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Milk Marketing Board
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Official General
Order No. A-981

Posted: December 19, 2012
Effective January 1, 2013

OVER-ORDER PREMIUM

NOW, this 19th day of December 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 January 1, 2013, and will expire at 12:00 midnight on June 30, 2013.

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 an over-order premium of \$1.80 per hundredweight effective 12:01 a.m. on January 1, 2013, through midnight on March 31, 2013.

(b) In all milk marketing areas the calculation of the Class I price for milk produced, processed, and sold in Pennsylvania shall include an over-order premium of \$1.85 per hundredweight effective 12:01 a.m. on April 1, 2013, through midnight on June 30, 2013.

(c) 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 being paid.

SECTION III

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

(b) All parts of Official General Order A-927 not inconsistent with this order shall continue in effect.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: December 19, 2012

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-ORDER PREMIUM HEARING
DECEMBER 5-6, 2012**

FINDINGS OF FACT

1. On December 5 and 6, 2012, 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.
2. Notice of the hearing was published at 42 Pennsylvania Bulletin 6744 on October 20, 2012, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1490, dated October 10, 2012.
3. 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 over-order premium be set at \$1.95 per hundredweight through June 30, 2013.
4. Mr. Schad testified that after two years of bad harvests, crop production conditions in Pennsylvania improved in 2012, but drought conditions in the Midwest had increased feed prices. Based on Chicago Mercantile Exchange commodity prices, Mr. Schad projected the cost to purchase feed to feed a cow producing 65 pounds of milk per day for the first six months of 2013 to be the highest it has been for that period over the past six years. He also forecasted the Pennsylvania all milk price for the first six months of 2013 to be generally the second highest it has been for that period over the past six years. The forecasted Pennsylvania milk margin per hundredweight, based on the forecasted feed costs and all milk price, ranges from \$11.44 per hundredweight to \$12.02 per hundredweight over the first six months of 2013; this margin would be the second or third highest over the past six years.
5. Mr. Schad testified that Pennsylvania milk production was declining relative to national milk production. He also testified that over the first three quarters of 2012 as compared to the same period in 2011, Pennsylvania milk production decreased 70 million pounds while milk production in New York increased 260 million pounds. Mr. Schad further testified that the regional demand for milk has increased due to a surge of yogurt production in the Northeast.
6. Mr. Schad testified regarding premiums in nearby markets. The GNEMMA over-order price for Class I distribution in New Jersey remained at \$1.37 per hundredweight (including a \$0.17 fuel adjustment) plus an additional premium for customers requiring rBST-free affidavit milk. Mr. Schad testified that the GNEMMA price for distribution in Maryland and Delaware remained \$0.10 per hundredweight higher than the New

Jersey price. The over-order Class I price for October 2012 set by the marketing agency in common in the southeast, including fuel adjustment and rBST-free affidavit premium, was \$3.90 per hundredweight, with credits of \$0.45 hundredweight available. The marketing agency in common in the mideast had an over-order price for April 2012 of \$2.92 per hundredweight including fuel adjustment and rBST-free affidavit premium, with credits of \$0.80 per hundredweight available; the October 2012 price was the same as the April 2012 price.

