



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-879

Posted: Sept. 23, 1993
Effective: Oct. 1, 1993

MILK MARKETING AREA 3
AMENDMENTS TO OFFICIAL GENERAL ORDER A-878 AMENDED

NOW, this 23rd day of September, 1993, the Commonwealth of Pennsylvania, Milk Marketing Board hereby enters the following Official General Order to be designated as Official General Order No. A-879:

SECTION I

The Findings of Fact and Conclusions of Law attached as Exhibit A hereto are incorporated herein as though more fully set forth below.

SECTION II

1. Section F, Provision 10, Paragraph (a) of Official General Order A-878 Amended is hereby amended to state the following:

Provision 10 - MULTI-STORE DISCOUNT: ADDITIONAL DISCOUNT

- (a) A primary supplier or a secondary supplier making a wholesale sale of Class I products to a multi-store group on a limited service basis may reduce the prices set forth in Schedule I by an additional 2 percent if the weekly total deliveries of Class I products to the multi-store group by the primary supplier is at least 25,000 quarts.

2. Section F, Provision 11, Paragraph (b) of Official General Order A-878 Amended is hereby amended to state the following:

Provision 11 - LICENSEE TO LICENSEE DISCOUNTS

- (b) The price reductions set forth in Paragraph (a) of this Provision may be made only if:
- (1) The buyer takes physical possession of all products purchased on a single drop basis;

- (2) The selling dealer does not provide to the purchaser any labor or other personal service in connection with the transportation for resale of the products purchased; and
- (3) The selling dealer does not pay consideration of any type to the purchaser for services rendered.

SECTION III

This Official General Order shall be effective October 1, 1993.

PENNSYLVANIA MILK MARKETING BOARD

Leon H. Wilkinson

Chairman

J. Robert Dury

Consumer Member

Donald E. Lunn

Member

IF YOU REQUIRE THIS INFORMATION IN AN ALTERNATE FORMAT, PLEASE CALL LISA SANNO AT (717) 787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS).

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OFFICIAL GENERAL ORDER A-879

I. FINDINGS OF FACT

A. Procedural History

1. Official General Order A-878 Amended, the price order for Milk Marketing Area 3, was approved and posted by the Pennsylvania Milk Marketing Board ("Board") on August 5, 1993, and became effective on August 15, 1993. (N.T. 11)

2. On September 7, 1993, the Board mailed Bulletin Number 1217 containing a Notice of Hearing, Pre-Submission Schedule, and Pre-Hearing Conference to all persons on the List Of Interested Persons maintained by the Board. (PMMB-1)

3. On September 18, 1993, Notice of the September 21, 1993 hearing was published in the Pennsylvania Bulletin, Vol. 23, No. 38. (PMMB-1)

4. The Hearing Notice provided that the purpose of the hearing was to consider two amendments to Official General Order A-878 Amended. (PMMB-1)

5. On September 21, 1993, the Board duly convened and conducted the Price Hearing for Milk Marketing Area 3, which hearing was conducted in Room 103 of the Department of Agriculture Building, Harrisburg, Pennsylvania. (N.T. 1)

6. A Pre-Order Conference in this matter was held on September 23, 1993.

B. Amendments To Official General Order A-878 Amended

7. David DeSantis, Chief of the Board's Enforcement and Accounting Division, testified that Section F, Provision 10, Paragraph (a) of Official General Order A-878 was ambiguous because it did not indicate whether volumes of milk sold by a primary supplier and a secondary supplier could be aggregated for determining threshold eligibility for the multi-store group additional discount. (N.T. 6)

8. Section F, Provision 10, Paragraph (a) of Official General Order A-878 Amended should be amended to remove the ambiguity discussed under Finding Of Fact 7. (N.T. 6,7)

9. Official General Order A-878 Amended will be more consistent with the Official General Orders governing other Milk Marketing Areas if eligibility for the additional discount is determined solely by the volume of milk sold by the primary supplier. (N.T. 8)

10. No interested party testified that milk sold by a secondary supplier should be considered when determining eligibility for the additional discount.

11. David DeSantis also testified that certain language should be deleted from Section F, Provision 11, Paragraph (b)(2) of Official General Order A-878 Amended. Specifically, David DeSantis testified that the words "unless the purchaser pays the selling dealer a fully cost-justified payment for such services" should be eliminated. (N.T. 6)

12. Elimination of the language set forth in Finding Of Fact 11 will make Official General Order A-878 Amended consistent with the prior Official General Order for Milk Marketing Area 3 and will make the Order easier to enforce by relieving the Enforcement Division of the need to perform complicated cost determinations for a variety of services. (N.T. 7)

13. No Interested Party testified that Section F, Provision 11, Paragraph (b)(2) should permit a licensee to perform services for another licensee.

14. Neither of the amendments set forth in the Notice of Hearing will affect the minimum prices established by the Board under Official General Order A-878 Amended. (N.T. 6)

II. CONCLUSIONS OF LAW

1. The September 21, 1993, hearing was held pursuant to the authority granted to the Board by Section 801 of the Milk Marketing Law (31 P.S. §700j-801).

2. The September 21, 1993, hearing was held after adequate notice and all Interested Parties were given a reasonable opportunity to be heard.

3. Amending Official General Order A-878 Amended as set forth in the Notice of Hearing will clarify the Order, make the Order easier to enforce, and will not affect the minimum wholesale and retail prices established by the Board.

4. Adoption of the attached Official General Order is reasonable and appropriate under Section 801 of the Milk Marketing Law (31 P.S. §700j-801).