacted by the COVID-19 pandemic and also continue to utilize, and thereby pay for, producer milk that they otherwise might not need. Producers do receive a minimum price for the volume of milk processors package and donate. So as to not cause an economic disincentive leading processors to discontinue donating milk, the Board finds that the market relief surcharge should not apply to volumes utilized for donated packaged milk.

27. A common theme among the witnesses was the national scope of the market disruptions caused by the COVID-19 pandemic and the concomitant need for a national solution implemented by USDA. The Board agrees.

Mr. Williams was aware of the potential to request USDA to take emergency action. He testified that no organization he was affiliated with had requested such emergency action. Mr. Williams also testified that he was not aware of any time USDA had held an emergency hearing.

The Board believes the scope and magnitude of the damage currently being done to the nation's dairy industry to be the paradigm situation for the use of any emergency

hearing authority available to USDA. The Board strongly encourages the industry to initiate the steps required to seek and implement a national solution.

In the absence of national action, the industry is left to inefficiently address an issue of national impact through piecemeal state and regional action. In addition to being generally inefficient, uncoordinated state and regional actions risk worsening disorderly market conditions and current disruptions. The Board appreciates the efforts of the cooperatives working across regions and the efforts of the Pennsylvania Department of Agriculture working with our sister states; however, we firmly believe that national action by the USDA is the best way to address the current situation.

28. The Board recognizes that in the absence of national action, further Board action regarding producer pricing and/or other issues may be necessary for July 2020 and later. We are confident that we can respond quickly and effectively to pricing issues and will if called upon.

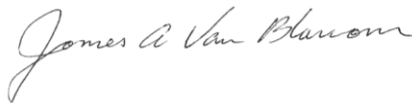
CONCLUSIONS OF LAW

1. The April 20, 2020, emergency 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. The record of the emergency hearing concerning April 2020 resale prices held on March 31, 2020, is incorporated by reference into the record of this hearing.
7. 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.
8. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD



Robert N. Barley, Chairman



James A. Van Blarcom, Member

Date: April 23, 2020

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