7. Gary Truckenmiller testified in support of GNEMMA's recommendation that the over-order premium be set at \$1.95 per hundredweight. Mr. Truckenmiller operates a 90 cow dairy farm with his son in Northumberland County. Mr. Truckenmiller markets his milk through Maryland and Virginia Milk Producers Cooperative Association, having switched in June 2012 from marketing directly to an out-of-state processor. Mr. Truckenmiller testified that Maryland and Virginia's primary focus is serving the Class I market and that Pennsylvania dairy farmers benefit the most from the over-order premiums those sales generate. He testified that the over-order premium dollars allow the cooperative to pay competitive quality premiums, rBST-free premiums, and volume incentives that directly benefit the membership. Mr. Truckenmiller testified that the premium he received from the out-of-state processor was \$1.00 per hundredweight, and the premium he receives from Maryland and Virginia is between \$1.00 and \$1.35 per hundredweight for quality, \$0.34 per hundredweight for not using rBST, and a further volume premium.
8. Mr. Truckenmiller testified that dairy farmers have to closely monitor and evaluate their input costs, noting that feed costs eat up the most margin on dairy farms. Mr. Truckenmiller grows the majority of his forages, keeping feed costs low and insulating his operation from commodity price increases. However, he testified that he has to purchase about 15% of his feed each year and has witnessed other dairy farmers struggle to pay their feed bills. Mr. Truckenmiller further testified that he can make more money selling crops on the grain market than he can selling feed to fellow dairy farmers.
9. 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 over-order premium be set at \$1.95 per hundredweight. Mr. Espenshade is a member of a Mount Joy Dairy Cooperative. He testified that all of his cooperative's milk goes to plants within Pennsylvania, with the exception of one plant in New Jersey, and that approximately 52% of the milk produced by his cooperative goes to Class I facilities.
10. Mr. Espenshade testified that since May 2012 his milk price has increased slightly, but not enough to keep up with rising feed costs. From June 2012 to October 2012, Mr. Espenshade's feed costs rose from \$9.34 per hundredweight to \$11.58 per hundredweight, while his milk price rose from \$17.06 per hundredweight to \$18.06 per hundredweight, which included \$0.70 per hundredweight of various premiums. Currently the value of the milk produced by an average cow in Mr. Espenshade's herd

is \$10.83 per day, with a feed cost of \$6.59 per day, leaving \$4.24 per cow per day for all other related farming and family expenses. Mr. Espenshade testified that the margin per cow per day in September was \$2.72 and in July was \$3.12.

11. The economic challenges faced by Mr. Espenshade have caused him to take additional measures. Young heifers are no longer fed a protein pellet, which he has tried to balance with additional grass hay; due to this change his heifers are not reaching breeding condition on time, leading to additional time in the heifer pens rather than in the milking string. Nor has Mr. Espenshade had his cows' hooves trimmed in over two years. Mr. Espenshade's farm was selected for preservation by Lancaster County, but his farm has lost so much equity since October 2008 that the farmland preservation proceeds will go not to improve his facilities and increase efficiency, but instead will go to his bank.
12. Michael Evanish testified on behalf of Pennsylvania Farm Bureau as an expert in dairy accounting and 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, the data from 600 of which are summarized and published in the Dairy Herd Analysis. Mr. Evanish testified that continuation of the Class I over-order premium at \$1.95 per hundredweight for at least six months is justified. He testified that since the present \$1.95 over-order premium was established he has witnessed nothing but negative economic impacts to dairy farmers.
13. Mr. Evanish testified that the past several years have seen the profitability of Pennsylvania's dairy farms being seriously and increasingly challenged by increases in purchased feed costs, with the purchase of feed being the largest expense on dairy farms. Mr. Evanish testified that purchased feed costs represented approximately 23% of revenue for decades, but that beginning in 2008 purchased feed costs increased to represent 29% to 30% of milk revenue.
14. Since every dairy farm purchases a different mix of feed unique to that farm, Mr. Evanish projected the impacts of recent feed price increases applying the formula used when calculating the margin for the LGM-Dairy Insurance Program. That formula yielded a 29% increase in feed costs from October 2011 to October 2012 per 100 hundredweights of milk produced. Removing corn from the formula, since a very high percentage of Pennsylvania dairy farms raise enough corn to meet their corn needs, results in a 10% increase in purchased feed costs based on increased soybean meal costs. Mr. Evanish testified that this is the time of year when dairy farmers have historically caught up on accounts payable that accumulated during the planting and harvesting seasons, but that high purchased feed costs were a severe restraint on that process.
15. Mr. Evanish testified that the data used in the Dairy Herd Analysis are produced and collected for the benefit of individual farmers to use to manage their businesses to attempt to become more profitable. Nor do the data represent a statistical sample; the

data represent farms that hire professional advisors. Mr. Evanish testified that a comparison of the 2010 and 2011 Dairy Herd Analyses showed an increase in cost of production for the three size categories of Pennsylvania dairy farms of between \$2.50 per hundredweight and \$3.00 per hundredweight. The 2011 Dairy Herd Analysis showed profits per hundredweight for farms with 0-100 cows of (\$0.68), for farms with 101-250 cows of \$1.60, for farms over 250 cows of \$1.62, and for the top 10% of farms of \$5.44. Mr. Evanish also projected the 2012 cost of production, based on feed cost increase only, to be around \$2.00 per hundredweight higher than 2011 for the three dairy farm sizes.

