



**Commonwealth of Pennsylvania**  
Milk Marketing Board  
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Official General  
Order No. A-1001

Posted: September 18, 2018  
Effective October 1, 2018

### **OVER-ORDER PREMIUM**

NOW, this 18<sup>th</sup> day of September 2018, 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 October 1, 2018, and will expire at 12:00 midnight on March 31, 2019.

#### **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 \$0.75 per hundredweight effective 12:01 a.m. on October 1, 2018, through midnight on March 31, 2019.

(b) 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**

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

PENNSYLVANIA MILK MARKETING BOARD

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Robert N. Barley, Chairman

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James A. Van Blarcom, Member

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Carol A. Hardbarger, PhD, Consumer Member

Date: September 18, 2018

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**OVER-ORDER PREMIUM HEARING**  
**September 5, 2018**

FINDINGS OF FACT

1. On September 5, 2018, 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 48 Pennsylvania Bulletin 4371 on July 21, 2018, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1545, dated July 2, 2018.
3. Dean Ellinwood 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., Dairy Marketing Services, LLC, Lanco Dairy Farms Co-op, Inc., and Maryland & Virginia Milk Producers’ Cooperative Association, Inc. Approximately 3,500 Pennsylvania dairy farmers market their milk through PADC members. Mr. Ellinwood recommended that the over-order premium be set at \$0.75 per hundredweight for the period October 1, 2018, through March 31, 2019.
4. Mr. Ellinwood testified that recent and reasonably foreseeable market conditions have been, and are expected to continue to be, quite challenging. He testified that new plant capacity that was anticipated to be on-line throughout 2018 had been delayed. Mr. Ellinwood also noted that even when the plants become operational, new finished product sales may take a while to be realized.
5. Mr. Ellinwood testified that overall farm milk production in the three major Northeast dairy states, Pennsylvania, New York, and Vermont, had decreased each month compared to the prior year’s same month from December 2017 through May 2018. Despite those declines, the Northeast and Mid-Atlantic areas were in an excess milk situation. The trend of decreasing year-over-year production in the Northeast reversed in June 2018 - compared to June 2017, June 2018 production increased 20 million pounds. June 2018 production in New York increased 23 million pounds over June 2017 production, while Pennsylvania production decreased 2 million pounds and Vermont production decreased 1 million pounds.
6. Mr. Ellinwood testified that dairy farm families are hurting. He testified, though, that the Board has played a critical role in maintaining the stability and strength of Pennsylvania’s dairy industry. Mr. Ellinwood testified that PADC would prefer a higher over-order premium, but that the over-order premium must balance protecting farmers from unprofitably low milk prices with requiring processors to pay competitive rates relative to surrounding markets. Mr. Ellinwood explained that if there is a significant gap between the over-order premium and the prevailing premiums in

surrounding markets milk processors may be incentivized to bring milk into Pennsylvania from outside the state. In that case, Pennsylvania farmers would not receive the intended benefit of the over-order premium, dealers would incur greater transportation costs, and the market as a whole would be less efficient.

7. Glenn Stoltzfus testified on behalf of Pennsylvania Farm Bureau. Mr. Stoltzfus is Chairman of Pennsylvania Farm Bureau's Dairy Committee and is a member of the Farm Bureau State Board of Directors. Mr. Stoltzfus operates Pennwood Farms in partnership with his three brothers. Pennwood Farms milks almost 700 Holsteins and raises all of its own heifer calves. Mr. Stoltzfus and his brothers farm approximately 1,700 acres. Pennwood Farms also does custom crop work and livestock sales, but 80% - 90% of the farm's income comes from the operation's milk check. Pennwood Farms ships its milk to Maryland & Virginia Milk Producers Cooperative. Mr. Stoltzfus recommended that the over-order premium be set at \$0.75 per hundredweight.
8. Mr. Stoltzfus estimated Pennwood Farms' cost of production for milk in 2017 was \$18.58 per hundredweight. Based on the farm's financial history and his understanding of its operations, he expected the 2018 cost of production to be similar to 2017's.
9. Mr. Stoltzfus testified that income over feed costs ("IOFC") was a more helpful indicator of the profit margin the farm is getting from dairy production. Pennwood Farms' IOFC for January 2017 was \$10.04. The farm's IOFC declined through 2017 to \$7.85 in December 2017. By June 2018 Pennwood Farms' IOFC had declined to \$6.49. Mr. Stoltzfus testified that the IOFC clearly demonstrated the serious and negative impact that the continued milk price downturn has had on Pennwood Farms, with the farm being in survival mode. Mr. Stoltzfus further testified that he is not the only dairy farmer in that situation.
10. In addition to milk prices being low, Mr. Stoltzfus described many costs that had increased. The average cost of feed concentrate for the first six months of 2018 is the highest since 2015 and is 6% higher than the averages for 2016 and 2017. The average protein cost for the first six months of 2018 was also the highest since 2015, 15% greater than the averages for 2016 and 2017. Pennwood Farms' property/liability and workers' compensation insurance costs have also increased significantly.
11. In response to the higher costs and lower milk prices, Pennwood Farms cuts expenses where possible. The farm is not updating equipment and is not replacing lost workers. Mr. Stoltzfus testified that these changes have resulted in decreased employee morale.
12. Mr. Stoltzfus testified that the dairy industry is in dire straits and that Farm Bureau would like to request a higher over-order premium. However, Farm Bureau understands that the market cannot handle a higher premium right now.
13. Micheal Evanish testified on behalf of Pennsylvania Farm Bureau as an expert in farm accounting and farm business analysis at the August 30, 2017, over-order premium hearing. Mr. Evanish's prepared testimony and tables from that hearing were admitted

to the record of this hearing. The Board made the following findings of fact in Official General Order A-998 based on Mr. Evanish's testimony at that hearing:

