



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

Official General
Order No. A-886 AMENDED

Posted: June 12, 1995
Effective: June 20, 1995

ESTABLISHING THE WEST CENTRAL MILK MARKETING AREA, AREA NO. 6,
FIXING MINIMUM PRICES FOR MILK AND CERTAIN MILK PRODUCTS AND
OTHERWISE REGULATING THE CLASSIFICATION, MARKETING, AND
DISTRIBUTION OF MILK AND MILK PRODUCTS IN AREA NO. 6

The Commonwealth of Pennsylvania, Milk Marketing Board, under the authority conferred by the Milk Marketing Law (Act of July 31, 1968, P.L. 963, No. 294), as amended, hereby orders that all parts of Milk Marketing Board Official General Orders inconsistent with this Official General Order No. A-886 Amended, including Official General Order A-886, which was effective June 1, 1995, are superseded with respect to the West Central Milk Marketing Area, known as Milk Marketing Area No. 6. This Order shall become effective at 12:01 a.m. on June 20, 1995.

SECTION A
SCOPE

This Official General Order shall govern the classification, sale, and distribution of milk within Area No. 6, as defined in Section B.

SECTION B
DEFINITIONS

The following words and terms shall have the meanings set forth in this section unless the context clearly indicates otherwise:

Area No. 6 - All municipalities, cities, boroughs, and townships within the Counties of Bedford, Blair, Cambria, Cameron, Centre, Clearfield, Elk, Forest, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Somerset, and Warren; in Clarion County all municipalities, cities, boroughs, and townships with the exception of the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby; in Westmoreland County the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier and St. Clair.

Board - The Milk Marketing Board of the Commonwealth, as created by Section 201 of the Law (31 P.S. §700j-201).

Consumer - As defined in Section 103 of the Law (31 P.S. §700j-103).

Cooperative - As defined in Section 103 of the Law.

Dealer - As defined in Section 103 of the Law (definition of "milk dealer" or "handler").

Dispenser Milk - Milk packaged in a container from which it is ultimately sold and dispensed to consumers exclusively for on-premise consumption.

Fluid Milk Product - Milk, skim milk, buttermilk, plain or flavored milk and milk drinks (plain or flavored) including reconstituted milk or skim milk, concentrated milk not in hermetically sealed cans, and products made from fluid skim milk or from nonfat milk solids to which vegetable fat has been added.

Fluid Cream Product - Cream, including but not limited to aerated cream and sterilized cream or a mixture of cream and milk or skim milk containing 10 percent or more butterfat.

Full Service Delivery - Delivery of Class I or II price-controlled packaged products to an individual stop, in connection with which the seller provides one or more of the following services: taking the delivered products from the dock to the dairy case or cooler, stocking cases with the delivered products, pricing the delivered products, rotating stock, removing leakers and defective products, taking inventory and ordering products to be delivered.

Law - The Milk Marketing Law (31 P.S. §§700j-101 - 700j-1204).

Limited Service Delivery - Delivery of Class I or II price-controlled packaged products to one specified point used normally for the receiving of food products, with the purchaser being responsible for any further handling of the products and the seller providing none of the services associated with full service delivery.

Multi-Store Group - Three or more stores that satisfy the requirements in Section F, Provision 9.

Over-Price Premium - A price in excess of the mandated producer price that is paid to a producer or producer cooperative for all classes of milk.

Person - As defined in Section 103 of the Law.

Primary Supplier - A milk dealer making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group for a price that is discounted under Section F, Provision 9, based on the volume of sales by that milk dealer to the multi-store group.

Producer - As defined in Section 103 of the Law.

Rounding - A uniform method for expressing a price to the fourth decimal place. If the fifth decimal place is five or more, the fourth decimal place is increased by one. If the fifth decimal place is less than five, the fourth decimal place is unchanged. Example: \$1.05655 becomes \$1.0566 and \$1.0565499 becomes \$1.0565.

School - A public or private educational institution serving kindergarten through grade 12.

Secondary Supplier - A milk dealer making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group for a price that is discounted under Section F, Provision 9, based on the volume of sales by the primary supplier to the multi-store group.

Subdealer - As defined in Section 103 of the Law.

Wholesale Sale - The sale of Class I or II price-controlled packaged products by a person other than a producer to a person other than a consumer.

SECTION C CLASSIFICATION OF MILK

Milk shall be classified according to the terms of Federal Milk Marketing Order No. 4, provided that Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk powder which has been designated as Class III-A under federal law and applicable federal regulations.

SECTION D MINIMUM CLASS PRICES

PROVISION 1 - CLASS PRICES

The minimum class prices for each hundredweight of all milk containing 3.5% butterfat delivered or made available on consignment or otherwise to milk dealers to be sold, resold, or utilized shall be as follows:

(a) The Class I price for each month shall be the average price per hundredweight for manufactured grade milk f.o.b. plants in Minnesota and Wisconsin, as reported for the second preceding month by the United States Department of Agriculture plus \$2.30, plus any Board-mandated premiums.

(b) The Class II price for each month shall be the Class II price established, announced, and published under federal law and

the federal regulations applicable to the milk being priced under Federal Milk Marketing Order No. 4.

(c) The Class III and Class III-A price for each month shall be the Class III and Class III-A prices, respectively, established, announced, and published under federal law and the federal regulations applicable to the milk being priced under Federal Milk Marketing Order No. 4.

PROVISION 2 - FLUID SALES OUTSIDE PENNSYLVANIA

The producer price for all fluid milk produced in Pennsylvania, processed, bottled, or packaged, and sold or disposed of outside the Commonwealth of Pennsylvania as fluid milk (PMMB Class I equivalent) shall be determined as follows: The producer price for milk of similar use prevailing in the market area in which the milk is ultimately sold shall be ascertained by the Board and announced not later than the fifth day of each month, or the prior business day if the fifth day is a Saturday, Sunday, or holiday.

