



**Commonwealth of Pennsylvania**

Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

717/787-4194  
717/783-6492

WEB SITE: [http://www.state.pa.us/PA\\_Exec/Milk/](http://www.state.pa.us/PA_Exec/Milk/)

E-mail:RA -PMMB@.state.pa.us

Official General  
Order No. A-908

Posted: March 14, 2000  
Effective: April 1, 2000

**AN ORDER ESTABLISHING ADD-ONS TO WHOLESAL PRICES  
AND OVER-ORDER PREMIUM FOR ALL MILK MARKETING AREAS**

NOW, this 14<sup>th</sup> day of March 2000, 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 April 1, 2000, and will expire pursuant to the calculations set forth in Finding of Facts No. 6 and 12 of this order.

**SECTION 1**

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 amount of \$.25 per hundredweight will be added to the over-order premium of \$1.20 established in Official General Order A-906.<sup>1</sup>

(b) In all milk marketing areas the wholesale and retail prices of fluid milk products shall be increased by \$.0031 per quart.

PENNSYLVANIA MILK MARKETING BOARD

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Beverly R. Minor, Chairwoman

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J. Robert Derry, Consumer Member

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Luke F. Brubaker, Member

<sup>1</sup> Official General Order A-906 is scheduled to expire at 12:00 midnight on June 30, 2000. The amount of \$.25 per hundredweight will be applied to or included in any subsequent official general orders establishing an over-order premium, if any, until the termination time established in Finding of Fact No. 12 of this order occurs.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**HEARING ON INCREASED DIESEL FUEL COSTS**

**March 2, 2000**

**FINDINGS OF FACT**

**Procedural History**

1. On March 2, 2000, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence to consider whether a temporary increase in minimum wholesale prices and a temporary increase in the over-order premium should be made to reflect increases in fuel costs.
2. Notice of the hearing was published at 30 *Pennsylvania Bulletin* 971 on February 19, 2000, and was mailed to those on the Board's interested persons list by means of Bulletin No. 1288 dated February 8, 2000. (PMMB Exhibits 1 and 2)
3. At the conclusion of the hearing, parties agreed to letter briefs due on March 9, 2000, and reply letter briefs due on March 10, 2000. (N.T. 223)

**Dealer Costs**

4. Clifford Ackman, appearing on behalf of Board staff as an expert witness in statistical analysis, testified that the cross-section of dealers used to determine the increased diesel fuel costs represented over 50% of the Class I sales in Pennsylvania.<sup>2</sup> (N.T. 136, Staff Exhibit 1) Carl Herbein, expert witness in milk accounting for the Pennsylvania Association of Milk Dealers (Dealers) testified that the dealers used the same cross-section in arriving at their costs and that this cross-section was representative because it covered all of Pennsylvania geographically and that 50.1% of the milk was represented by the cross-section. (N.T. 68-69) The Board finds that the cross-section dealers used by both Board staff and Dealers to be representative of dealers especially since this was a statewide hearing.
5. Mr. Herbein and Brian Brandt, expert witness in accounting for Board staff, both arrived at an increased cost in diesel fuel by the cross-section dealers during the period of July 1999 and February 2000 to be \$.0031 per point. This figure was a result of actual average invoice costs. (N.T. 73, 146-147, Staff Exhibit 3, Exhibit D2, Rebuttal Exhibit D3) Mr. Herbein testified that the \$.0031 should be added to the into store minimum wholesale price and also added to the minimum out-of-store retail prices, effective

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<sup>2</sup> The cross-section dealers are Wawa Dairy; Tuscan/Lehigh, Lansdale and Schulykill Haven; Clover Farms; Wengerts Dairy; Dean Dairy, Erie and Sharpsville; and Galliker's Dairy.

April 1, 2000. (N.T. 74) The Board finds that \$.0031 per quart should be added to the into store minimum wholesale price and added to the out-of-store retail costs, effective April 1, 2000.

6. Mr. Herbein testified that the \$.0031 per quart add-on should continue in effect until three months after a five-week average results in a diesel fuel cost of \$1.37 per gallon for the Central Atlantic region based on data concerning retail on-highway diesel prices supplied by the Energy Information Administration (EIA), U.S. Department of Energy. This information is available on the EIA's website. (N.T. 179, Exhibit D4) Mr. Herbein further testified that the three-month continuation after the trigger point is reached is based upon "an anticipated April 1 effective date" and the "serious price cost problems in January, February and March." (*Id.*) Mr. Ackman testified that the use of \$1.37 per gallon as the trigger point is based on an evaluation of diesel fuel prices between the period May 26, 1997 through February 14, 2000. The average price during that period was \$1.18 and \$1.37 is the first price that is outside two standard deviations of the average price and, therefore, is statistically acceptable. (N.T. 139, Staff Exhibit 2) The Board finds that the use of a five-week average for diesel fuel costs of \$1.37 per gallon based on the EIA data to arrive at a trigger point to terminate the add-on of \$.0031 per quart to the minimum wholesale and retail prices proposed by the Dealers is acceptable. The Board further finds that the \$.0031 adjustment shall be removed three months subsequent to the price of diesel fuel declining to less than the trigger point of \$1.37 per gallon.