In weighing Mr. Evanish's testimony, the Board recognizes that the Dairy Herd Analysis and cost of production are not based on a representative cross-section of producers. We also note that to the extent that the data are collected uniformly each year, the Dairy Herd Analysis could show cost of production trends.

16. 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 over-order premium be set at \$1.95 per hundredweight for at least six months. Mr. Ebert testified that conditions for dairy farmers had not changed very much and that they continue to face serious challenges that have placed considerable stress on already tight margins, demonstrating the need for the over-order premium to continue at its current level.
17. Mr. Ebert testified that although 2012 was almost over, farmers have still been feeling the effects of 2011 weather extremes. Farmers began running out of feed in the spring of 2012 before the new harvest came in. As a result of limited and poorer quality feed, Mr. Ebert's farm experienced cow impacts such as lower conception rates and increased breeding costs. Mr. Ebert also testified that 2012's weather had an impact on Pennsylvania dairy farmers with a lower overall harvest on his farm, hot weather leading to lower conception rates and higher breeding costs, and climbing feed prices due to drought throughout parts of the country.
18. Mr. Ebert testified that dairy farmers continue to face a challenging environment. Rising input costs have stressed margins already weakened by the challenges of the past six years. Between October 2011 and October 2012 the cost of Mr. Ebert's feed concentrate rose 28% and the cost of soybean meal rose 41%. Mr. Ebert testified that his income over feed costs in October 2011 was \$8.92, compared to \$5.96 in October 2012, a decrease of 33%.
19. Earl Fink testified on behalf of the Pennsylvania Association of Milk Dealers as an expert in milk marketing as defined by the ability of milk processors and fluid processors to procure milk competitively and the ability to sell packaged milk competitively and profitably and Pennsylvania Milk Marketing Board regulation and enforcement. Mr. Fink testified in support of setting the over-order premium at \$1.35 for the first six months of 2013.

20. Mr. Fink testified that the Pennsylvania-mandated premium of \$1.95 plus the \$0.83 fuel adjuster for November 2012 was substantially higher than premiums in nearby markets, with the Class I premium in New Jersey at \$1.37 and the Class I premium in Maryland and Delaware at \$1.47. Mr. Fink testified that the cooperative premiums in Ohio do not tell the whole story and that it is important to know what plants with independent milk supplies are paying because those plants were capturing the attention of importing retail and food service companies. Based on premium program sheets for two independently-supplied Ohio processors, a Dairy Farmers of America premium program sheet, and general market intelligence, Mr. Fink testified that premiums to independent producers west of Pennsylvania were in the range of \$1.30 per hundredweight to \$1.40 per hundredweight. Mr. Fink did not see producer payrolls for any plants; he did testify that United Dairy buys producer milk at a slightly lower price than the two independently-supplied Ohio processors, but he did not provide any other information or program sheets relative to premiums Pennsylvania plants were paying for producer milk sourced out-of-state.
21. Mr. Fink also testified that in recent years retailers such as Aldi, Save-A-Lot, Bottom Dollar, Costco, and Wegmans had increased their Pennsylvania market share. These retailers source their milk from out-of-state and Mr. Fink testified that some were not actively soliciting price quotes from Pennsylvania processors. Mr. Fink further testified that he had noticed a troubling trend in that Pennsylvania's market share is seriously threatened by not just the possibility of lost business but by the fact that Pennsylvania produced and processed milk is being overlooked by the large discounters and growing trendy grocers.
22. Mr. Fink testified that not only are fluid milk sales declining nationwide, but Pennsylvania plants are getting a smaller share of that shrinking volume. Mr. Fink explained that milk processing is a thin margin business that relies on volume to keep overhead down, with the lower market share threatening the survival of Pennsylvania's diverse milk processing segment leading to a horrible situation for the dairy farmers that rely on local Class I outlets.
23. Mr. Fink did not know if Aldi sourced its milk out-of-state due to Pennsylvania minimum prices. Mr. Fink testified that Bottom Dollar transfers title to milk it purchases from a Virginia plant outside Pennsylvania; he did not know if Bottom Dollar sourced milk for its stores in other states from the same Virginia plant. Mr. Fink testified that plants supplying Save-A-Lot ship the milk to a distribution center in Maryland; he also testified that some of that milk comes from a Pennsylvania plant and the Pennsylvania-mandated over-order premium has no effect on bidding for that business. Mr. Fink was unsure of the precise delivery and title transfer arrangements for Wegmans.
24. 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 over-order premium be set at \$1.35. He testified that out-of-state premiums are