PROVISION 3 - BUTTERFAT DIFFERENTIAL; DIRECT DELIVERY DIFFERENTIAL

The butterfat differentials and the direct delivery differential established under federal law and the applicable federal regulations for the federal milk marketing orders affecting Area 6 are incorporated herein.

PROVISION 4 - USE OF EQUIVALENT PRICE

If a price quotation used in determining the Class I, II, III, or III-A price or the butterfat differential is not available, the Board shall determine and use an equivalent price.

PROVISION 5 - SALES IN OTHER AREAS

The producer price of milk shall be determined according to the Official General Order for the milk marketing area in which the milk is located when it leaves the selling dealer's control. Milk shall be presumed to leave the selling dealer's control upon:

- (a) Arrival at the destination point designated by the purchaser if the seller incurs the costs of delivery;
- (b) Placement on the seller's dock if the purchaser takes possession using:
 - (1) Equipment owned or leased and personnel employed by the purchaser; or
 - (2) A trucking company that is independent from the seller. In determining whether a trucking company is independent from the seller, the Board will consider the totality of the relationship between the seller and the trucking company, including whether the seller:
 - (A) Owns any interest in the trucking company and, if so, the extent of such interest;
 - (B) Shares common directors, officers, management personnel or employees with the trucking company;

- (C) Uses equipment or facilities in common with the trucking company;
- (D) Shares common accounting, purchasing, accounts receivable or billing operations with the trucking company;
- (E) Has common financing or credit arrangements with the trucking company.

SECTION E PAYMENTS TO PRODUCERS

The amount owed by a milk dealer to a producer shall be determined as follows:

(a) The number of pounds of milk and butterfat handled, sold, used or disposed of by the milk dealer for each class of milk as defined in Section C shall be totaled by class and adjusted for milk received from sources other than producers as set forth in 7 Pa. Code Chapter 143.

(b) The adjusted total pounds of milk and butterfat handled, sold, used or disposed of by the milk dealer for each class of milk as determined under Subsection (a) shall be multiplied by the prices and butterfat differential prescribed in Section D using the weighted average butterfat test of the milk used for each classification.

(c) The total value of all classes of milk as determined under Subsection (b) shall be divided by the total pounds of milk and butterfat received by the milk dealer from producers to determine the "blended rate per hundred pounds of milk."

(d) The milk dealer shall pay each producer from whom the milk dealer received milk according to 7 Pa. Code Chapter 143.

(e) No deductions or assessments of any kind, type or nature whatsoever shall be made from the producer prices set forth in this Order unless permission in writing is first received from the producer. All such deductions shall be itemized in detail on the monthly statement to producers.

(f) A monthly statement shall be rendered producers in accordance with 7 Pa. Code §143.14.

(g) In the case of any handler making payments to producers through the operation of a marketwide pool, the Board will recognize such pool debits and/or credits to the accounts of such handlers. Payments for marketing services by federal market administrators and assessments for Order administration shall not be recognized as a payment to producers.

SECTION F RESALE PRICES

PROVISION 1 - MINIMUM RESALE PRICES

Subject to the remaining provisions of this section, the minimum wholesale and retail prices for Class I or II price-controlled packaged products sold or made available in Area 6 by persons other than producers shall be as set forth in Subsections (a)-(c). Wholesale sales and retail sales in any other milk

marketing area shall be paid for in accordance with the prices established for that area.

(a) The minimum wholesale prices described in Schedule I of this Order are the prices applicable to a wholesale sale of packaged, including dispenser, Class I or Class II fluid milk products and fluid cream products, or both. The minimum prices set forth in Schedule I may be reduced by any applicable discount set forth in the succeeding provisions of this section, PROVIDED that all such reductions shall be rounded in accordance with the definition of "rounding" in Section B. Return of nondefective, including out of code, Class I or II price-controlled packaged products is prohibited under any circumstances or pricing scheme.

(b) The minimum retail out-of-store prices prescribed in Schedule II of this Order are the minimum prices to be charged by and paid to a store by a consumer who purchases a Class I or Class II price-controlled packaged product, or both, for off-premise consumption or use. These prices are applicable irrespective of off-premise use by the consumer.

(c) The minimum retail home-delivered prices prescribed in Schedule II, footnote 4 of this Order are the minimum prices to be charged and paid when the product purchased is delivered by a milk dealer or subdealer to a consumer. These prices are applicable irrespective of ultimate use by the consumer and apply to all sales to a consumer except those as defined in Subsection (b).

PROVISION 2 - RESALE PRICE ADJUSTMENT

The minimum resale prices for all products, including light, sour, medium and heavy cream, prescribed in Schedules I and II of this Order shall be adjusted upward or downward with movements in the Class I price, the prevailing area milk cost, and the butterfat differential.

PROVISION 3 - PREVAILING AREA MILK COST

The prevailing area milk cost shall be determined on a monthly basis in the following manner:

(a) All dealers selling milk in Area 6 shall report to the Board monthly the total amount paid for producer milk including all premiums, handling fees, quality or service premiums or other costs directly associated with procurement of milk from producers for the previous month and the volume of all classes of milk which they purchased for resale in Area 6.

(b) Monthly, the Board shall compute the weighted average over-price premium of classes of milk purchased for processing and resale in Area 6.

(c) The prevailing area milk cost for any month shall be the weighted average over-price premium for the third month preceding that month plus the current price of Class I milk purchased for processing and resale in Area 6.

