



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-894

Posted: April 18, 1997
Effective: April 30, 1997

OVER-ORDER PREMIUM

AMENDMENT TO OFFICIAL GENERAL ORDER NO. A-893

NOW, this 18th day of April 1997, 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 April 30, 1997.

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) Section II(a) of Official General Order No. A-893 is amended by extending the over-order premium of \$.80 per hundredweight through April 30, 1998, with a premium of \$.50 per hundredweight to take effect on May 1, 1998.

(b) Section II of Official General Order No. A-893 is further amended by adding subsection (d):

(d) Beginning August 1, 1997, 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 mandated over-order premium being paid.

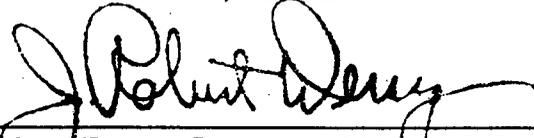
SECTION III

All parts of Official General Order No. A-893 not inconsistent with Section II continue in effect.

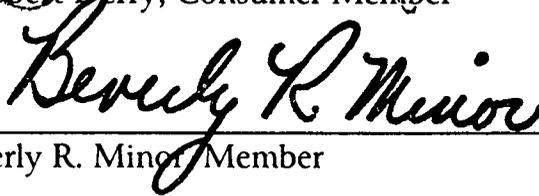
PENNSYLVANIA MILK MARKETING BOARD



Leon H. Wilkinson, Chairman



J. Robert Derry, Consumer Member



Beverly R. Minor, Member

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

OVER-ORDER PREMIUM HEARING

APRIL 9, 1997

I. FINDINGS OF FACT

Procedural history

1. On April 9, 1997, the Pennsylvania Milk Marketing Board (hereafter "the Board") convened a hearing in response to applications filed under section 801 of the Milk Marketing Law (hereafter "the Law"), 31 P.S. § 700j-801. Applicants Pennsylvania Farm Bureau, Pennsylvania Farmers Union, Pennsylvania State Grange, and National Farmers Organization requested the hearing to present evidence bearing on whether an adjustment should be made to the level of the over-order premium established by Official General Order (hereafter "OGO") No. A-893. (PMMB Exhibits 1 - 4)

2. In response to an application filed by Board staff, the Board expanded the scope of the hearing to include evidence bearing on whether the over-order premium should be modified to apply not only to milk produced, processed, and sold in Pennsylvania, but also to milk purchased from producers in Pennsylvania and utilized in another state with a mandated Class I premium. At the conclusion of the hearing the Board and counsel for the parties agreed that a decision on this issue would be deferred to accommodate a briefing schedule and to allow for the expedited issuance of an order addressing the level of the over-order premium. (N.T. 234 - 36, PMMB Exhibit 5)

3. Notice of the hearing was published at 27 Pennsylvania Bulletin 1114 on March 1, 1997, and, in accordance with section 801 of the Law, was sent to all interested persons by means of Bulletin No. 1256, dated February 19, 1997. (PMMB Exhibits 6 and 7)

Current order

4. Section II(a) of OGO No. A-893 established an over-order premium of \$.80 per hundredweight to begin November 1, 1996, and to remain in effect until April 30, 1997, when it was scheduled to decrease to \$.50 per hundredweight. (Board adjudication)

Cost of production

5. The average cost of producing milk in Pennsylvania during 1996 was \$15.08 per hundredweight, a record high representing an 8% increase over the comparable figure (\$13.94) for 1995. The rate of increase rose to 8.7% for the last quarter of 1996, compared with the same period in 1995. (N.T. 102, 120 - 21, 144 - 45, PFB Exhibits 1 and 3, LOL Exhibit 1 (Table 1))

