

NEWS RELEASE
COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

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FOR IMMEDIATE RELEASE
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BOARD AMENDS OFFICIAL GENERAL ORDER A-968

At its July Sunshine Meeting, the Pennsylvania Milk Marketing Board approved Official General Order A-968 Amended. The order is part of a settlement agreement reached in a federal lawsuit between the Board and Fair Oaks Farm, Millard Dairy, and the Pennsylvania Association of Milk Dealers. The amended order keeps in place the current methodology for calculating Pennsylvania milk dealers' mandatory over-order premium obligations.

The Board issued Official General Order A-968 on June 2, 2010, in response to a petition filed by then Governor Rendell and Secretary of Agriculture Redding. Two out-of-state producers, Fair Oaks Farm and Millard Dairy, and the Pennsylvania Association of Milk Dealers challenged the constitutionality of OGO A-968 in federal court, claiming that the changes to the over-order premium calculation in the order violated their rights under the Commerce Clause of the United States Constitution. The federal court issued an injunction, concluding that the two out-of-state producers and the milk dealers were likely to prevail on their claim, and preventing the Board from enforcing OGO A-968 during the course of the litigation.

The Board was represented throughout the course of the federal litigation by the Pennsylvania Attorney General's office. After consideration of the evidence obtained

during discovery and based upon the advice of the Attorney General's office, the Board recognized that there was a significant likelihood that OGO A-968 would have a discriminatory effect on the purchase of out-of-state milk by Pennsylvania dealers and that the order may adversely affect the ability of out-of-state producers to sell their milk to Pennsylvania dealers. Based on these considerations and the advice of the Attorney General's office, the Board determined that it was in the best interests of the entire Pennsylvania dairy industry to settle the litigation. There was very little likelihood that the Board would prevail at trial and the Board would be liable for significant plaintiffs' attorney fees if it continued the litigation and lost at trial.

Official General Order A-968 and the ensuing federal litigation demonstrate that proposals that attempt to reserve the entire Pennsylvania over-order premium solely for Pennsylvania producers will most likely violate the United States Constitution. It is also important to realize that the evidence presented to the Board at the OGO A-968 hearing demonstrated that dealers are paying to producers the entire amount of over-order premium that they collect and that the extent of the so-called "stranded" premium seems to be vastly overstated. The Board remains committed to doing everything the law allows to benefit the entire Pennsylvania dairy industry.

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