(d) Any special fees, assessments, or other charges imposed on milk dealers by Pennsylvania or the federal government shall be recognized in the computation of resale prices for Area 6, provided that these fees, assessments, or other charges are based on the amount of Class I milk sold or handled in Pennsylvania by the milk

dealers, and provided further that these fees, assessments, or other charges are not currently recognized in the computation of resale prices for Area 6.

(e) The prevailing area milk cost shall be published not later than the fifth day of the month preceding the month in which that price shall be in effect or on the prior business day if the fifth day is a Saturday, Sunday, or holiday.

PROVISION 4 - BUTTERFAT DIFFERENTIAL ADJUSTMENT

After the Board determines the Class I price and the prevailing area milk cost, wholesale prices shall be adjusted to reflect changes in the butterfat differential.

PROVISION 5 - PRICING MULTIPLE UNIT PACKAGES

(a) When two quart containers are fastened together for sale as a half-gallon package or when two half-gallon containers are fastened together for sale as a gallon package, the resulting package may be sold at the prices established for paper one-half gallons and plastic gallons, respectively, on Schedules I and II of this Order plus \$.01.

(b) When a package comprised of two quarts fastened together is offered for sale as a half-gallon and when a package comprised of two single half-gallons fastened together is offered for sale as a gallon, the package so offered shall be marked in such a manner that when separated, the component parts thereof shall be clearly identified as integral parts of the larger single package. For example: One of the quart containers may be marked "HALF" and the remaining quart container may be marked "GALLON"; one of the half-gallon containers may be marked "ONE", the other half-gallon container "GALLON"; or the word "TWIN" may be marked on one container and the word "PACK" may be marked on the other.

(c) A package must be fastened together by one of the following means:

- (1) Stapled at the plant in such a manner that separation of the package would be clearly evident;
- (2) Glued at the plant in such a manner that separation of the package would be clearly evident;
- (3) Fastened by a nonperforated handle at the plant, which is glued or stapled to both components of the package in such a manner that separation of the package would be clearly evident; or
- (4) Taped at the plant by heat sealing process so that separation of the package would be clearly evident.

(d) All sales of any other combination package shall be at no less than the sum of the prices of its component parts.

PROVISION 6 - EXEMPTIONS FROM RESELL PRICING PROVISIONS

The following sales of bulk milk or bulk cream or both are exempt from the resale prices set forth in Schedule I of this Order:

- (a) Any sale of bulk cream in excess of 320 quarts per sale;
- (b) Any sale of bulk milk or bulk cream (sweet or sour) to a manufacturer of food products, PROVIDED the milk or cream is used

exclusively for the manufacture of food products at the plant or plants of the manufacturer and no fluid milk or cream is moved from the manufacturing location;

(c) Any sale to a bakery, hotel, restaurant, hospital, or institution which operates a commissary separate and apart from its other accommodations. "Separate and apart" as used herein means separately housed and completely detached from other accommodations.

(d) This Provision is not applicable to any sales in which the buyer takes physical possession of bulk milk dispenser cans or containers, gallon, half gallon, quart, pint, one-third quart, half pint, or other similar containers for which a price is established by this Order.

(e) Any sale made under this Provision cannot be used in computing the average daily delivery under the dispenser pricing in Schedule I of this Order.

(f) A dealer making sales under this Provision, whether cash or credit, shall be required to have readily available for inspection by personnel of the Board, for a period of two (2) years, the following:

- (1) Exact location of the manufacturing plant(s) where products were utilized;
- (2) The selling price and quantity of any product sold under this Provision together with the price and quantity of any other products sold;
- (3) A record from which the Board can readily ascertain the method by which the sales price was determined.

PROVISION 7 - WHOLESALE DISCOUNT

(a) A person making a wholesale sale of Class I or II price-controlled packaged products may, subject to Subsections (b)-(d), reduce the prices set forth in Schedule I of this Order by 4.0 percent if the weekly average delivery to an individual stop is at least 200 quarts and by 7.5 percent if the weekly average delivery to an individual stop is at least 500 quarts, PROVIDED that the number of deliveries to that stop does not exceed three a week.

(b) For purposes of this Provision, the weekly average delivery shall be the total number of quarts of Class I or II price-controlled packaged products, net of returns of defective products, delivered to or picked up by the purchaser at an individual stop for resale in the original package divided by the number of actual deliveries, not to exceed three, of Class I or II price-controlled packaged products made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. Each seller making a wholesale sale may consider only that seller's own sales and not sales by other sellers in determining whether the purchaser qualifies for a price reduction under this Provision.

(c) This Provision does not apply to sales to schools.

(d) This Provision allows for full service deliveries as defined in Section B, PROVIDED that returns for credit of in code or nondefective products are prohibited.

PROVISION 8 - LIMITED SERVICE DISCOUNT

(a) A person making a wholesale sale of Class I or II price-controlled packaged products by means of limited service delivery as defined in Section B may reduce the prices set forth in Schedule I of this Order by 10.5 percent if the weekly average delivery to an individual stop is at least 1,000 quarts, PROVIDED that all products handled on the delivery, whether Class I or II price-controlled packaged products or not, are delivered in accordance with Subsections (b) through (f) of this Provision.

(b) For purposes of this Provision, the weekly average delivery shall be the total number of quarts of Class I or II price-controlled packaged products, net of returns of defective products, delivered to or picked up by the purchaser at an individual stop for resale in the original package divided by the number of actual deliveries of price-controlled packaged products made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. Each seller making a wholesale sale may consider only that seller's own sales and not sales by other sellers in determining whether the purchaser qualifies for a price reduction under this Provision.

(c) All Class I or II price-controlled packaged products sold and purchased under this Provision shall be purchased for resale or use in Area 6.

