



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-1009 Amended

Posted:
Effective

December 2, 2020
January 1, 2021

OVER-PRICE PREMIUM

NOW, this 2nd day of December 2020, 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, 2021.

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

The calculation of the over-price premium shall exclude from Pennsylvania receipts pounds of milk received by cooperative-owned plants to the extent milk is supplied to a cooperative-owned plant from Pennsylvania members of the cooperative that owns the plant, but will be included in total receipts.

PENNSYLVANIA MILK MARKETING BOARD

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Date: December 2, 2020

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-PRICE PREMIUM HEARING
August 5, 2020**

FINDINGS OF FACT

1. On August 5, 2020, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for all milk marketing areas to receive testimony and evidence concerning the over-price premium. The hearing was called to consider the composition of the over-price premium cross section. The scope of the hearing was expanded to also consider the impact on the over-price premium of over-price premium cross section dealers owned by dairy cooperatives.
2. Notice of the hearing was published at 50 Pennsylvania Bulletin 3189 on June 27, 2020, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1577, dated June 10, 2020.
3. The Board issued Official General Order A-1009 on November 6, 2020. OGO A-1009 became effective on December 1, 2020. When Board Staff implemented OGO A-1009 to calculate December 2020 resale prices, it determined that language to clarify the order would be beneficial. The Board, on its own motion, added clarifying language to section II of this order. The amended section II clarifies, based on the record of the hearing, that cooperative member pounds are excluded from Pennsylvania receipts but are included in total receipts.
4. Ron Mong testified on behalf of the Pennsylvania Association of Milk Dealers (“PAMD”) as an expert in cost accounting and milk cost accounting. Mr. Mong explained that the over-price premium represents money paid by cross-section dealers to their milk suppliers above the Board-mandated minimum amount due. The over-price premium is intended to reflect amounts paid above the Board-mandated minimum producer price so that the over-price premium cost can be built into Board-established minimum wholesale prices. Mr. Mong testified that in Pennsylvania the Board-established minimum wholesale prices tend to set the market price in the wholesale market. He further testified that it is important, therefore, that the over-price premium accurately reflect premiums paid above the minimum producer price due and not diluted by milk volumes that by definition do not have an over-price premium.
5. On May 1, 2020, Dairy Farmers of America (“DFA”) acquired four large Pennsylvania milk plants from Dean Foods. Mr. Mong testified that the acquisition would result in an inappropriate dilution of the over-price premium. He testified that when a cooperative-owned plant acquires milk from its own members there is no minimum due calculation because Board minimum prices do not apply to a cooperative purchasing member milk. Because there is no Board minimum price due, there can be no over-price premium by definition. Mr. Mong emphasized that the over-price premium is not zero, but rather the over-price premium simply does not exist. Mr. Mong recommended that the volume of member milk acquired by cooperative-owned plants be excluded from the cross section. Doing so would allow any over-price premium cooperative-owned plants

pay for independent milk or non-member cooperative milk to remain in the cross section.

