



**Commonwealth of Pennsylvania**  
Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

717/787-4194  
717/783-6492

WEB SITE: <http://www.mmb.state.pa.us>

E-mail: [RA-PMMB@state.pa.us](mailto:RA-PMMB@state.pa.us)

Official General  
Order No. A-931

Posted: September 15, 2004  
Effective: October 1, 2004

---

### **OVER-ORDER PREMIUM**

NOW, this 15<sup>th</sup> day of September 2004, 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, 2004, and will expire at 12:00 midnight on December 31, 2004.

#### **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 \$1.55 per hundredweight effective 12:01 a.m. on October 1, 2004, through midnight on December 31, 2004.

(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

---

Boyd E. Wolff, Chairman

---

Luke F. Brubaker, Member

---

Barbara A. Grumbine, Consumer Member

Date: September 15, 2004

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OVER-ORDER PREMIUM HEARING  
SEPTEMBER 1, 2004**

FINDINGS OF FACT

1. On September 1, 2004, the Pennsylvania Milk Marketing Board (Board) convened 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 34 Pennsylvania Bulletin 3509 on July 2, 2004, and was mailed to those who have requested notice of Board hearings by means of Bulletin No. 1365, dated June 24, 2004.
3. At the end of the hearing, a briefing schedule was set. Principal briefs were due on September 10, 2004, and reply briefs were due on September 13, 2004.
4. Charles Seidel, a dairy farmer from Berks County, testified on behalf of Pennsylvania State Grange. Mr. Seidel recommended that the Board set the over-order premium at \$1.80 per hundredweight. Mr. Seidel testified that the Grange still felt that an over-order premium of \$1.95 per hundredweight was justified, as he had testified to in May 2004, but that the Grange was recommending \$1.80 because it felt that that level of over-order premium addressed the concerns regarding marketing and milk supply. Mr. Seidel testified that milk production costs continued to rise. Mr. Seidel also testified that the two months of recent high milk prices did not balance the two years of low prices and that many farmers still felt that they were "just digging the hole deeper and finding it harder and harder to climb out." Mr. Seidel noted that the Grange's recommended over-order premium was in addition to the fuel adjuster to the over-order premium established by Official General Order A-927.
5. Edward Gallagher testified as an expert in agricultural economics and dairy marketing on behalf of Dairylea Cooperative, Inc.; Dairy Farmers of America, Inc.; Land O' Lakes, Inc.; Dairy Marketing Services, LLC; the Northeast Milk Marketing Agency, and Maryland and Virginia Milk Producers' Cooperative Association, Inc. Mr. Gallagher recommended that the over-order premium be set at \$1.80 per hundredweight for October 2004 through December 2004 and that the fuel adjuster established in OGO A-927 continue separately. Mr. Gallagher testified that while milk price levels had been at record highs, dairy farmers had not necessarily received high returns because of high feed prices during the first half of 2004 and increases in the costs of inputs other than feed. Mr. Gallagher also testified that dairy farmers' accounts payable grew "significantly" during 2002 and 2003 while at the same time their repayment of long term debt decreased or even stopped. Mr. Gallagher noted that the higher milk prices during the first part of 2004 had allowed farmers to begin to pay down their accounts and loans, but the higher farm cost of production had not allowed farmers to "get back on their feet yet." Mr. Gallagher further testified that Class I milk prices are significantly lower now than they

- were in June and that he expected the Class I price to continue to decline through the remainder of the year.
6. Mr. Gallagher testified that Pennsylvania milk production continued to decline, although he did note that, to the surprise of many analysts, output per cow had increased during the spring and summer. Mr. Gallagher predicted that the increase in output per cow could lead to fourth quarter 2004 milk production in Pennsylvania showing an increase over the fourth quarter of 2003. Even so, Mr. Gallagher pointed out that milk production in Pennsylvania would still be seven to nine percent below year 2000 levels. He also noted that there was some pressure to sell herds to expanding dairy farms in the western United States.
  7. Dennis Schad testified as an expert in milk marketing and agricultural economics on behalf of the Northeast Milk Marketing Agency (NEMMA). Mr. Schad recommended that the over-order premium be set at \$1.80 per hundredweight for October 2004 through December 2004 and that the fuel adjuster established in OGO A-927 continue separately. Mr. Schad testified that milk production costs in Pennsylvania continue to increase. Mr. Schad did believe, however, that corn and soybean prices would fall to levels more in line with 2003 prices, and that alfalfa prices would increase to above 2003 levels through the remainder of the year. Mr. Schad also testified that, generally, over-order prices in markets adjacent to Pennsylvania are "strongly affected by the Pennsylvania Milk Marketing Board premium." Mr. Schad noted that NEMMA decreased over-order prices in Delaware and Maryland by \$0.35 on July 1, to \$1.30 per hundredweight and that over-order prices for distribution in southern New Jersey had remained at \$1.20 per hundredweight. Mr. Schad testified that the Dairy Cooperative Marketing Agency (DCMA) over-order premium in the southeastern United States moves inversely to the Class I mover – increasing when the Class I mover decreases and decreasing when the Class I mover increases. Mr. Schad forecast the DCMA premium to be \$1.20 per hundredweight in October and \$1.45 per hundredweight during November and December.
  8. Amy Van Blarcom-Lackey testified on behalf of Pennsylvania Farm Bureau. Ms. Van Blarcom-Lackey testified that the Pennsylvania Farm Bureau supported the testimony and exhibits offered by Mr. Gallagher and Mr. Schad and requested the Board set the over-order premium at \$1.80 per hundredweight for October 2004 through March 2005. The Farm Bureau believed that erratic summer weather conditions would have an adverse impact on the quantity and quality of feed crop production. Ms. Van Blarcom-Lackey also testified that the Farm Bureau continued "to be concerned over the long-term effect that the sustained period of low prices and reductions in aggregate milk production and cow numbers in Pennsylvania will have on the future sustainability of Pennsylvania's dairy operations." The Farm Bureau's recommendation on the level and duration of the over-order premium was made independently of the over-order premium fuel adjuster of OGO A-927.
  9. Mary Keough Ledman testified on behalf of Dean Foods as an expert in dairy marketing and dairy economics. Ms. Ledman forecast above-average Class I movers for October