(d) The price reductions set forth in this Provision shall apply only when an order for Class I or II price-controlled packaged products is placed by the purchaser at least a day before each delivery.

(e) All sales made under this Provision are final. Any allowance for returns is prohibited except for defective products.

(f) Empty cases or containers shall be assembled by the purchaser for convenient pickup by the seller.

(g) This Provision does not apply to sales to schools.

PROVISION 9 - MULTI-STORE DISCOUNT: QUALIFICATION

(a) Three or more stores may form a multi-store group provided all of the following are satisfied:

- (1) The stores are owned by the same person or persons, are operated under franchises granted by the same franchiser, or purchase Class I or II price-controlled packaged products pursuant to a contract with the same contracting entity;
- (2) All invoices for Class I or II price-controlled packaged products purchased by the stores are received, processed, and paid by the common owner, franchiser, or contracting entity (note: payment for all Class I or II price-controlled packaged products purchased under a multi-store discount is deemed to be guaranteed by the common owner, franchiser, or contracting entity);
- (3) Each store receives a minimum of 200 quarts of Class I or II price-controlled packaged products per delivery and;

(4) The primary dealer files with the Board a sworn statement listing the name and address of each store in the multi-store group and the weekly average aggregate volume of purchases of Class I or II price-controlled packaged products by all stores in the multi-store group. The multi-store group may file the information required by this paragraph if the primary dealer fails to do so.

(b) A milk dealer making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group may reduce the prices set forth in Schedule I by:

- (1) 7.5 percent for full service delivery if the weekly average aggregate delivery to all stores in the group is at least 500 quarts, PROVIDED that the number of deliveries to an individual stop does not exceed three a week.
- (2) 10.5 percent for limited service delivery if the weekly average aggregate delivery to all stores in the group is at least 1,000 quarts.

(c) The weekly average aggregate delivery shall be determined by dividing the total number of quarts of Class I or II price-controlled packaged products delivered to all stores in the multi-store group by the primary supplier, net of returns of defective products, by the number of actual deliveries of Class I or II price-controlled packaged products to all stores in the multi-store group by the primary supplier between 12:01 a.m. on Monday to 12:00 midnight on the following Sunday.

PROVISION 10 - MULTI-STORE GROUP: SECONDARY SUPPLIER

(a) A secondary supplier making a wholesale sale of Class I or II price-controlled packaged products to a store that is a member of a multi-store group may reduce the prices set forth in Schedule I of this Order by the same percentage that the primary supplier is permitted to reduce its prices.

(b) A secondary supplier selling Class I or II price-controlled packaged products to a member of a multi-store group must comply with all the requirements set forth in this Order that apply to the primary supplier except for the volume of purchases.

PROVISION 11 - MULTI-STORE DISCOUNT: ADDITIONAL DISCOUNT

(a) A primary supplier or a secondary supplier making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group on a full service or limited service basis may reduce the prices set forth in Schedule I by an additional 2 percent (of the total amount due prior to the application of the discount set forth in Provision 9) if the primary supplier's weekly total deliveries of Class I or II price-controlled packaged products to the multi-store group are at least 25,000 quarts.

(b) The weekly total deliveries of Class I or II price-controlled packaged products to the multi-store group shall be determined by adding the total number of quarts of Class I or II price-controlled packaged products delivered to each store member of the multi-store group, net of returns of defective products,

between 12:01 a.m. on Monday and 12:00 midnight on the following Sunday.

(c) The additional discount permitted by this Provision may be given to the common owner, franchiser, or contracting entity only and not to the individual store members of the multi-store group. A common owner, franchiser, or contracting entity that accepts the additional discount permitted under this Provision shall be deemed to guarantee payment to the primary supplier or the secondary supplier or both.

PROVISION 12 - SCHOOL DISCOUNT

(a) A person making a wholesale sale of Class I or II price-controlled packaged products may, when the products are to be delivered on a limited service basis, reduce the prices set forth in Schedule I of this Order by 4 percent if the weekly average delivery to individual schools is at least 275 quarts.

(b) For purposes of this Provision, the weekly average delivery shall be the total number of quarts of Class I or II price-controlled packaged products delivered to an individual stop or picked up by the purchasing school for resale in the original package divided by the number of actual deliveries or pickups made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. Each seller making a wholesale sale may consider only that seller's own sales and not sales by other sellers in determining whether the purchasing school qualifies for a price reduction under this Provision.

(c) The price reduction set forth in this Provision is subject to the same restrictions and limitations outlined in Provision 8, Subsections (c) - (f).

(d) This Provision is applicable to any sales of dispenser milk as priced in the dispenser section of Schedule I.

PROVISION 13 - LICENSEE TO LICENSEE DISCOUNTS

(a) A licensed milk dealer selling Class I or II price-controlled packaged products to a milk dealer or subdealer may reduce the prices set forth in Schedule I of this Order by:

- (1) 15 percent if the buyer purchases fewer than 1,000 quarts of Class I or II price-controlled packaged products;
- (2) 22 percent if the buyer purchases at least 1,000 quarts of Class I or II price-controlled packaged products.

(b) The price reductions set forth in Subsection (a) 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 pay consideration of any type to the purchaser for services rendered; and
- (3) 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. In implementing this paragraph, the Board will use the criteria in Section D, Provision

5, Subsection (b) to determine whether a trucking company is independent from the seller.

PROVISION 14 - NEW TYPES OF MILK OR CONTAINERS

No product or type of milk or cream or size of container for which a price is not specifically prescribed herein shall be used or sold within the Commonwealth until authority is granted by the Board for its use or sale.