6. The essence of Mr. Mong's testimony was that the over-price premium, basically, is the amount paid by milk dealers above the minimum amount due divided by the pounds on which the above-minimum price is paid. If a certain amount of milk does not have a minimum due, it cannot have a price paid above the minimum due. If those pounds of milk cannot have a value for the amount paid in the numerator of the over-price premium rate, those pounds should be removed from the denominator of the over-price premium rate.
7. Steven Zalman testified on behalf of Board Staff as an expert in milk industry cost accounting and regulation. Mr. Zalman testified regarding his analysis of PAMD's proposed change. Mr. Zalman testified that there would be no dilution of the over-price premium if pounds of milk supplied to cooperative-owned plants by cooperative members were treated as if they were paid a zero over-price premium.
8. Mr. Zalman conducted a study based on actual data from February 2020 and March 2020 used in published resale prices. For each of the months, Mr. Zalman calculated the over-price premium using the current methodology (ie, zero over-price premium in the numerator with all Pennsylvania-member pounds received by cooperative-owned plants remaining in the denominator) and using the methodology proposed by PAMD (ie, removing Pennsylvania-member pounds received by cooperative-owned plants entirely from the over-price premium calculation). Mr. Zalman also calculated the amount dealers would recover through adding the over-price premium to Board-mandated minimum wholesale prices. He testified that his study showed that dealers in aggregate would recover \$75,312 in February 2020 and \$97,080 in March 2020 above what they paid as over-price premiums using the methodology proposed by PAMD; the calculations as described by Mr. Zalman are shown on Board Staff Surrebuttal Exhibits 2 and 3. Board Staff Rebuttal Exhibits 2 and 3 also showed the results of Mr. Zalman applying the current methodology; the current methodology results in a lower over-price premium rate incorporated in minimum producer and wholesale prices. The current methodology resulted in dealers in aggregate recovering \$24,278 in February 2020 and \$38,983 in March 2020 above what they will have paid as over-price premiums.
9. Troye Cooper 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 members are Maryland and Virginia Milk Producers' Cooperative Association, Inc.; Lanco Dairy Farms Co-Op, Inc.; Dairy Farmers of America, Inc.; and Land O' Lakes, Inc. Mr. Cooper supported 100% recovery by dealers of their over-price premium cost. He testified that can be achieved by retaining the current dealer cross-section and calculations proposed by Staff.
10. Mr. Mong testified that February and March 2020 were not the correct months to calculate the effect of PAMD's proposed change. He testified that the over-price premiums in those two months were calculated from dollars paid in November and

December 2019, with Dean Foods entering bankruptcy on November 12, 2019. Therefore, Mr. Mong testified, these two months are not necessarily representative. Governor Wolf ordered all non-life sustaining businesses to close on March 19, 2020, and Mr. Mong testified that the business disruptions caused by COVID-19 had repercussions across Pennsylvania. He testified that the impacts would have likely affected the sales volume used in Staff's over-price premium calculation. Mr. Mong concluded that because of the Dean Foods bankruptcy and COVID-19 crisis February and March 2020 were not the correct months to use to calculate the impact of PAMD's proposed change.

11. Mr. Mong testified that Board Staff correctly excludes premium dollars when cooperative-owned plants buy member milk. He explained that, due to the common ownership, premiums invoiced for such milk are not the result of an arms-length transaction. Mr. Mong also testified that generally accepted accounting principles require the elimination of these related-party transactions. He further testified that PAMD's request to remove the cooperative receipt pounds from a cooperative-owned plant's over-price premium calculation is because when the plants are supplied with member milk there can be no over-price premium. According to Mr. Mong, if the pounds from plants that can never have over-price premium dollars are included in the calculation the impact of the plants that are paying over-price premium is diluted and therefore the correct math is to eliminate the receipts of member milk from cooperative-owned plants.
12. The Board finds that cooperative-member milk supplied to plants owned by the supplying cooperative should be excluded from the over-price premium calculation. The Board finds credible the testimony of Mr. Zalman and Mr. Cooper, as well as that of Mr. Mong.

Section 801 of the Milk Marketing Law requires the use of generally accepted accounting principles to ascertain the costs on which minimum wholesale prices are based. Therefore, we find that since generally accepted accounting principles require the elimination of related party transactions, those transactions should be removed from the over-price premium calculation. The over-price premium calculation should not include milk received by a cooperative-owned plant from members of the cooperative which owns the plant.

13. The Board finds that milk received from independent producers by a cooperative-owned plant should continue to be included in the over-price premium calculation. The Board also finds that milk received from cooperatives other than the cooperative that owns the receiving plant should continue to be included in the over-price premium calculation.
14. The Board finds that this calculation should be effective beginning with January 2021 resale prices.

CONCLUSIONS OF LAW

1. The August 5, 2020, hearing regarding the over-price premium was held pursuant to the authority granted to the Board in section 801 of the Milk Marketing Law (Law), 31 P.S. §§ 700j-801.
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 considered the entire record and concludes that the order is supported by a preponderance of credible evidence and is reasonable and appropriate under section 801 of the Law.
4. Section 801 of the Law provides that the Board may amend an order on its own motion within 20 days of the effective date of the order, if such amendment is based on the record of the hearing held prior to the issuance of the order. This amendment is based on the record of the August 5, 2020, hearing and is made on the Board's own motion within 20 days of the effective date of the order.
5. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Date: December 2, 2020

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