considerably lower than those paid by Pennsylvania plants, presenting a competitive disadvantage to Pennsylvania processors. Mr. Herbein further testified that the volume of Pennsylvania sales by the cross section dealers was also affected by the increasing sales by importing retailers and by the loss of accounts to out-of-state plants.

25. The dealer cross section studied by Mr. Herbein consisted of the same dealers used for cost replacement hearing purposes with two exceptions: he removed the two non-processing dealers from the cross section for this hearing because they do not purchase producer milk and he added United Dairy from Ohio because United has both a Pennsylvania and Ohio plant and buys producer milk outside Pennsylvania as well as in Pennsylvania. Mr. Herbein analyzed the three most recently audited months' producer obligation worksheets for each of the cross section dealers. He testified that the cross section dealers purchased 79% of their milk from Pennsylvania producers and that their plant blend premium above the federally-mandated minimum price was \$1.89 per hundredweight for all milk, regardless where that milk was acquired.
26. Mr. Herbein testified that Class I sales in Pennsylvania are decreasing at a rate greater than those sales are decreasing in adjacent federal orders and in all of the federal orders together. He also testified that there are some insignificant differences between the federal order requirements and the Board's route disposition requirements in how Class I sales are classified. Among the differences are that the Pennsylvania route disposition used to determine Class I sales in Pennsylvania is essentially a measure of wholesale sales and there is no information available regarding retail sales in Pennsylvania, while sales from all sources at retail in a given area are the basis for federal order in area sales. Mr. Herbein testified that the differences are not great enough to change the relationship relative to Pennsylvania Class I sales decreasing at a greater rate than sales in adjacent federal orders. He further testified that he knew each of the cross section companies well, has represented them in one way or another for many years, and he knows their businesses. Mr. Herbein was certain that the Pennsylvania dealers had a competitive problem that he sees regularly.
27. Looking at total sales inside and outside Pennsylvania of both milk and drinks, Mr. Herbein also testified that the trend has been for less volume generally to be running through the cross section plants; as volume decreases, unit costs increase, leading to diminished profitability for the plants and higher resale prices.
28. Mr. Herbein testified that some of the cost of production analysis presented by Mr. Evanish did not apply generally accepted accounting principles ("GAAP"). Mr. Herbein testified that Mr. Evanish's approach to imputing a cost for management labor was appropriate for business analysis purposes, but that for rate making purposes the cost for management labor should be the actual amount paid; some examples of actual amounts paid include direct payment as some type of salary or personal living expenses for the producer. Mr. Herbein also testified that depreciation, to be GAAP-compliant, should be cost based, rather than based on fair market value. Mr. Herbein opined that these differences caused the cost of production to be overstated in Mr. Evanish's analysis.