PROVISION 15 - RETURNABLE REUSABLE CONTAINER DEPOSIT

A deposit shall be charged and collected on each returnable, reusable container as follows:

	<u>Gallon</u>	<u>1/2 Gallon</u>
Dealer to Wholesale Customer	\$0.50	\$0.40
Store to Consumer	.50	.40
Dealer to Consumer	.50	.40

**SECTION G
INCORPORATION OF REGULATIONS**

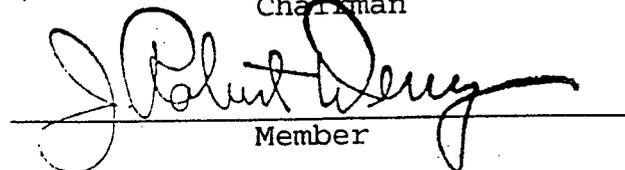
All provisions of the regulations promulgated by the Pennsylvania Milk Marketing Board are incorporated by reference and made a part of this Official General Order.

**SECTION H
SEVERABILITY**

If any section, provision, subsection, paragraph, or clause of this Order shall be determined to be unconstitutional or otherwise contrary to law, the remainder of the Order shall be given effect as though that section, provision, subsection, paragraph, or clause had not been included.

PENNSYLVANIA MILK MARKETING BOARD


Chairman


Member

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

PENNSYLVANIA MILK MARKETING BOARD
 WEST CENTRAL MILK MARKETING AREA, AREA NO. 6
 MINIMUM WHOLESALE PRICES
 SCHEDULE I

JUNE 1995

OGO A-886

DESCRIPTION	PRODUCT CODE	BUTTERFAT % RANGE		DISP. PER QT. EQUIV.	NON-RETURNABLE							
		LOW	HIGH		GAL. /1/	3 QT.	1/2 GAL. /2/	QUART	PINT	1/3 QT.	1/2 PT.	4 OZ.
STANDARD MILK	0300	4.01	6.00	0.6229	2.3252	1.7594	1.1944	0.6109	0.3249	0.2179	0.1775	0.1060
STANDARD MILK	0400	3.25	4.00	0.6133	2.2870	1.7306	1.1753	0.6013	0.3202	0.2149	0.1751	0.1047
FLAVORED MILK	0500	3.25	8.00	0.6397	2.3926	1.8099	1.2281	0.6277	0.3333	0.2233	0.1817	0.1081
LOWFAT FLAVORED MILK	0600	0.00	3.24	0.6170	2.3016	1.7417	1.1826	0.6050	0.3219	0.2162	0.1761	0.1053
LOWFAT MILK	0800	2.00	3.24	0.5974	2.2231	1.6828	1.1433	0.5854	0.3121	0.2100	0.1711	0.1028
LOWFAT MILK	0900	0.50	1.99	0.5846	2.1722	1.6446	1.1179	0.5726	0.3058	0.2059	0.1680	0.1012
BUTTERMILK	1000	0.00	6.00	0.6015	2.2396	1.6952	1.1516	0.5895	0.3142	0.2112	0.1721	0.1033
SKIM MILK	1200	0.00	0.49	0.5826	2.1637	1.6383	1.1137	0.5706	0.3048	0.2053	0.1674	0.1009
MIXED MILK /3/	1500	6.01	17.99				1.6007	0.8003	0.4014	0.2668	0.2008	
LIGHT CREAM	1700	18.00	29.99					0.9178	0.5067	0.3059	0.2533	
MEDIUM CREAM	1800	30.00	35.99					1.0604	0.6112	0.3534	0.3056	
HEAVY CREAM	1900	36.00	50.00					1.2028	0.7157	0.4009	0.3578	
SOUR CREAM /4/	1600	18.00	29.99					1.3859	0.6929	0.4619	0.3824	

/1/ DEDUCT \$0.06 IF SOLD IN REUSABLE CONTAINER WITH A 50 CENT DEPOSIT.

/2/ DEDUCT \$0.04 IF SOLD IN REUSABLE CONTAINER WITH A 40 CENT DEPOSIT.

/3/ MIXED MILK PRICES: 3/8 OZ. - \$.014, 1/2 OZ. - \$.018, 3/4 OZ. - \$.027. ADD \$.02 PER QT. EQUIVALENT TO ESTABLISH RETAIL PRICES ON SCHEDULE II.

/4/ SOUR CREAM - 5 LB - 3.2571
 10 LB - 6.5142

PENNSYLVANIA MILK MARKETING BOARD
 WEST CENTRAL MILK MARKETING AREA, AREA NO. 6
 MINIMUM RETAIL OUT-OF-STORE (CASH AND CARRY)
 SCHEDULE II /4/

JUNE 1995

OGO A-886

DESCRIPTION	PRODUCT CODE	BUTTERFAT %		DISP. PER QT. EQUIV.	NON-RETURNABLE							
		RANGE			GAL. /1/	3 QT.	1/2 GAL. /2/	QUART	PINT	1/3 QT.	1/2 PT.	4 OZ.
		LOW	HIGH									
STANDARD MILK	0300	4.01	6.00	0.64	2.42	1.83	1.24	0.63	0.33	0.22	0.18	0.11
STANDARD MILK	0400	3.25	4.00	0.63	2.38	1.80	1.22	0.62	0.33	0.22	0.18	0.11
FLAVORED MILK	0500	3.25	8.00	0.66	2.48	1.88	1.27	0.65	0.34	0.23	0.19	0.11
LOWFAT FLAVORED MILK	0600	0.00	3.24	0.64	2.40	1.81	1.23	0.63	0.33	0.22	0.18	0.11
LOWFAT MILK	0800	2.00	3.24	0.62	2.32	1.76	1.19	0.61	0.32	0.22	0.18	0.11
LOWFAT MILK	0900	0.50	1.99	0.61	2.27	1.72	1.17	0.60	0.32	0.21	0.17	0.11
BUTTERMILK	1000	0.00	6.00	0.62	2.34	1.77	1.20	0.61	0.32	0.22	0.18	0.11
SKIM MILK	1200	0.00	0.49	0.60	2.26	1.71	1.16	0.59	0.32	0.21	0.17	0.11
MIXED MILK	1500	6.01	17.99				1.64	0.83	0.41	0.28	0.21	
LIGHT CREAM	1700	18.00	29.99					0.94	0.52	0.31	0.26	
MEDIUM CREAM	1800	30.00	35.99					1.09	0.62	0.36	0.31	
HEAVY CREAM	1900	36.00	50.00					1.23	0.73	0.41	0.36	
SOUR CREAM /3/	1600	18.00	29.99					1.41	0.71	0.47	0.39	

