



**Commonwealth of Pennsylvania**

Milk Marketing Board  
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Official General  
Order No. A-925

Posted: March 3, 2004  
Effective: March 25, 2004

**AN ORDER REGARDING TIMING OF THE INCLUSION OF THE  
OVER-PRICE PREMIUM IN MINIMUM RESALE PRICES  
FOR ALL MILK MARKETING AREAS**

NOW, this 3<sup>rd</sup> day of March 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 March 25, 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**

In each of the six milk marketing areas, the over-price premium shall be based on milk that is produced, processed, and utilized as Class I milk in Pennsylvania and be calculated in the following manner.

- (a) Combine the pounds of milk received by the cross-section dealer from Pennsylvania farms plus the out-of-state pounds of milk received by that dealer to arrive at the total pounds of milk received by the cross-section dealer.
- (b) Multiply the cross-section dealer's Class I sales in that area by the Pennsylvania percentage of receipts to arrive at the cross-section dealer's sales from Pennsylvania producers. The Pennsylvania percentage of receipts is determined by dividing the pounds of milk received from Pennsylvania farms by the total pounds of milk received in the area.
- (c) Dependent on billing, determine the overpayment to Pennsylvania producers for Pennsylvania Class I milk.

- (d) To arrive at the cross-section dealer's over-price premium, exclusive of premiums targeted at classes of milk in that area, multiply the cross-section dealer's percentage of the Class I utilization in that area (the cross-section dealer's area Class I sales divided by the total pounds of milk received by the cross-section dealer) by the Pennsylvania's portion of overpayment derived in (c) above. To this add the portion of the over-price premium targeted to Class I for milk produced, processed, and utilized as Class I milk in the area.
- (e) The average over-price premium per hundredweight for the specific milk marketing area is determined by dividing the total of all the cross-section dealers' over-price premiums paid in that area by the total area Class I sales from Pennsylvania producers for all cross-section dealers.

### **SECTION III**

The average over-price premium shall be reflected in the wholesale and retail price build-up on a monthly basis no later than in the fourth month following receipt by dealers of the producer milk for which payment of the over-price premium is made and any adjustments to the over-price premium shall be made in the succeeding months. For example, the over-price premium paid in April 2004 for March 2004 milk receipts from producers would be reflected in the wholesale and retail prices in July 2004. These prices would be announced on or before June 15, 2004.

This order shall take effect for over-price premium payments for July 2004 receipts by dealers of producer milk reflected in dealer reports filed with the Board in August 2004. These over-price premium payments shall be included in the resale prices announced on or before October 15, 2004, for November 2004.

### **SECTION IV**

To enable Board Staff to calculate the over-price premium on a monthly basis as provided for in Section III, milk dealers who are members of the over-price premium cross sections shall file the PMMB-62 Milk Dealer's Monthly Report, cooperative billing statements, and Federal Acknowledgement(s) from Federal Order Market Administrator(s) with the Board, to be received in the Board office by 4:00 p.m. on the 25<sup>th</sup> day of the month immediately succeeding that for which the activity is reported.

In order to provide Board Staff and the over-price premium cross-section dealers an opportunity to practice and adjust to the new timing and additional filing requirements of this Order, the over-price premium cross-section dealers shall begin filing cooperative billing statements and Federal Acknowledgment(s) with the PMMB-62 Milk Dealer's Monthly Report due March 25, 2004.

**SECTION V**

The calculation and timing of the inclusion of the over-price premium in resale prices adopted in this official general order supersedes any calculation of the over-price premium set forth in prior official general orders of the Board.

PENNSYLVANIA MILK MARKETING BOARD

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Boyd E. Wolff, Chairwoman

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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Dated: March 3, 2004

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
OVER-PRICE PREMIUM HEARING  
FEBRUARY 4, 2004**

**FINDINGS OF FACT**

1. On February 4, 2004, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence concerning the timing of the inclusion of the over-price premium in resale prices. The Board also received testimony and exhibits concerning the cross-section of dealers used to calculate the over-price premium.
2. Notice of the hearing was published at 34 *Pennsylvania Bulletin* 275 on January 9, 2004, and was mailed to those on the Board's interested persons list by means of Bulletin No. 1349 dated December 30, 2003.
3. At the conclusion of the hearing, a schedule was established for the submission of briefs and reply briefs on February 24, 2004, and March 1, 2004, respectively.
4. Carl Herbein testified on behalf of the Pennsylvania Association of Milk Dealers as an expert in milk cost accounting. Mr. Herbein testified that the Board should continue to use the current methodology used to calculate the over-price premium but suggested that the over-price premium be included in resale prices sooner than it is currently. Mr. Herbein proposed that over-price premiums paid for milk received from producers by dealers in January should be reflected in resale prices in April. Mr. Herbein presented proposed forms to be used by the dealers in calculating their over-price premium, but noted that those forms could and should be modified to account for individual dealer variations. Mr. Herbein suggested a 60 to 90 day period would be adequate for Board Staff and Dealers to assess the individual cross-section dealers circumstances, develop forms, and conduct any training necessary. Mr. Herbein was confident that each of the cross-section dealers could calculate their individual over-price premiums.
5. Brian Weinzerl of Galliker Dairy Company also testified on behalf of the Pennsylvania Association of Milk Dealers. Mr. Weinzerl has been involved in preparing reports to be submitted to the Board and calculating producer payroll for 20 years. Mr. Weinzerl was also confident that he could accurately calculate Galliker's over-price premium each month.
6. David DeSantis testified on behalf of Board Staff as an expert in milk accounting and enforcement. Mr. DeSantis explained that utilization information supplied by the Board's Milk Accounting and Regulatory System ("MARS") was absolutely necessary to accurately calculate the over-price premium. Mr. DeSantis also noted that, since MARS did not account for "higher of" values and targeted premiums, it was necessary for Board auditors to examine dealer records in conjunction with MARS-generated data to calculate the exact over-price premium for each cross-section dealer. Mr. DeSantis did not believe