6. Purchased feed prices account for about a quarter of the cost of producing milk. The average cost of purchased feed increased by 14% in the fourth quarter of 1996, as compared with that period in 1995. More recently, alfalfa hay showed a 35% increase in price from February 1996 to March 1997. Because of the poor quality of the hay, producers must buy more at the higher price or pay additional trucking costs to obtain a better product out of state. Although corn prices dropped substantially since last October, high prices for soybean meal have greatly moderated cost savings attributable to corn. On March 17, 1997, soybean prices, a proxy for soybean meal prices, ranged from \$7.90 to \$8.49 a bushel in central and south-central Pennsylvania, compared with \$7.17 on that date in 1996. A survey of selected feed mills in various regions of Pennsylvania shows that March 1997 prices for corn decreased by 13% to 34% from July 1996 levels, whereas March 1997 prices for soybean meal increased by 15% to 26% over July 1996 levels. That same survey showed that the effect on total feed costs, as reflected in prices for a complete feed mix at a 16% protein level, was a cost decrease of only 5% to 15%. Because of its poor quality, forage requires additional protein supplement. Consequently, the dramatic rise in cost of soybean meal becomes an even more significant factor in the cost of production. The moderating influence of corn prices is further diminished inasmuch as during the winter most producers use corn they have raised rather than buying it. During the summer, however, their supplies tend to run out and corn must be purchased--at prices that are now inching upward. (N.T. 93 - 94, 96 - 99, 103 - 04, 121 - 23, 138, 145 - 48, 192, PFB Exhibit 2, PFU Exhibits 1 - 3)

Producer income

7. The period July 1996 to March 1997 saw all-time high milk prices followed by the greatest drop ever experienced by producers. Although there has since been some price recovery, there is no assurance of a continuing upward trend. Wholesale milk prices paid to producers in February 1997 was approximately

\$13.90¹, compared with \$14.70 in February 1996. The February 1997 price was below that for any month in 1996. From July 1996 to February 1997 prices declined by 13%. The 1996 "crash" in the BFP from a September high of \$15.37 to a December low of \$11.34 was reflected in an average wholesale producer price of \$17.20 per hundredweight in October 1996, compared with a price over \$3.00 per hundredweight lower in February 1997. (N.T. 94 - 95, 124, 129, 149 - 50, PFU Exhibit 4)

8. Calculations using a profit margin of 3.5%, a total cost of production (including cost for management and cost for interest on equity) of \$18.51 per hundredweight for the twelve months ending December 1996, and a hundredweight price of \$15.53 for the same period indicate that the average producer experienced a shortfall of \$2.98 per hundredweight. (N.T. 125 - 26, PFB Exhibits 3 and 7)

9. The difference between the average cost of production and the average price received by Pennsylvania producers in 1996 was \$.46 per hundredweight, compared with \$1.04 from 1991 through 1995. Thus, notwithstanding record prices in 1996, producers netted only 44% of the five-year average difference between costs and prices received. (N.T. 148 - 49)

10. Producer income is derived from the sale of cull cows and calves as well as from the sale of milk. Nineteen ninety-six was an especially poor year for beef sales. During the year the average price of cull cows in Pennsylvania decreased by 15%. Between 1995 and 1996, the price of bull calves fell by 26%. (N.T. 149, 192)

Milk production and sales

11. The number of milk cows in Pennsylvania during February 1997 averaged 639,000 head, 2000 fewer than in January 1997 and 6000 fewer than in February 1996. Production per cow also decreased, averaging 1290 pounds in February 1997, which is 95 pounds² less than production in January 1997 and 55 pounds less than production in February 1996. Overall, milk production in Pennsylvania during February 1997 was 5% below production in February 1996. Comparisons between February 1996 and February 1997 must, however, take into account the extra day

¹ Robert Junk testified that the February 1997 price was \$13.90 (N.T. 94), whereas Dennis Schad gave the figure as \$13.80 (N.T. 150).