### **Producer Prices**

7. Harold Curtis, Chairman of the State Dairy Committee for Pennsylvania Farm Bureau (PFB), testified that based on diesel fuel prices remaining level, his milk production costs would increase by \$.16 per hundredweight. (N.T. 49, PFB Exhibit) Mr. Curtis further testified that his suppliers, such as feed and fertilizer dealers, expect the prices to rise because of the increased hauling costs. (N.T. 49-50) Mr. Curtis asked the Board to consider increasing the current over-order premium level by \$.25 per hundredweight until fuel prices returned to more normal levels or when the current over-order premium expires and the premium level can be reevaluated. (N.T. 52)
8. Edward Gallagher, Vice President of Planning and Regulatory Policy for Dairylea Cooperative, Inc. (Dairylea), testified on behalf of Dairylea, Dairy Farmers of America, Inc. (DFA), and Dairy Marketing Services, Inc. (DMS) as an expert in milk marketing and agricultural economics. Mr. Gallagher testified that the Class I over-order premium should be increased by at least \$.06 per hundredweight and continued until "two months after the average fuel price falls back to its November level" of \$1.327 (the average of five Mondays in November). (N.T. 105, 107) Mr. Gallagher later testified that, since the increase would become effective in April, he would recommend that the increase continue for three months, rather than the two months originally testified to. (N.T. 120-121) Mr. Gallagher further testified that Dairylea and DFA support the position of the Pennsylvania Farm Bureau to temporarily increase the over-order premium by \$.25 per hundredweight. (N.T. 110, 120)

9. David DeSantis testified on behalf of the Board staff as an expert in milk cost accounting as to the impact of the increased diesel fuel costs on dairy farmers in Pennsylvania. (N.T. 150) Mr. DeSantis testified that the total effect on farm costs for hauling cost increases for diesel fuel from July 1999 to February 2000 amounted to \$.02266 per hundredweight. These costs were based on information gathered from a small cross-section of milk haulers. (N.T. 151, Staff Exhibit 4) Data examined by Mr. DeSantis also indicated that other fuel costs were on the rise and, therefore, the study may be understating the total impact on the farmers. (N.T. 153) Mr. DeSantis further recommended that the over-order premium be increased by \$.23 and that the “trigger of \$1.37 be used to disengage the premium and the add-on for resale milk pricing” and that it should be continued for four months (“for however many months that there are between December and when this is implemented”). (N.T. 156)
10. Peter Seman, a dairy farmer from Susquehanna County, indicated that he was paying \$1.79 per gallon of diesel fuel when he had only been paying \$.89 per gallon several months before. (N.T. 42) Mr. Seman testified that this high cost of fuel would lower the income at the farm. (N.T. 41)
11. Laretta Clowes, a consumer, testified that she was willing to pay more for milk if the increase was going back to the farmer. She further indicated that all the surveys she has read indicate that the average consumer would willingly pay more to the farmer for the same product. (N.T. 23)
12. The Board finds that the over-order premium should be increased by \$.25 per hundredweight. The Board further finds that the methodology for a termination point based on the use of a five-week average for diesel fuel costs of \$1.37 per gallon trigger set forth in Finding of Fact 6 is appropriate for a termination point of the \$.25 add-on to the over-order premium. The Board further finds that the \$.25 add-on shall be removed three months subsequent to the gallon price of diesel fuel declining to less than the trigger point of \$1.37 per gallon. The Board recognizes, however, that Official General Order No. A-906 (over-order premium order) will expire on June 30, 2000, and that this increase in diesel fuel cost should become part of a subsequent over-order premium order.

**CONCLUSIONS OF LAW**

1. The March 2, 2000, hearing on the increased diesel fuel costs 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. (Finding of Fact 2)
3. In adopting the attached order, the Board has 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.
4. 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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Beverly R. Minor, Chairwoman

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J. Robert Derry, Consumer Member

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Luke F. Brubaker, Member

Dated: March 14, 2000

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