that the majority of dealers would be able to consistently duplicate the results produced by MARS and was therefore concerned that large degrees of inaccuracy could be introduced into the system. Mr. DeSantis was not opposed to efforts to speed up the process, but was concerned that any efforts to do so should be done accurately and efficiently. Board Staff was particularly concerned that any changes may lead to broad swings in over-price premiums based on inaccurate calculations by dealers necessitating large audit adjustments.

7. Dennis Schad testified on behalf of Northeast Milk Marketing Agency, Dairylea Cooperative, Dairy Farmers of America, Land O' Lakes, Maryland and Virginia Milk Producers Cooperative Association, and Dairy Marketing Services as an expert in milk marketing and dairy economics. Mr. Schad supported any mechanism that would decrease the time lag between over-price premium payments by dealers to producers and the recouping of those premium payments by the dealers in the minimum wholesale price.
8. Mr. Herbein suggested the following dealer cross-sections:
  - Area 1 – Tuscan/Lehigh Dairies, L.P. – Lansdale, Rosenberger's Dairy, LLC, Wawa Dairy Farms
  - Area 2 – Clover Farms Dairy Co., Tuscan/Lehigh Dairies, L.P. – Schuylkill Haven, Rosenberger's Dairy, LLC, Turkey Hill Dairy, Inc., Wengert's Dairy
  - Area 3 – Clover Farms Dairy Co., Tuscan/Lehigh Dairies, L.P. – Schuylkill Haven, Guers Dairy, Schneider – Valley Farms, Inc., Turkey Hill Dairy, Inc., Wengert's Dairy
  - Area 4 – Wengert's Dairy, Harrisburg Dairies, Inc., Kemp's Foods, Inc., Rutter Bros. Dairy, Inc., Turkey Hill Dairy, Inc.
  - Area 5 – Dean Foods Company – Erie, Dean Foods Company – Sharpsville, Fike's Dairy, Inc., Schneider Dairy, Inc., Turner Dairy Farms, Inc.
  - Area 6 – Dean Foods Company – Erie, Dean Foods Company – Sharpsville, Galliker Dairy Co., Inc., Schneider Dairy
9. Clifford Ackman testified on behalf of Board Staff as an expert in milk statistics. Mr. Ackman presented a similar cross-section to that presented by Mr. Herbein, with the exception that Mr. Ackman included Colteryahn Dairy in Area 5. Mr. Ackman testified that he could not offer an opinion on the validity of the cross-section absent Colteryahn, because he had done no study on the effect of excluding Colteryahn. Mr. Ackman did opine that the dealers he presented as members of the cross-section were representative of all the dealers doing business in all Milk Marketing Areas.
10. In its reply letter brief dated March 1, 2004, Board Staff stated that the Staff and Dealers had come to an agreement based upon a compromise proposed by the Staff in its brief. The compromise proposal presented by Board Staff in its reply letter brief called for the Dealers to continue to submit the PMMB-62 Milk Dealer's Monthly Report on or before

the 25<sup>th</sup> day of the month immediately succeeding the month for which the activity is reported. Dealers would also file at the same time their cooperative billing statements and Federal Acknowledgment(s) from the Federal Order Market Administrator(s). Board Staff would then enter the required data into MARS, generate Producer Obligation Worksheets from the MARS data, and calculate the over-price premium for each cross-section dealer. Under this proposal, Board Staff indicated that over-price premiums paid for milk received from producers in January would be included in May milk prices.

11. Board Staff also stated in the reply letter brief that no discussion of the timing for implementation of the proposal had taken place between the Staff and Dealers. Staff recommended that implementation occur after completion of cost replacement hearing audits in July 2004; July data would be reported, along with cooperative billing statements and Federal Acknowledgment(s), on or before August 25, 2004, with the over-price premium generated from that data included in the price announcement made on or before October 15, 2004, for November 2004 prices.
12. The Board finds that it is desirable to provide for recapture of over-price premiums paid by Dealers in as timely a manner as possible. The Board also finds it equally important to include accurate calculations of the over-price premium in resale prices. The Board finds that the compromise proposed by Board Staff meets these two goals. Therefore, we find that the compromise proposal submitted by Board Staff in its reply letter brief shall be implemented. The Board further finds that the proposal shall be implemented on the timetable proposed by Board Staff as found in Finding of Fact 11.
13. The Board finds that the cross-section of dealers to be used to calculate the over-price premium when this order becomes effective shall be as presented by Mr. Herbein and shown in Finding of Fact 8, with the addition of Colteryahn Dairy in Area 5. The Board further finds that changes in the cross-section of dealers used to calculate the over-price premium shall be made through the Board's public hearing process.

**CONCLUSIONS OF LAW**

1. The February 4, 2004, hearing regarding the timing of the inclusion of the over-price premium in resale prices and the cross-section of dealers used to calculate the over-price premium 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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Boyd E. Wolff, Chairman

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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Dated: March 3, 2004

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