² Although the transcript has the witness, Robert Junk, saying "95 per cent less" (N.T. 95), "pounds" is the only sensible rendering in view of the comparison being made.

leap year added to the calendar in February 1996. On a daily basis, milk production in the United States during February 1997 increased by 2% over production in February 1996. Nonetheless, milk is not at a surplus level that would warrant ratcheting down prices to be competitive in a volatile market. (N.T. 94, 95 - 96, 108, 114, 123 - 24, PFB Exhibit 8)

12. Market administrator statistics from the three federal orders (2, 4, and 36) on which 81% of Pennsylvania producers are pooled indicate that milk production in the Middle Atlantic region is decreasing. Milk production in the three areas fell by 2.9% in 1996, as compared with production in 1995. These statistics also show flat Class I sales. (N.T. 152 - 54, 193)

13. The Pennsylvania Agricultural Statistics Service (PASS) reported that Pennsylvania milk production in 1996 was unchanged compared to 1995. Figures compiled by the Board, however, indicate that PASS overestimated production during most of 1996. (N.T. 151 - 52, LOL Exhibit 1 (Table 2) and Exhibit 2 (page 3))

14. Between February 1995 and January 1997 in-state sales by Pennsylvania dealers increased slightly, whereas their out-of-state sales decreased slightly. Overall, the trend has been level. The same period showed a generally decreasing trend of out-of-state dealers selling into Pennsylvania, an indication that the over-order premium was not too high. (N.T. 49, 85 - 86, Staff Exhibits 2 and 5)

15. When marketing conditions are such that regional Class I sales are static or rising and Pennsylvania dealers are losing in-state Class I sales, the level of the over-order premium should be examined as a factor in the loss of sales to out-of-state competition. These marketing conditions do not now exist. (N.T. 154 - 55, LOL Exhibit 2 (page 2), Findings of Fact 12 and 14)

Continuation of the premium

16. The over-order premium should reflect forces in the marketplace and account whenever possible for increased costs of production and reduced producer income. (N.T. 45)

17. Producers continue to be successful in negotiating premiums beyond federal order minimums. In comparison to December 1996, the net premiums in various markets shown on MMI Exhibit 1 (Figure 1) have generally increased. (N.T. 155, 207 - 08)

18. Representative Italo Cappabianca (on behalf of several members of the House Democratic caucus), the Pennsylvania State Grange, the Pennsylvania Farmers Union, the National Farmers Organization, the Pennsylvania Farm Bureau, Land O' Lakes et al., and Milk Marketing Inc. support continuation of the \$.80 premium. Recommendations for an effective period fell into three categories: at least six months, six months, and twelve months. (N.T. 24, 35 - 36, 102 - 03, 114, 127, 138, 159, 190 - 91) The Board finds that twelve months is both reasonable and practical (see Conclusion of Law 3).

Segregation of premium on producer statements

19. Producers are not aware of exactly how the over-order premium affects their income because dealers do not show as a separate line item on their monthly statements the amount attributable to the premium. Because requiring dealers to supply this information to independent producers and to cooperatives is likely to necessitate some reprogramming, it would be reasonable to delay implementation for three months after the effective date of the new order. The requirement should not extend to statements from cooperatives to their producer members. (N.T. 46 - 47, 53, 65 - 66; 91)

II. CONCLUSIONS OF LAW

1. The April 9, 1997, hearing on the over-order premium was held pursuant to authority granted the Board in sections 801 and 803 of the Law, 31 P.S. §§ 700j-801 and 700j-803.

2. The hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard. (Finding of Fact 3)

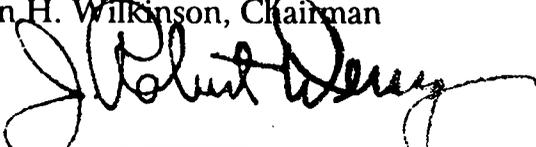
3. A preponderance of the evidence establishes that the cost of milk production relative to the return to producers, reduced producer income associated with declining prices for cull cows and calves, decreasing milk production, steady Class I sales, and favorable competitive conditions support continuation of the \$.80 over-order premium established by OGO No. A-893. Inasmuch as under section 801 of the Law the Board on its own motion or upon written application may convene a hearing at any time to reconsider the premium level, the twelve-month period adopted in the new order is susceptible to appropriate adjustment based on changed circumstances.

