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Land O'Lakes, Inc.

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Land O'Lakes Dairy Foods

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August 6, 2001

U.S. Department of Agriculture
Office of Hearing Clerk
Room 108
14th & Independence Avenue, SW
Washington, D.C. 20250

Dear Sir:

Land O' Lakes, Inc. wishes to file this brief relating to the hearing in Bloomington, Minnesota on June 26-27, 2001 [Docket No. AO-361-A35; DA-01-03].

Land O' Lakes, Inc. offers the following change to Proposal No. 4 (Dairy Farmers of America). Mr. Hollon's testimony stated that the units (each individual state) have the same delivery qualifications as local milk (page 27, paragraph 1). Land O' Lakes agrees with the intent of this statement, should the Department adopt this proposal. Procedures located outside the marketing area (state units) should have the same performance standards as those located inside. Consequently, qualifying shipments should be allowed to plants described in paragraphs 1030.7 (c)(1)(i) through (iv) for producers grouped into state units as well as those not grouped. The performance standards should be equal for each grouping of producers. Mr. Hollon's statement suggests this is true; however, DFA's proposal appears inconsistent.

Proposed language 1030.13 (e)(2):

> At least ten percent of such producer milk of the handler shall be delivered to plants described in 1030.7 (c)(1)(i) through (iv), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to 1030.7 (c) or (f) or 1030.13 (d); and
>
> Language proposed as 1030.13 (d)(3) should specify...delivered to plants described in section 1030.7 (c)(1)(i) through (iv).
>
> It may also be necessary to insert a paragraph in section 1030.7 (c) to provide for grouping producers by state outside the marketing area who are qualifying by means of the supply plant provision. These producers should have the same delivery qualifications as local milk; ie. Section 1030.7 (c)(1). Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section.

Land O' Lakes, Inc. would support these changes should, in fact, the Department determine producers located outside the marketing area should be grouped in state units and qualify based on their own performance.

Included with this brief is an Order No. A-913 from the Pennsylvania Milk Marketing Board. Please note the reference to "double-dipping" on the 4th page paragraph #6. The Department should be cautioned that there are any number of state agencies with milk pricing provisions. Some of these provide for minimum pricing, some have proposals for pooling. Federal Orders are/were promulgated as a result of the enabling legislation of the AMAA of 1937. Section 1030.12 specifically refers to "Federal" Orders. It is not the intent of the Act or Federal Orders to interpret state orders, nor to treat dairy farmers regulated by state agencies differently than those not regulated.

Sincerely,

James Hahn / RLM

James E. Hahn
Director, Membership/Procurement
Dairy Foods Industrial Group

Cc: Paul Kyburz, Market Administrator

Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-913

Posted: June 5, 2001
Effective: July 1, 2001

AN ORDER ESTABLISHING THE METHODOLOGY FOR CALCULATING THE OVER-PRICE PREMIUM FOR ALL M ILK MARKETING AREAS

NOW, this 5th day of June 2001, 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 July 1, 2001.

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 dealers.

(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 resale price build-up on a monthly basis in the fifth month following payment of the over-price premium and any adjustments to the over-price premium shall be made in the succeeding months. For example, the over-price premium paid in August 2001 for July 2001 milk production shall be reflected in the wholesale and resale prices in December 2001. These prices will be announced on or before November 15, 2001.

SECTION IV

The calculation of the over-price premium 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

Beverly R. Minor

Beverly R. Minor, Chairwoman

Luke F. Brubaker

Luke F. Brubaker, Member

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OVER-PRICE PREMIUM HEARING
MARCH 7, 2001

FINDINGS OF FACT

A. Procedural History

1. On March 7, 2001, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence concerning the methodology used in the calculation of the over-price premium.

2. Notice of the hearing was published at 31 *Pennsylvania Bulletin* 897on February 10, 2001, and was mailed to those on the Board's interested persons list by means of Bulletin No. 1299 dated January 25, 2001. (PMMB Exhibits 1 and 2)

3. At the conclusion of the hearing, a schedule was established for the submission of letter and rebuttal briefs on March 26, 2001 and March 30, 2001, respectively.