29. Rob Blaufuss testified on behalf of Dean Foods (“Dean”) as an expert in agricultural and dairy economics. Mr. Blaufuss testified that Dean is feeling a certain level of anxiety regarding the increasing disparity between the Pennsylvania-mandated over-order premium and premiums being paid for independent out-of-state milk. He also testified that large retail outlets have seen an increase in their market share of fluid milk sales but have increasingly ignored Pennsylvania milk due to its high cost. Mr. Blaufuss recommended that the over-order premium be set at \$1.35 per hundredweight from January 1, 2013, through June 30, 2013.
30. Mr. Blaufuss testified that while Class I plants would like to procure locally produced milk, Pennsylvania-produced milk is increasingly uncompetitive in the marketplace. He testified that a significant amount of independent milk lies just beyond Pennsylvania’s northern and western borders. He further testified that according to Dean’s market intelligence, premium levels for that independent milk ranged from \$0.35 per hundredweight to \$1.10 per hundredweight during September 2012. Mr. Blaufuss testified that if the current premium is maintained Pennsylvania produced, processed, and sold milk will increasingly lose market share to lower cost out-of-state producers.
31. Mr. Blaufuss testified that the current USDA milk production forecast was for an increase of 1.8% in 2012 compared to 2011 and that 2013 milk production was forecast to remain unchanged. He testified that continued strong demand for dairy products coupled with reduced international milk production was likely to help support international dairy product prices during the first half of 2013.
32. Mr. Blaufuss testified that, despite Pennsylvania having a higher all-milk price than New York or Ohio, declining milk production is not a new trend in Pennsylvania; Pennsylvania milk production declined year-over-year in 53.1% of the months between January 1998 and September 2012. In contrast, New York experienced negative milk production growth in 39.5% of the months between January 1998 and September 2012 and Ohio saw negative milk production growth estimates in 27.7% of the months over the past 15 years. Mr. Blaufuss testified that Pennsylvania and New York have different economies of scale that impact production decisions; in 2011 the average Pennsylvania dairy farm had 74 cows while the average New York dairy farm had 112 cows.
33. Mr. Blaufuss testified that crop prices have stabilized in recent months and have started to decline as elevated price levels caused demand to erode. He testified that while total United States crop production suffered as a result of drought conditions, Pennsylvania corn, soybean, and alfalfa production increased year-over-year in 2012. The Pennsylvania soybean crop set a record for total production. Mr. Blaufuss forecasted Pennsylvania income over feed costs for the first six months of 2013 to be generally among the highest since 2008. He based the all milk price on the same formula used by Mr. Schad, but using the “six economists” Class I mover.

With the exception of January 2013, the all milk price forecasts of Mr. Schad and Mr. Blaufuss are very similar.

34. Mr. Blaufuss testified that over the past decade increased domestic and international demand and government policies have caused agricultural commodity prices and price volatility to significantly increase. He testified that while input costs and milk price changes do not always move in lockstep each month, milk prices do factor in the changes in input costs. Mr. Blaufuss opined that expected first half of 2013 income over feed cost levels were understated for Pennsylvania farmers due to their ability to grow the majority of their feed.
35. Lynne Bohan testified on behalf of the Pennsylvania Association of Milk Dealers' request to set the over-order premium at \$1.35 per hundredweight from January 1, 2013, through June 30, 2013. 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.
36. Ms. Bohan testified that Hood is concerned that an over-order premium level of \$1.95 per hundredweight in addition to the fuel adjuster puts processors like Hood at a competitive disadvantage because the prevailing premiums being paid across the Northeast are lower than the Pennsylvania-mandated premium. Ms. Bohan testified that the cooperative premiums from New York and throughout the Northeast are in the range of \$1.625 per hundredweight and that while she did not know the premiums paid by plants with independent supplies, Hood generally understood that those premiums were lower than the cooperative premiums.
37. Ms. Bohan testified that Hood has observed an increasing trend among retailers toward importing milk from out-of-state facilities for sale in Pennsylvania. She testified that Hood's fluid milk plant in Hatfield, Pennsylvania, has experienced decreases in volume and sales which have outpaced national and regional volume declines.
38. David DeSantis testified as an expert with respect to Milk Marketing Board statistics. Mr. DeSantis is the Board's Chief of Enforcement and Accounting. Mr. DeSantis provided information to GNEMMA which formed the basis of GNEMMA exhibits 19 and 20, and confirmed values and calculations on GNEMMA exhibit 21.

Mr. DeSantis explained that GNEMMA exhibit 19 was a monthly total of sales of Class I products by out-of-state dealers from January 2007 through September 2012, broken out as route sales and dealer-to-dealer sales.