4. Adoption of the attached order is supported by the record and is reasonable and proper under sections 801 and 803 of the Law, subject to any revisions the Board may deem appropriate in accordance with the procedures set out in the Law.

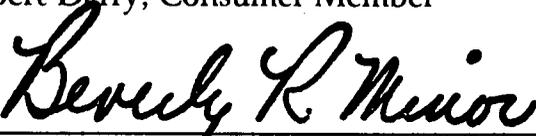
PENNSYLVANIA MILK MARKETING BOARD



Leon H. Wilkinson, Chairman



J. Robert Derry, Consumer Member



Beverly R. Minor, Member

Dated: April 18, 1997



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-894 (SUPPLEMENTAL)

Posted: July 15, 1997
Effective: August 1, 1997

OVER-ORDER PREMIUM
SUPPLEMENT TO OFFICIAL GENERAL ORDER NO. A-894

NOW, this 15th day of July 1997, 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 August 1, 1997.

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

Section II of Official General Order No. A-894 is supplemented by the addition of the following subsection (c):

(c) The over-order premium shall continue to apply only to Class I milk produced, processed, and sold in Pennsylvania.

PENNSYLVANIA MILK MARKETING BOARD

Beverly R. Minor, Chairwoman

J. Robert Derry, Consumer Member

Luke F. Brubaker, Member

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OVER-ORDER PREMIUM HEARING

APRIL 9, 1997

I. FINDINGS OF FACT

1. On April 9, 1997, the Pennsylvania Milk Marketing Board (hereafter "the Board") convened a hearing in response to applications filed under section 801 of the Milk Marketing Law (hereafter "the Law"), 31 P.S. § 700j-801. Applicants Pennsylvania Farm Bureau, Pennsylvania Farmers Union, Pennsylvania State Grange, and National Farmers Organization requested the hearing to present evidence bearing on whether an adjustment should be made to the level of the over-order premium established by Official General Order (hereafter "OGO") No. A-893. (PMMB Exhibits 1 - 4)

2. In response to an application filed by Board staff, the Board expanded the scope of the hearing to include evidence bearing on whether the over-order premium should be modified to apply not only to milk produced, processed, and sold in Pennsylvania, but also to milk purchased from producers in Pennsylvania and utilized in another state with a mandated Class I premium. At the conclusion of the hearing the Board and counsel for the parties agreed that a decision on this issue would be deferred to accommodate a briefing schedule and to allow for the expedited issuance of an order addressing the level of the over-order premium. (N.T. 234 - 36, PMMB Exhibit 5)

3. Notice of the hearing was published at 27 Pennsylvania Bulletin 1114 on March 1, 1997, and, in accordance with section 801 of the Law, was sent to all interested persons by means of Bulletin No. 1256, dated February 19, 1997. (PMMB Exhibits 6 and 7)

4. On April 18, 1997, the Board issued OGO No. A-894, effective April 30, 1997, which extended the over-order premium of \$.80 per hundredweight through April 30, 1998, with a premium of \$.50 per hundredweight to take effect on May 1, 1998.

5. Briefs pertaining to Board staff's proposal (see Finding of Fact 2) were filed by counsel representing the staff; Milk Marketing, Inc.; Land O'Lakes, Inc.; and the Pennsylvania Association of Milk Dealers.

6. Over-order premiums established by the Board apply only to Class I milk produced, processed, and sold in Pennsylvania. (N.T. 44, Board records)

7. Board staff's expert, David DeSantis, recommended that the Board modify the premium calculation to account not only for Class I milk produced, processed, and sold in Pennsylvania, but also for milk purchased from producers in Pennsylvania and utilized in an adjacent state that also has a mandated premium. No state adjacent to Pennsylvania, however, has such a premium. Therefore the recommendation, if implemented, would have no immediate effect. (N.T. 45 - 47, 58 - 59, 60 - 61)