/1/ DEDUCT \$0.06 IF SOLD IN REUSABLE CONTAINER WITH A 50 CENT DEPOSIT.

/2/ DEDUCT \$0.04 IF SOLD IN REUSABLE CONTAINER WITH A 40 CENT DEPOSIT.

/3/ SOUR CREAM - 5 LB - 3.33
 10 LB - 6.66

/4/ ADD \$0.0425 PER QUART FOR HOME DELIVERED MILK

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AREA 6 PRICE HEARING
DECEMBER 6 AND 7, 1994

I. Findings of Fact

A. Procedural History

1. The current price order for the Pennsylvania West Central Milk Marketing Area, Official General Order (OGO) A-871, was approved and posted by the Pennsylvania Milk Marketing Board (Board) on February 20, 1992, with an effective date of March 1, 1992.

2. The hearing on December 6-7, 1994, was called in response to a Petition To Revise Official General Order No. A-871 filed by licensed milk dealers in Milk Marketing Area 6.

3. Pursuant to notice given by the Board at a regularly scheduled Sunshine Meeting, a notice setting the date and time for the hearing was published at 24 Pennsylvania Bulletin 5496 - 5497 (October 29, 1994).

4. Pursuant to the published notice, the Board convened the price hearing for Area No. 6 on December 6, 1994, in the Agriculture Building, Harrisburg, Pennsylvania, and concluded the hearing on December 7, 1994.

B. Producer Pricing

5. Counsel to the Pennsylvania Farm Bureau recommended that the Board maintain the existing mechanism for establishing minimum producer prices in Area 6, based on testimony presented at previous Area 6 hearings and on the presumption in Section 801 of the Milk Marketing Law (Law) (31 P.S. §700j-801) that current orders are presumed valid unless challenged. This recommendation was unopposed. (N.T. 10)

C. Validity of Dealer Cross Section

6. The cross section used by both Petitioners and Board staff consisted of Galliker Dairy Co., Inc., Johnstown, Pennsylvania; Johnstown Sani-Dairy, Johnstown, Pennsylvania; Dairy Dell, Division of Johnstown Sani-Dairy, Johnstown, Pennsylvania; and Valley Farms, Inc., Williamsport, Pennsylvania. (N.T. 14, 178; Exhibit D-1)

7. Of the four dealers in the cross section, three are located within Area 6 and one, Valley Farms, Inc., is located in Area 3. (N.T. 14-15, Exhibit D-1)

8. The Board finds that the cross section is representative of dealers in Area 6 in that:

a. The cross section is geographically diverse, including three dealers within the area and a significant dealer outside the area. (N.T. 14-15, Exhibit D-1)

b. The dealers in the cross section accounted for 69.8% of sales of controlled fluid milk products in Area 6 during 1993. (N.T. 21)

c. The dealers in the cross section sell milk in various container sizes that are representative of the containers sold by all dealers in Area 6 during 1993. (N.T. 16-19, Exhibit D-2)

d. Sales of products by the dealers in the cross section to supermarkets, small stores, institutions (including schools, hospitals, and nursing homes), and convenience stores are representative of sales by customer type in Area 6. (N.T. 15-16)

9. The Board finds, based on the evidence identified in paragraph 8, that the dealers in the cross section used by Petitioners and Board staff are representative of the dealers in Area 6.

D. Wholesale Prices

10. Petitioners and Board staff presented exhibits showing weighted average processing, packaging, and delivery costs (comprising costs for receiving, standardization and pasteurization, bottling, cold room, delivery, and selling). Both Petitioners and Board staff calculated a cost per quart of \$.1517

when using a percentage of sales weighting method. Board staff also offered calculations based on a percentage of impact weighting method, which yielded a cost per quart of \$.1507. Board staff's expert testified that the Board could appropriately use either method. (N.T. 180-81, Exhibits D-4 and Staff-2) The Board finds that the figures obtained using the percentage of sales weighting method are the appropriate figures for use in setting wholesale prices in Area 6.

11. Petitioners presented evidence concerning known cost increases and decreases during 1993 and 1994. The evidence demonstrated cost increases for chocolate milk ingredients, plastic gallon containers, paper containers, labor, payroll taxes and fringe benefits, gasoline, utilities, insurance, and other operating expenses; the cost of low-fat product ingredients was unchanged. Petitioners' evidence was uncontroverted but for its finding that cost increases for gasoline yielded a per quart equivalent of \$.0010. Petitioners' expert agreed that the more appropriate figure would be \$.0007. (N.T. 33-48, 94-95; Exhibit D-6) The Board finds on this evidence that the cost increases reflected in Exhibit D-6, with the figure associated with gasoline adjusted to \$.0007, should be included in calculating wholesale prices.

