



## Commonwealth of Pennsylvania

Milk Marketing Board  
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Official General  
Order No. A-978

Posted: May 2, 2012  
Effective: May 9, 2012

### **AN ORDER REGARDING THE TIMING AND MANNER OF PRICE ANNOUNCEMENTS FOR ALL MILK MARKETING AREAS**

NOW, this 2<sup>nd</sup> day of May 2012, 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 9, 2012.

#### **SECTION A SCOPE; INCORPORATION**

This official general order governs the timing and manner of the Board's monthly price announcements. The attached findings of fact and conclusions of law are incorporated herein by this reference as though fully set forth in this order.

#### **SECTION B PRICE ANNOUNCEMENTS**

- a. For producer class and component prices, the Board will use the federally announced prices on the dates specified by the United States Department of Agriculture (“USDA”).
- (b) (i). Unless otherwise provided herein, for resale pricing purposes, the Board will calculate a Class I and Class II advanced price using the same methodology and the same dairy product price information for the same time period (the weighted average of the most recent two weekly dairy product price surveys announced pursuant to 7 CFR 1170.17 before the 24<sup>th</sup> day of the month) used by the United States Department of Agriculture (“USDA”) to determine Class I skim and butterfat prices and the Class II skim price. For Class II butterfat prices the Board will continue to use the methodology adopted in the 2004 cost replacement orders in each of the six milk marketing areas in Pennsylvania; the relevant cost replacement orders are OGO-A-890(CRO 9), OGO A-

911(CRO 4), OGO A-910(CRO 4), OGO A-900(CRO 6), OGOA-887(CRO 9) and OGO A-907(CRO 5).

(ii). Unless otherwise provided herein, the Board will announce the Class I and Class II advanced prices and resale prices on or before 3:00 pm the day following USDA's announcement of the Class I and Class II advanced prices. If the day following USDA's announcement of the Class I and Class II advanced prices is a weekend or a state-recognized holiday, the Board shall announce the Class I and Class II advanced prices and resale prices on or before 3:00 pm the next business day.

(iii). In January of each year, the Board shall have authority, without hearing, to select and announce price announcement dates for the Board that are not in conformity with the USDA price announcement date pursuant to paragraph (b)(ii).

(iv) The Board shall also have the authority to, without hearing and for good reason, including reasons related to industry practicality, reschedule resale price announcement dates. The Board shall take official action at a Sunshine meeting at least 7 days before such a rescheduled price announcement date announcing that the Board's resale price announcement will be rescheduled to take place on or up to 10 days before the USDA price announcement date.

(v). The Board shall further have authority without a hearing to adjust the resale price announcement date as needed in the event of an emergency or *force majeure*.

(vi). Announcements by the Board that the price announcement date for resale prices shall differ from the price announcement date otherwise provided for in paragraph (b)(ii) shall be published on the Board's website; provided however that, on the record of this hearing the Board has determined that the resale prices for December 2012 shall be announced on November 15, 2012. If a Board price announcement is not made in conformity with paragraphs (b)(i) and (b)(ii) herein, the Board shall calculate the Class I and Class II advanced prices pursuant to paragraph (b)(i), but shall use the weighted average of the most recent 2 weekly dairy product price surveys announced by the Agricultural Marketing Service pursuant to 7 CFR 1170.17 that are published before the date for the Board-announced resale prices.

(vii). To the extent the Board-calculated Class I skim and butterfat or Class II skim prices differ from the Class I skim and butterfat or Class II skim prices issued by the USDA for producer prices that the Board would otherwise have used had it issued in conjunction with USDA pursuant to paragraph (b)(i) and (b)(ii), the Board will make the necessary adjustments to the Class I or Class II resale prices in the next succeeding month.

PENNSYLVANIA MILK MARKETING BOARD

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Luke F. Brubaker, Chairman

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Richard Kriebel, Member

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Lynda J. Bowman, Consumer Member

Dated: May 2, 2012

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
TIMING AND MANNER OF PRICE ANNOUNCEMENTS HEARING  
APRIL 4, 2012**

**FINDINGS OF FACT**

1. On April 4, 2012, the Pennsylvania Milk Marketing Board (“Board”) convened a hearing for all milk marketing areas to receive testimony and evidence concerning the timing and manner of Board price announcements.
2. Notice of the hearing was published at 42 *Pennsylvania Bulletin* 1589 on March 24, 2012, and was mailed to those on the Board’s interested persons list by means of Bulletin No. 1482, dated March 13, 2012.
3. Todd Rutter testified in support of the Pennsylvania Association of Milk Dealer’s (“PAMD”) request to revise the provisions of the Board’s price announcement order. Mr. Rutter is the president of Rutter’s Dairy (“Rutter”). Rutter operates a processing plant in York, Pennsylvania, and company convenience stores. It receives producer milk from Pennsylvania and Maryland farmers and sells packaged milk in Pennsylvania, Maryland, and New Jersey.

Mr. Rutter testified that the proposed revisions would allow the Board to announce resale prices within 24 hours of the United States Department of Agriculture’s (“USDA”) announcement of advanced Class I and Class II prices. Mr. Rutter explained that, without the revisions, Board price announcements would diverge from USDA price announcements, leading to various issues that could be easily avoided by simply changing the Board’s price announcement dates.

The issues that could be avoided by changing Board price announcement dates include minimizing customer concerns by keeping Pennsylvania pricing in-sync with surrounding states’ pricing and maintaining the ability to get prices out to customers around holidays and within five working days of the end of the month.

4. Robert Mertz also testified in support of PAMD’s proposal. Mr. Mertz is the general manager of Schneider – Valley Farms Dairy (“Schneider”) Schneider operates a processing plant in Williamsport, Pennsylvania, and distributes packaged milk in Pennsylvania, New York, and New Jersey, with 77% of the milk sold in Pennsylvania.

Mr. Mertz had the same concerns regarding Board price announcement dates differing from USDA dates as Mr. Rutter had. Mr. Mertz explained that it was essential to have price changes out to customers as soon as possible because customers have a lot of work to do in response to those price changes. Mr. Mertz also testified that some of Schneider’s subdealers only serve their customers once per week, so it is essential for those subdealers to have price information on Mondays.

5. The Board finds that the resale price announcement dates should be changed pursuant to PAMD's proposal. In so finding, the Board relies on the credible and persuasive testimony of Mr. Rutter and Mr. Mertz regarding the benefits of changing the resale price announcement dates and the problems that are caused when Board price announcement dates differ from federal price announcement dates. We also note that there was no opposition to PAMD's proposal, nor was any alternate proposal offered.

### **CONCLUSIONS OF LAW**

1. The April 4, 2012, hearing regarding the timing and manner of resale price announcements was held pursuant to the authority granted to the Board in sections 801, 802, and 803 of the Milk Marketing Law (Law), 31 P.S. §§ 700j-801, 700j-802, and 700j-803.
2. The hearing was held following adequate notice, and all interested parties were given a reasonable opportunity to be heard.
3. In adopting this 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, 802, 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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Luke F. Brubaker, Chairman

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Dated: May 2, 2012

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