- a. MSC Business Services ("MSC") client dairy farms, on average, had experienced losses in four of the years from 2009 – 2016. He testified that the Board should be concerned with both the level of loss and the length of time that dairy farmers have operated at a loss.
  - b. Nineteen percent of MSC-client dairy farms were profitable in 2016, compared to 35% that were profitable in 2015. He testified that dismal financial returns received by dairy farmers have a depressing impact on farmers' subsequent business decisions and enthusiasm toward investing in their businesses. He testified that without enthusiasm for the future, owners were less likely to take on additional financial risk to modernize their operations and were less likely to promote dairy farming as a career to the next generation.
14. Matt Espenshade testified on behalf of the Pennsylvania State Grange. Mr. Espenshade is a seventh generation dairy farmer from Lancaster County milking 75 cows and farming 260 acres. Mr. Espenshade is a member of Mt. Joy Farmers Co-Op ("Mt. Joy"). He recommended that the over-order premium be at least \$0.75 per hundredweight.
  15. Mr. Espenshade testified that IOFC on his farm had generally decreased on his farm from 2017 through 2018. He testified that purchased feed costs have seen unusually drastic swings this year, but with costs for corn and protein concentrate in August 2018 being higher than they were in December 2017.
  16. Mr. Espenshade testified that the over-order premium does not just support Pennsylvania farmers, but also supports the businesses the farmers depend on. The over-order premium helps dairy farmers maintain farm equity and pay down debt.
  17. Steven Zalman testified on behalf of Board Staff. Mr. Zalman is an Audit Supervisor for the Board. Mr. Zalman presented the IOFCs found in the monthly *Penn State Dairy Outlook Newsletter* for August 2016 through June 2018. Mr. Zalman testified that IOFC is not a comprehensive picture of producer profitability and that every farm has its own individual costs and income. The IOFC found in the *Dairy Outlook Newsletter* has, for the most part, been decreasing since January 2017. This is the same trend testified to by Mr. Stoltzfus and Mr. Espenshade.
  18. Arden Tewksbury testified on behalf of Progressive Agriculture Organization and the Dairy Subcommittee of the National Family Farm Coalition; he is the manager of Progressive Agriculture Organization and the Chairman of the Dairy Subcommittee. Mr. Tewksbury recommended that the over-order premium be set at \$1.50 per hundredweight.

19. Mr. Tewksbury testified that the over-order premium must be fair to dairy farmers, fair to handlers, and fair to Pennsylvania consumers. He also testified that the Board would never be able to establish an over-order premium level that would solve the dilemma experienced by Pennsylvania dairy farmers – the average price paid to them is lower than their average cost of production. Based on data from the USDA Economic Research Service and the average price paid to dairy farmers in Federal Order 1, Mr. Tewksbury estimated that Pennsylvania dairy farmers were underpaid at least 500 million dollars in 2017. Mr. Tewksbury testified that cause of this dilemma was federal policy and not the Board.
20. Mr. Tewksbury testified that Readington Farms in New Jersey was paying a premium of \$1.50 to Pennsylvania producers. Mr. Ellinwood testified that while he was aware that Readington Farms had increased its premium this year, he was not aware of any other premium increases in surrounding markets.
21. The Board finds that the over-order premium should be set at \$0.75 per hundredweight from October 1, 2018, through March 31, 2019.

In so finding, the Board relies on the persuasive and credible testimony of Mr. Ellinwood, Mr. Stoltzfus, and Mr. Espenshade. We find Mr. Tewksbury's testimony credible, and agree with his characterization that the over-order premium must be fair to farmers, handlers, and consumers, but find more persuasive the testimony of Mr. Ellinwood and Mr. Stoltzfus that \$0.75 strikes the best balance among farmers, handlers, and consumers given current market conditions.

When the Board establishes an over-order premium level, we attempt to set that level at the point that provides the greatest return to producers without threatening their ability to market their milk. Mr. Ellinwood, in particular, being involved in raw milk procurement from almost 3,500 Pennsylvania dairy farmers and the sale of that milk to handlers, is positioned to understand current market conditions and we find his testimony persuasive.

We also appreciate the testimony regarding average IOFC presented by Mr. Zalman. It was useful to see that the average trend was the same as experienced by Mr. Stoltzfus and Mr. Espenshade on their farms.

22. We share the sentiment expressed by Mr. Ellinwood and Mr. Stoltzfus regarding their preference for a higher over-order premium. The Board agrees with their assessment of current market conditions and believes that current conditions cannot support a higher over-order premium. We remain concerned that setting the over-order premium at too high a level would result in Pennsylvania dairy farmers receiving less benefit from the premium. We find and conclude that \$0.75 per hundredweight will provide the best return to Pennsylvania dairy farmers given the current market situation.

## CONCLUSIONS OF LAW

1. The September 5, 2018, 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 testimony and exhibits presented by Michael Evanish at the August 30, 2017, over-order premium hearing are hereby incorporated by reference.
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

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Robert N. Barley, Chairman

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James A. Van Blarcom, Member

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Carol A. Hardbarger, PhD, Consumer Member

Date: September 18, 2018

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