12. Petitioners' expert testified that the Board's unit cost system fails to capture certain raw milk acquisition costs. Exhibit D-7 categorizes these additional costs as supply premiums, quality premiums, cooperative handling fees, and market administration fees. These premiums and fees represent an additional cost of raw milk equal to \$.0009 per quart. Board staff's expert and Petitioners' expert recommended that the Board continue its current practice of adding the raw milk cost adjustment to the resale price month by month. (N.T. 44-47, 98, 190-91; Exhibit D-7) The Board finds that the evidence presented supports inclusion of the raw milk cost adjustment in the computation of wholesale milk prices.

13. Petitioners presented evidence bearing on the propriety of an interest cost adjustment. Petitioners' expert testified that since interest expense is not included in the Board's unit cost system, it should be included as a cost in developing prices. Petitioners determined that net interest expense has a cost per quart effect of \$.0003. (N.T. 47-48, Exhibit D-8) The Board finds that Petitioners' evidence justifies the inclusion of interest expense in computing wholesale prices.

14. Petitioners and Board staff presented statistical cost information and related testimony concerning various sizes

and kinds of containers. Petitioners used only the percentage of sales weighting methodology, whereas Board staff used in addition the percentage of impact methodology. Results under the percentage of sales methodology were identical but for quart and bulk per quart containers, with Petitioners' figures being higher by, respectively, \$.0002 and \$.4958. Board staff's expert testified that the significant difference for bulk per quart containers was owing to Board staff's examination of all such containers in the marketplace as compared to Petitioners' focus only on the 20-quart container. Results using the percentage of impact methodology showed only slight deviations from results using the percentage of sales methodology. (N.T. 22-25, 178-180; Exhibits D-3 and Staff-1) The Board finds Board staff's figures using the percentage of sales methodology to represent most accurately the container costs to be included in the computation of wholesale prices.

15. Petitioners presented statistical cost information and related testimony concerning a cost adjustment linked to container filling speeds. Exhibit D-9 demonstrates the effect on unit costs of filling speeds associated with different-sized containers, namely, that larger containers (gallon, half gallon, quart) are more cost efficient than smaller containers. Board

staff's expert agreed with Petitioners' conclusions. (N.T. 51-56, 191; Exhibit D-9) The Board finds therefore that inclusion in the computation of wholesale prices of the container filling cost adjustment calculated by Petitioners is supported by the evidence.

16. Petitioners proposed that the Board increase the price of milk in Area 6 by \$.0028 per quart to compensate for costs incurred by nonprocessing dealers and subdealers. Petitioners' expert testified, and Exhibit D-12 reflects, that delivery costs of nonprocessors and subdealers is \$.0564 higher than the delivery costs of dealers in the cross section. The witness also testified that although only 4.9% of the milk in Area 6 is distributed to the ultimate consumer, school, or store by subdealers, spreading the cost over the entire market is a practical and defensible way to ensure that the cost is captured. Board staff's expert testified that the high costs incurred by nonprocessors and subdealers would more appropriately be recovered through the discount system. In this regard, Petitioners offered a proposal to revise dealer to dealer discounts in the existing Order by establishing a 15% discount for deliveries of fewer than 1,000 quarts and a 22% discount for deliveries of 1,000 quarts and over. (N.T. 63-65, 75-77, 133-37,

194; Exhibits D-10 and D-12) The Board finds no convincing support in the record for a marketwide adjustment of the wholesale price of milk to allow a small percentage of nonprocessing dealers and subdealers to recover their costs. The Board finds that the discount system is the appropriate vehicle for cost recovery and adopts Petitioners' proposal for revising the discount schedule.

17. Section 801 of the Law (31 P.S. §700j-801) requires the Board to provide dealers and retailers with a return of not less than 2.5% or more than 3.5%. Petitioners' expert--citing inflationary pressures, passage of time until the next Area 6 price hearing, and the Federal Reserve Board's adjustment of interest rates--testified that 3.5% is the appropriate rate. With regard to the Federal Reserve Board, although Petitioners' expert testified that it had significantly increased interest rates on borrowing over the preceding six months, information in Exhibit D-8 shows that the cost per quart effect of interest expense is only \$.0003. The Board regards interest rates and the date of the next price hearing for Area 6 as highly speculative and therefore not supportive of Petitioners' request for a 3.5% rate of return. (N.T. 57-60, Exhibit D-8) The Board finds that

a rate of 3.25% is reasonable in light of the evidence regarding cost pressures faced by the industry.

18. Petitioners and Board staff presented evidence concerning full service discounts. Petitioners' expert testified that full service discounts at existing levels should be maintained in Area 6 (see Exhibit D-10) owing to the "relationship [in Area 6] between the processors and the retailers" (N.T. 69) and to geographic characteristics peculiar to the area, notably the area's "seasonality" with regard to hunting, skiing, and summer vacation areas. (N.T. 71-72) The witness also testified that full service deliveries should allow for returns of out of code and defective products. (N.T. 69-71) Staff Exhibit 3, however, demonstrates that the impact of full service discounts on the price of milk is \$.0654 per quart. Board staff's expert testified that if full service discounts are justified, that justification should be in the nature of market pressures, not through costs; moreover, the witness testified that allowing for return of product would exacerbate the cost increases associated with full service deliveries. (N.T. 200-201) Having considered the evidence favoring and disfavoring full service discounts in Area 6, and based upon the conditions facing the milk industry in that area, the Board concludes that

maintaining full service discounts at existing levels is justified, with a limitation on the number of deliveries--namely, no more than three deliveries a week. Inasmuch as out of code products cannot be categorized as defective products, the Board will not grant Petitioners' request to allow for their return.