Mr. DeSantis explained that GNEMMA exhibit 20 showed receipts and utilization for all Pennsylvania Class I dealers on an annual basis for 2008 through 2011, and for the months of January 2012 through July 2012. Mr. DeSantis also testified that the Board has incomplete information on retail sales volumes of Class I products in Pennsylvania because the Board's definition of "route disposition" is different than that used by the federal milk market administrators; the federal milk market administrators track all

sales to stores or other final destinations, while the Board basically tracks sales only to the point the product leaves the selling dealer's control, which may or may not be the milk's final destination.

Mr. DeSantis testified that GNEMMA exhibit 21 was prepared by GNEMMA from Board price announcements for January 2007 and December 2012. He testified that he confirmed that the numbers and calculations in the exhibits were correct for the descriptions stated.

39. While Mr. DeSantis generally described the information found in GNEMMA exhibit 20, he provided no analysis of the data. Nor did any other witness provide any analysis of the data found in GNEMMA exhibit 20. The Board finds lawyer analysis of those data in briefs to be unpersuasive and does not rely on that analysis in reaching our decision in this matter. We may or may not have found persuasive expert analysis of that data during the hearing, which analysis could have been expanded upon in briefs.

We do not mean to imply by this finding that we either encourage or discourage future expert analysis of various data sets. We merely note that we would find arguments based on data sets more persuasive if there is some explanation at the hearing regarding the data and some testimony regarding their relevance to the decision we have to make so that we may put the data in context.

Nor does the Board find persuasive analysis and argument in briefs based on material contained in public documents or "official notice" documents for which no testimony was provided at the hearing. If this type of information is going to serve as evidence on which the Board will base a decision, the significance, impact, and relevance of the information should be explained by a witness at the hearing.

The Board wants to base our decisions on evidence that has been explained at hearings. We can ask a witness a question regarding evidence or testimony to make it more clear or to give us more detail. We cannot ask a brief the same questions. If parties offer into evidence documents on file with the Board, public documents, or records in other proceedings before the Board with no testimony regarding the purpose, significance, or relevance of that evidence and then rely on it in a brief, we have no opportunity to question that evidence or argument and other parties have no opportunity to provide a meaningful response, thereby depriving the Board of the quality of information on which we want to base our decisions.

40. Mr. Schad testified that if Pennsylvania Class I sales had declined at a greater rate than other areas and that the reason for the decline was the level of the Pennsylvania-mandated over-order premium, there should be evidence of changes in sales when the premium level changes. He testified that correlation is a statistical tool used to measure the relationship between two variables. Mr. Schad analyzed the correlation between the over-order premium and Pennsylvania Class I sales between 2006 and 2011 as reported on the Board's Over-Order Premium Effect publication and found only a weak relationship. Mr. Schad also performed the analysis with the fuel adjuster premium

added to the over-order premium and once again found only a weak, albeit it slightly stronger, relationship between the mandated premium level and Pennsylvania Class I sales.

Mr. Schad also analyzed the correlation between the over order premium level and in-state Class I sales by out-of-state dealers. Mr. Schad testified that this correlation was - 0.33, indicating that in-state Class I sales by out-of-state dealers declined when the over-order premium increased.

The monthly Pennsylvania Class I sales volumes from the Over-Order Premium Effect publication are not necessarily actual values of sales volumes in all cases. For several months the values are the averages for the months.