8. Mr. DeSantis also recommended that the over-order premium established by the Board be applicable irrespective of whether milk produced and ultimately sold in Pennsylvania is processed in or outside the state. Imposition of the premium under these circumstances would turn on whether title to the milk had passed in Pennsylvania. Mr. DeSantis proposed making this determination on a case-by-case basis. (N.T. 47 - 48, 52, 58 - 59, 63, 67 - 68, 83)

9. Lack of clarity as to how a regulatory order will be implemented--for example, uncertainty with regard to how the Board will determine the location of a sales transaction-- would have a negative impact on business decisions concerning where, under what terms, and at what price to market milk. (N.T. 201 - 03)

10. As with all pricing practices established by the Board, applying an over-order premium across state lines requires consideration of the impact on market conditions, such as incentives for out-of-state dealers to terminate purchases from Pennsylvania producers. (N.T. 78 - 80)

II. CONCLUSIONS OF LAW

1. The April 9, 1997, hearing on the over-order premium was held pursuant to authority granted the Board in sections 801 and 802 of the Law, 31 P.S. §§ 700j-801 and 700j-802.

2. The hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard. (Finding of Fact 3)

3. A preponderance of the evidence establishes that implementation of the proposal for capturing out-of-state mandated premiums would be, at present, a nullity inasmuch as no neighboring state has such a premium.

4. The evidence bearing on the proposal to impose the Pennsylvania premium on milk purchased and ultimately sold in Pennsylvania but processed out of state is insufficient to establish precise criteria for its implementation.

5. The evidence bearing on proposals to capture out-of-state premiums and to apply the premium to milk purchased and sold in Pennsylvania but processed out of state is insufficient to establish that implementation would be in the best interests of Pennsylvania producers.

6. Adoption of the attached order rejecting the above-referenced proposals is supported by the record and is reasonable and proper under sections 801 and 803 of the Law, subject to revisions the Board may deem appropriate in accordance with the procedures set out in the Law.

DISCUSSION

The question before the Board is whether to extend the reach of its authority under section 803 of the Law to fix the minimum prices to be paid by milk dealers to Pennsylvania producers. The Board now exercises this authority by imposing an over-order premium on milk produced and processed in Pennsylvania, and included in the purchasing dealer's Pennsylvania Class I utilization. Board staff proposes, first, that milk purchased from producers in Pennsylvania and utilized in an adjacent state with a mandated over-order premium be subject to that state's premium and, second, that milk produced and ultimately sold in Pennsylvania but processed out of state be subject to Pennsylvania's premium.

The staff acknowledges that no adjoining state has such a premium; hence its first proposal, if adopted, would have no immediate effect. Implementation of staff's second proposal requires a determination of whether title to the milk passes in Pennsylvania. Staff suggests making this determination on a case-by-case basis, a practice which implicates the principle that regulated entities must be given reasonable notice of what they are required to do.

The Board notes, moreover, that none of the producer organizations that were parties to this proceeding submitted a brief in support of staff's recommendation. The parties submitting briefs, other than staff, expressed opposition based on vagueness of implementation and enforcement, disruption of the marketplace, and violation of the Commerce Clause of the United States Constitution. The Board does not reach the constitutional issue, having determined that the evidence is

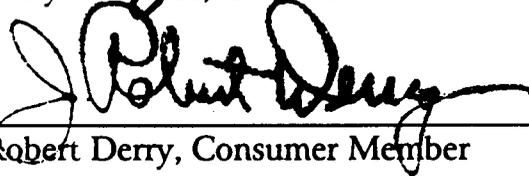
insufficient for purposes of executing and administering staff's recommendation and for purposes of determining whether modification of the premium is in the best interests of Pennsylvania's dairy farmers.

Notwithstanding its decision to reject staff's recommendation, the Board will continue to welcome and consider innovative and thoughtful approaches to milk pricing.

PENNSYLVANIA MILK MARKETING BOARD



Beverly R. Minor, Chairwoman



J. Robert Derry, Consumer Member

Luke F. Brubaker, Member

Dated: July 15, 1997