19. Petitioners and Board staff offered exhibits demonstrating the costs associated with small deliveries. Exhibit D-5 shows a cost of \$.1503 per quart, whereas Staff Exhibit 3 shows a cost of \$.1752. Board staff's expert testified, however, that the number in Exhibit 3 "has full-service deliveries contained in it [to an unknown extent] and, therefore, may not be usable." (N.T. 207) Accordingly, the Board finds that the number derived by Petitioners accurately reflects the cost for small deliveries and should be used in determining wholesale prices.

20. Petitioners presented in Exhibit D-10 proposals to maintain multi-store and school discounts at existing levels; that exhibit also expresses Petitioners' recommendation that the multi-store discount be available only if each store in the group receives an average of at least 200 quarts per delivery. The Board finds, hearing no evidence to the contrary, that the existing school discount continues to be appropriate. Consistent

with its findings in paragraph 18, the Board will maintain a full service discount of 7.5% for multi-store groups but will place on that discount the requirement that the weekly average aggregate delivery to all stores in the group is at least 500 quarts. Similarly, the Board will maintain the 10.5% limited service discount for multi-store groups, with the requirement that the weekly average aggregate delivery to all stores in the group is at least 1,000 quarts. Finally, the Board will adopt the Petitioners' recommendation of requiring each store in the group to average at least 200 quarts per delivery.

21. Pursuant to section 801 of the Law the Board held a pre-order conference for interested parties on April 27, 1995. At that conference the Petitioners presented, without opposition, the request that the existing \$.18 producer pricing bracket system be eliminated. Deeming the conference record to supplement the hearing record in this matter, and consistent with its experience in implementing the bracket system, the Board finds that its elimination is in the best interests of the milk industry in Area 6.

E. Retail (Out of Store) Prices

22. The Pennsylvania Food Merchants Association (PFMA) and Board staff performed in-store handling cost studies. Both

parties relied on the same raw data, which Board staff acquired from surveying 20 randomly selected stores that accounted for 13.8% of the milk sales in Area 6. PFMA, however, arrived at a cost per quart of \$.07603 (with costs for containers of other sizes computed on a quart-equivalent basis), whereas Board staff's costs were \$.0723 per quart, \$.1054 per half gallon, and \$.1717 per gallon. The differences in the findings of PFMA and Board staff are attributable to the methodologies used to compute check-out costs and to project the handling cost of a quart container onto containers of other sizes. (N.T. 291, 360, 375, 388, 393; PFMA-1, Staff-7) The Board finds that Board staff's study is statistically sound and accurately reflects in-store handling costs for quart and larger containers. The Board further finds, however, that Board staff's in-store handling costs should be converted to quart equivalents so that costs can be methodically projected onto containers of all sizes. The Board will therefore compute the cost per quart for the gallon and half gallon container as, respectively, \$.0429 and \$.0527, derive weighted costs using 1993 sales figures, thus arriving at a quart equivalent of \$.0489.

23. PFMA recommended that the Board provide retailers with a 3.5% return under section 801 of the Law, citing in

support of this recommendation the likely time lapse before the next Area 6 order, the effects of general inflation, and the fact that 1993 figures used in this hearing are already dated. The Board's Bureau of Consumer Affairs recommended a return of 2.5%, the lowest rate permitted under section 801. (N.T. 342-44, 413, 420) The Board finds that a reasonable rate of return to retailers is 3.25% based on net sales of price-controlled products.

24. Based on its findings in paragraphs 21 and 22, the Board finds that in-store handling costs--using the quart, half gallon, and gallon costs in Board staff's study, with costs of smaller containers percentaged out using the quart price--should be added to the wholesale price, discounted approximately 7.5%. The resulting number will be multiplied by 3.25% to calculate the rate of return.

II. Conclusions of Law

A. The December 6-7, 1994, hearing to set the price of milk in PMMB Area 6, the West Central Milk Marketing Area, was held pursuant to authority granted the Board in section 801 of the Law (31 P.S. §700j-801), which provides that the Board "shall ascertain, after a hearing..., prices paid to producers, to dealers and to stores for milk in the respective milk marketing

areas as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth...."

B. The hearing was held following adequate notice, and all interested parties were given a reasonable opportunity to be heard.

C. The cross section used by Petitioners and Board staff is reasonable, inasmuch as it is representative of dealers in the marketplace.

D. In establishing the attached Official General Order, the Board has considered all relevant unit cost data, based upon competent evidence presented at the hearing, and has considered all relevant factors presented to it concerning conditions affecting the milk industry in Area 6, such as aggregate sales of various types of controlled products, and historical and prevailing market practices.

E. A reasonable rate of return to dealers is 3.25%, based upon net sales of price-controlled products determined in accordance with generally accepted accounting principles.

F. It is reasonable to add store cross-section costs and a profit margin of 3.25% to the average wholesale cost adjusted for the most prevalent delivery discount in the marketplace.

G. Provisions of the existing Area 6 Order that regulate producer pricing should be maintained.

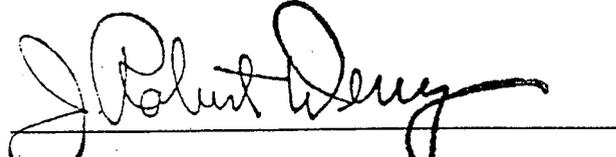
H. Adoption of the attached Official General Order is reasonable and appropriate under section 801 of the Law, subject to any revisions or amendments which the Board may deem appropriate pursuant to the procedures set out in the Law.

ORDER OF THE BOARD

AND NOW, this 7th day of June 1995, Official General Order A-866 Amended and supporting Findings of Fact and Conclusions of Law are adopted. The amended order shall be effective on June 20, 1995, and shall supersede Official General Order A-866, which was effective on June 1, 1995.

PENNSYLVANIA MILK MARKETING BOARD


Leon H. Wilkinson, Chairman


J. Robert Derry, Member