41. John Turcinov testified on behalf of Dairy Farmers of America as an expert in milk marketing, raw milk costs, and producer milk procurement. Mr. Turcinov testified that Ohio is a very competitive market for producer milk and that Ohio should not be considered a reservoir of low-cost milk. Mr. Turcinov testified that mailbox prices from 2007 to the most current month available in 2012 are similar in Ohio and Western Pennsylvania. Since the mailbox prices are not standardized to any test, Mr. Turcinov adjusted for the difference in average component values between Pennsylvania and Ohio and found that the Ohio price paid to producers was higher in all instances. Mr. Turcinov also reviewed the market administrator's publication of hauling costs and found that more of the cost of hauling milk is borne by the buyer in Ohio than in Pennsylvania; he concluded that the total cost of Ohio milk is greater than the mailbox prices indicate.
42. Mr. Turcinov testified that, as a general rule, producers will not switch markets for a small potential price advantage. He testified that within the past year a handler in Ohio with distribution in Pennsylvania had offered DFA producers a one-year guaranteed premium of \$2.25 per hundredweight. Mr. Turcinov further testified that any processor sourcing milk in Ohio to expand sales in Pennsylvania would have to pay a higher than market average cost to procure additional milk.
43. Dean Ellinwood testified on behalf of GNEMMA as an expert in raw milk marketing, procurement from producers, and sales to handlers. Mr. Ellinwood testified that the demand for milk in New York and New England is very strong and growing and that milk supplies are very tight, now and for the foreseeable future; there are no inexpensive additional supplies of milk in New York for processors of any class product. Mr. Ellinwood testified that new processing capacity is being developed in New York state and that there are no uncommitted volumes of inexpensive milk in New York or New England available to be imported into Pennsylvania for Class I processing absent extraordinary price incentives.
44. The Board finds that the over-order premium should be set at \$1.80 per hundredweight for January through March 2013. In so finding we rely on the credible and persuasive testimony of Mr. Schad and Mr. Blaufuss regarding the Pennsylvania all milk price;

both Mr. Schad and Mr. Blaufuss testified that the Pennsylvania all milk price will be among the highest it has been since 2008 for the January through March period. We also find persuasive Mr. Blaufuss's testimony that income over feed costs for the first half of 2013 are understated for Pennsylvania farmers due to the ability of Pennsylvania farmers to grow the majority of their feed; we also note Mr. Evanish's credible testimony that a very high percentage of Pennsylvania dairy farms raise enough corn to meet their corn needs. Mr. Ebert and Mr. Espenshade also credibly testified that they had enough corn to meet their projected needs through June 2013.

The Board also finds credible but less persuasive the testimony of Mr. Fink, Mr. Herbein, Ms. Bohan, and Mr. Blaufuss regarding competition in the marketplace, premiums outside Pennsylvania, and the decrease in Pennsylvania sales by Pennsylvania processors. We believe that the long term somewhat static level of the over-order premium has resulted in some level of competitive issues for Pennsylvania processors competing for in-state sales, but not to the level that a reduction in the over-order premium to \$1.35 is justified. For instance, there is no evidence that the location out-of-state distribution centers was picked based solely on the Pennsylvania over-order premium. Nor do we have evidence regarding the volumes of milk being procured at premium levels testified to by Mr. Fink and Mr. Blaufuss, and we have credible testimony from Mr. Turcinov and Mr. Ellinwood regarding the availability and price of milk in Ohio and New York respectively. We also find credible Mr. Herbein's testimony that he sees a competitive issue for the dealers in the Pennsylvania marketplace. We are persuaded that the weight of all of the testimony and evidence supports setting the over-order premium at \$1.80 per hundredweight for January 2013 through March 2013.

45. The Board finds that the over-order premium should be set at \$1.85 per hundredweight for April 2013 through June 2013. In so finding, we rely on the reasoning in Finding of Fact 44, but also note that the forecasts by Mr. Schad and Mr. Blaufuss for the Pennsylvania all milk price, income over feed costs, and margin per hundredweight tend to trend downward and we find that raising the premium in April 2013 through June 2013 appropriate.
46. The Board understands the conflicting views and recommendations of the parties regarding the over-order premium level. We also understand the importance of the over-order premium level to the Pennsylvania dairy industry. With the importance of the over-order premium level and the marked difference in the parties' recommended levels, we carefully considered the entire record. Without recounting each and every point raised in testimony or the evidence, we find that the weight of the evidence supports this order. Some testimony was affected by what we heard on cross examination and other testimony was not. Some testimony was affected by what we heard in rebuttal or surrebuttal and other testimony was not. We were challenged with this decision making, individually and collectively, and believe it is the best decision for Pennsylvania's dairy industry.

CONCLUSIONS OF LAW

1. The December 5 and 6, 2012, 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. 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

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: December 19, 2012

IF YOU WISH TO RECEIVE THIS INFORMATION IN AN ALTERNATE FORMAT,
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