B. Validity of Cross-Section Dealers

4. David DeSantis, appearing on behalf of the Board staff, as an expert in milk accounting, testified that the cross-section of dealers used in calculating the over-price premium throughout the various milk marketing areas were "very representative of the over-price premiums that are being paid" and "they are traditionally the dealers that we (Board staff) have used to calculate the over-price premium." (N.T. 16) Those cross-section dealers recommended by Board staff are: Clover Farms Dairy, Colteryhan Dairy Incorporated, Dean Dairy Products Company, Fikes Dairy, Galliker Dairy Company, Guers Dairy, Harrisburg Dairies Incorporated, Kemps Foods Incorporated, Marburger Farm Dairy, Meadow Brook Dairy Company, Rosenberger Dairies Incorporated, Rutter Brothers Dairy Incorporated, Schneiders Dairy Incorporated, Schneider-Valley Farms, Turkey Hill Dairy, Turner Dairy Farms, Wawa Dairy Farms, and Wengerts Dairy Incorporated. (Staff Exhibit 2) The Board finds that the cross-section of dealers to be appropriate to be used since these dealers are representative of the over-order premiums being paid and have been used in the past by Board staff in the calculation of the over-price premiums.

5. Mr. DeSantis recommended that "the cross-section be adjusted based on the market conditions that develop on an as needed basis" and that dealers be added to the cross-section administratively through a bulletin. (N.T. 20) Mr. DeSantis further testified that, if the over-price premium were handled on an annual basis, the practical effect would be to "recognize the cross-section of dealers that contributed to the over-price premium at the cost replacement hearing" based on evidence and testimony rather than through a bulletin. (N.T. 57)

Mr. DeSantis also testified to two factors that must occur before a dealer is added to the cross-section. First, the dealer must use the "same guidelines for payment to producers as everybody else in the state and, second, the dealer has to have the same reliable data that matches everybody else in the same time frame." (N.T. 44)

C. Calculation of the Over-Price Premium

6. David DeSantis testified that the over-price premium be calculated based on milk that is "produced in Pennsylvania, processed in a Pennsylvania plant and resold as Class I in the state, that block of milk only eliminating all other milk." (N.T. 14) Mr. DeSantis testified that out-of-state milk was being eliminated because "premiums are often paid on milk...that is produced out of state" and the federal minimum is recognized on that milk. By recognizing only the federal minimum, that premium paid to an out-of-state producer would be counted "as an over-price premium and, in effect, would be double dipping." (N.T. 15) Including out-of-state production would result in a higher over-price premium resulting in higher wholesale and resale prices. (N.T. 15-16) Mr. DeSantis presented testimony and an exhibit outlining how the over-price premium shall be called in each of the six milk marketing areas. (N.T. 20, 25-27, 30-31, Staff Exhibit 1) That calculation is as follows.

(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.

The following is a hypothetical example of the calculations described above.

	Dairy A	Dairy B	Total
1. Pounds Received from PA Farms	1,000,000	800,000	
2. Out-of-State Receipts	500,000	500,000	
3. Total Receipts	1,500,000	1,300,000	
4. Area 1 Class I Sales	300,000	100,000	
5. PA Percentage of Receipts (Line 1/Line 3)	66.7%	61.5%	
6. Area 1 Sales from PA Producers (Line 4 X Line 5)	200,000	61,538	261,538
7. Total Overpayment to All Producers	4,000	3,000	
8. PA Portion of Overpayment (Line 7 X Line 5)	$2,667	$1,846	
9. Area 1 Percentage of Utilization (Line 4/Line 3)	20.0%	7.7%	
10. Area 1 Over-Price Premium (Line 8 X Line 9)	$533	$142	$675
11. Avg. Over-Price Premium per CWT (Line 10/Line 6)			.26

The Board finds that exclusion of out-of-state production from the calculation of the over-price premium is appropriate. Therefore, the Board finds that the over-price premium shall be calculated based on milk that is produced, processed, and utilized as Class I milk in Pennsylvania. The Board further finds that the calculation methodology set forth by Board staff is acceptable and shall result in a more reliable manner in which to arrive at the over-price premium than with the current method.

D. <u>Factors Relative to the Calculation of the Over-Price Premium</u>

7. Mr. DeSantis recommended certain factors or conditions that should be met when determining the over-price premium.[1] (N.T. 17-24, Staff Exhibit 2) Those recommendations are as follows.