2004 through December 2004. Ms. Ledman testified that from January 2000 through September 2004 the Class I mover had averaged \$12.54 per hundredweight while the Pennsylvania Milk Marketing Board premium had averaged \$1.52 per hundredweight. Since Ms. Ledman's forecast of the Class I mover for the fourth quarter of 2004 was \$13.42, it was her opinion that raising the over-order premium to \$1.80 per hundredweight plus the fuel adjuster was unjustified due to supply, market, and competitive conditions. Ms. Ledman also found it noteworthy that the New Jersey premium remained at \$1.20 per hundredweight when the Board reduced the Pennsylvania over-order premium to \$1.30 per hundredweight; Ms. Ledman opined that this showed the Board took the over-order premium in the right direction in July. Ms. Ledman also testified that since the New Jersey premium had not changed, any increase in the Pennsylvania over-order premium would exacerbate competitive pressures facing processors in eastern Pennsylvania. Dean Foods recommended that the Board maintain the over-order premium at \$1.30 per hundredweight plus the OGO A-927 fuel adjuster for October 2004 through December 2004.

10. Mike Ambruso testified on behalf of Dean Foods. Mr. Ambruso testified that Pennsylvania retailers have been soliciting out-of-state processors and are beginning to take some business out-of-state. Mr. Ambruso testified that he knew of one Pennsylvania retailer that was currently supplied by a Pennsylvania processor who was negotiating with a New Jersey processor to take over the business. Mr. Ambruso also testified that Dean Foods had lost three retail customers to plants in Ohio; the retailers attributed the change in suppliers at least partially to price.
11. Carl Herbein testified on behalf of the Pennsylvania Association of Milk Dealers (PAMD) as an expert in milk accounting, dairy marketing, and the dairy industry in Pennsylvania. Mr. Herbein conducted a study comparing Pennsylvania Class I sales in June 2004 with Pennsylvania Class I sales in June 2003. Mr. Herbein's study revealed that Pennsylvania Class I sales had decreased 14.7% in June 2004 compared to June 2003. Mr. Herbein testified that factors causing the decrease included the higher milk price in June, a distributor that moved from Pennsylvania to New Jersey between June 2003 and June 2004, other distributors and retailers buying or taking possession of milk out-of-state and bringing it into Pennsylvania, and some movement of business between accounts.

In its brief, PAMD stated that the data used in Mr. Herbein's study were subsequently discovered to be "inaccurate" and that the study should not be relied on. Having received no explanation regarding why PAMD considered the data "inaccurate," the Board has no basis to question the accuracy of the data used by Mr. Herbein; however, we are also willing to disregard the study at PAMD's request. PAMD did recommend in its brief that the over-order premium remain at \$1.30 per hundredweight plus the OGO A-927 fuel adjuster. PAMD noted the competitive pressures faced by Pennsylvania processors and the danger of producers being adversely impacted by milk procurement arrangements that avoid paying the over-order premium.

12. The Board finds that an over-order premium of \$1.55 per hundredweight for October 2004 through December 2004 is the best response to conditions in Pennsylvania at this time. The Board also finds that the over-order premium fuel adjuster provided for in OGO A-927 shall continue independent from this over-order premium decision.

While we found the testimony of all the witnesses to be credible, the Board believes that \$1.55 per hundredweight for three months plus the fuel adjuster strikes the proper balance among the competing issues identified at the hearing. We believe it is important to provide an incentive for producers to remain in business in Pennsylvania and to increase production and we remain concerned about the long term effect of the recent period of sustained low milk prices. On the other hand, the Board is also concerned about the competitive situation faced by Pennsylvania processors who increasingly seem to be facing the issue of their retail customers seeking to source their milk purchases in such a way as to avoid paying a wholesale price that includes the Pennsylvania over-order premium; we are also concerned about the potential for these types of procurement arrangements to adversely affect Pennsylvania producers, because of the reduction in sales of milk subject to the over-order premium (i.e., milk produced, processed, and sold in Pennsylvania).

Because of our equally strong concerns regarding the need to provide an incentive for dairy farmers to stay in business and increase production and the competitive situation facing processors (and the concomitant potential for Pennsylvania producers to be adversely impacted) the Board finds that the over-order premium should be effective October 2004 through December 2004. The Board believes it is important to re-evaluate the level and duration of the over-order premium sooner, rather than later, due to the present nature of the milk market in Pennsylvania.

13. Prompted by a letter from their cooperative, several dairy farmers contacted the Board offices in the week prior to the hearing. This decision and order is based solely on evidence presented at the September 1, 2004, hearing. No *ex parte* communications played any role in this order.

## CONCLUSIONS OF LAW

1. The September 1, 2004, 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

---

Boyd E. Wolff, Chairman

---

Luke F. Brubaker, Member

---

Barbara A. Grumbine, Consumer Member

Date: September 15, 2004

IF YOU WISH TO RECEIVE THIS INFORMATION IN AN ALTERNATE FORMAT,  
CALL 717-787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS.)