(a) The over-price premium cross-section dealers should be accessible to the Pennsylvania Association of Milk Dealers (PAMD) in order to provide an oversight service to Board staff as has been done in the past. (N.T. 18)

(b) Where a cooperative fails to provide detailed and timely information regarding the state of origin of the milk, the Board shall regard all such milk as out-of-state

[1] Mr. DeSantis also offered a recommendation that no dairy that has producer ownership of 20% or more should be in a cross-section for Over-Price Premium purposes. (N.T. 17, Staff Exhibit 2) During testimony, Mr. DeSantis stated that this recommendation should be excluded from the over-price premium order. (N.T. 36)

and no over-price premium or over-order premium shall be calculated or be included in the minimum producer price for that processor. (N.T. 18-19)

(c) When business dictates that a processor be added to, or deleted from, the over-price premium cross-section, the change will be made through a bulletin serving as an administrative amendment to the Official General Order resulting from this hearing. (N.T. 19-20)

(d) Premiums specifically identified as Class I premiums on the Cooperative billing will be applied proportionately to Pennsylvania Class I area utilization as a fraction of all Class I sales. (N.T. 20-22)

(e) Premiums and handling charges not specifically identified to a class will be applied proportionately to Class I Pennsylvania utilization by area as a fraction of all utilization. (N.T. 22)

(f) The Federal Processor Assessment of $0.20 per CWT should be added to the over-price premium. (N.T. 22) Mr. DeSantis testified that this factor be expanded to state that "any special fees, assessments or other charges on milk dealers by Pennsylvania or the federal government will be recognized in the calculation of the resale prices, provided that these fees, assessments or other charges are based on the amount of Class I milk sold or handled in Pennsylvania by the dealers. And, provided further that these fees, assessments or other charges are not currently recognized in the computation of the resale price." (N.T. 22-23)

(g) The over-price premium should be adjusted annually with the cost replacement process. If, in the interim, it is evident that market conditions have caused a significant change in the Over-Price Premium in an area or state wide, the Board may call a hearing to adjust the Premium. (N.T. 23-24)

Mr. DeSantis testified that Board staff recommended that the over-price premium be adjusted annually because of staffing problems and workload of the auditors and that, "without audited information, you're going to have nothing more than guesswork on the over-price premium." (N.T. 24) Mr. DeSantis testified that he agreed that it should be calculated monthly; however, he further testified that Board staff should not use unaudited submitted information because it generates "high unreliable over-price premiums" and large adjustments have had to be made in the past following an audit of this information. (N.T. 24, 41, 47) Mr. DeSantis testified that there should be no wild swings in the price based on things other than real payments to producers. (N.T. 47-48) Carl Herbein, appearing on behalf of the Pennsylvania Association of Milk Dealers as an expert in milk accounting, testified that the over-price premium should be adjusted on a monthly basis rather than annually as recommended by Board staff in item (g) above. (N.T. 70) Mr. Herbein, in response to Mr. DeSantis' testimony relative to unreliable information submitted by the milk dealers, testified that a series of workshops with the accountants of the cross-section dealers regarding how the reports should be prepared. (N.T. 85) Mr. Herbein testified that having monthly adjustments to the over-price premium would be an economic incentive for the milk dealers to complete their reports accurately. (N.T. 86) The Board finds that factors (a), (c), (d) and (e) shall be adopted as presented; that factor (b) be adopted with the words "and timely" removed from that factor; that factor (f) be adopted, including the language presented by Mr. DeSantis regarding the expansion of fees to include the language as noted above; and that factor (g) be changed to reflect a monthly calculation of the over-price premium in each milk marketing area. The Board further finds that, to address the concerns of Board staff relative to audited information, the average over-price premium per hundredweight shall be reflected in the wholesale and resale price for the specific milk marketing area on a monthly basis in the fifth month following payment of the over-price premium so that the submitted information may be audited and that any adjustments to the over-price premium shall be made in the succeeding months. For example, this order will go into effect on July 1, 2001, so the over-price premium paid in August 2001 for July 2001 milk production shall be reflected in the December 2001 wholesale and resale prices, announced on or before November 15, 2001. Any adjustments to the over-price premium shall be reflected in succeeding months. Currently, over-price premiums are calculated on an annual basis for each milk marketing area. The Board recognizes that, because of the time period required to provide for audited information, there will be a transition period between the current over-price premium calculation and the new calculation method. The Board finds that it is appropriate to continue to use the current over-price premium established in each milk marketing area until a new over-price premium is determined using the new methodology set forth in this order.

CONCLUSIONS OF LAW

1. The March 7, 2001 hearing on the calculation of the over-price premium was held pursuant to the authority granted to the Board in section 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. 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 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

Beverly R. Minor

Beverly R. Minor, Chairwoman

Luke F. Brubaker

Luke F. Brubaker, Member

Dated: June 5, 2001

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