



**Commonwealth of Pennsylvania**

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Official General

Posted:

January 5, 2000

Order No. A-890A (CRO 4) Revised

Effective:

February 1, 2000

**COST REPLACEMENT ORDER FOR THE SOUTHEASTERN  
MILK MARKETING AREA, AREA 1**

NOW, this 1<sup>st</sup> day of December, the Commonwealth of Pennsylvania, Milk Marketing Board 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 February 1, 2000.

**SECTION A  
INCORPORATION**

The attached Findings of Fact, Conclusions of Law, Schedules I and II and Attachments 1 – 3 are incorporated herein by this reference as though fully set forth in this order.

**SECTION B  
SCOPE**

(a) The processing, packaging, and delivery costs, container costs, and ingredient costs adopted by the Board in this order replace the costs in these categories embodied in Official General Order A-890 Amended (CRO 3) and will be incorporated into the wholesale and retail prices of Class I price-controlled packaged products sold in Milk Marketing Area No. 1, as defined in section B of Official General Order A-890 Amended. Wholesale and retail prices will be adjusted as well by the increase in labor, insurance, and utility costs, which the board accepted in this order.

(b) Wholesale and retail prices for Class II price-controlled packaged products sold in Milk Marketing Area No.1 will reflect the costs adopted in this order. Class II prices will be calculated each month in the manner set forth in Finding of Fact 11.

(c) The rate of return to dealers is maintained at 3.25%.

(d) Prior to application of discounts available to schools as governed by Official General Order A-899, unit prices may be reduced as directed in Finding of Fact 7.

**SECTION C**  
**EFFECTIVENESS OF OFFICIAL GENERAL ORDER A-890 AMENDED**  
**SUPERSESSION OF OFFICIAL GENERAL ORDERS A-890 AMENDED (CRO 1),**  
**(CRO 2) AND (CRO 3)**

All parts of Official General Order A-890 Amended not inconsistent with section B (relating to scope) continue in effect. Except for Section B (e) of Official General Order A-890 (CRO 3) which remains in effect, this order supersedes Official General Orders A-890 Amended (CRO 1), (CRO 2) and (CRO 3).

**PENNSYLVANIA MILK MARKETING BOARD**



Beverly R. Minor, Chairwoman



J. Robert Derry, Consumer Member



Luke Brubaker, Member

Dated: January 5, 2000

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**COST REPLACEMENT HEARING FOR MILK MARKETING AREA NO. 1**  
**SEPTEMBER 1, 1999**

I. FINDING OF FACT

A. Procedural History

1. On September 1, 1999, the Pennsylvania Milk Marketing Board (Board) conducted a hearing for Milk Marketing Area No. 1 to consider cost replacement pursuant to section G of Official General Order A-890 Amended (OGO A-890A).

2. Notice of the hearing was published in 29 Pennsylvania Bulletin 3984 on July 24, 1999. Notice was also mailed to all interested persons by means of Bulletin No. 1281, dated July 15, 1999. The hearing notice enumerated the scope of evidence that the Board would receive. (PMMB Exhibits 1 and 2)

B. Validity of Dealer Cross-Section

3. The cross-section used by Board staff and the dealers, the only parties to present evidence of dealer costs, comprised Tuscan/Lehigh Dairies, L.P.– Lansdale; Milk Industry Management Corporation t/a Balford Farms; Readington Farms, Inc.; Rosenberger's Dairy, Inc.; and Wawa Dairy Farms. The same cross-section was used for determining prices under the current cost replacement order in Area 1. (N.T.12 – 17, 46 – 48. *See also* Exhibits S-1 and S-2)

4. The cross-section dealers sell 63.21% of all price-controlled packaged products sold in Area 1. There continues to be a close correspondence between products sold in various container sizes by the cross-section dealers and by all dealers doing business in Area 1. (N.T. 12 and 13, Exhibit S-1)

5. Clifford Ackman, appearing for Board staff as an expert in milk statistics, testified that the cross-section is representative with respect to the percentage of sales in Area 1. Carl Herbein,

appearing for the dealers as an expert in milk accounting, testified that the cross-section is representative with respect to overall coverage of the area and the type of customers served, sources of milk, types of containers utilized and blow-molding capabilities. (N.T. 12 – 17, 46 & 47, Exhibit S-1)

6. Based on the evidence set out in paragraphs 4 and 5, the Board finds that the cross section is representative of all dealers in Area 1.

C. Dealer Costs and Rate of Return

7. Timothy Moyer, appearing for Board staff as an expert in milk accounting, and Carl Herbein presented evidence of container costs current to May and June of 1999, and weighted by the percentage of sales method. Mr. Moyer presented cost information for plastic containers, paper containers individually, and where both paper and plastic were used in the same container size, a combined price. Staff advocates use of the paper price to establish the minimum price for milk sold in these sizes with an add-on for milk that is sold in plastic. (N.T. 19 – 22, Exhibit S-3) Mr. Herbein advocated use of the blended price based on the Board's past practice of using a blended price and also to assist in smoother transition between the paper to the plastic quart and pint containers where volume is developing. (N.T. 48 – 59, 81 & 82, 86 & 87, 89 – 91, Exhibits D-2 and D-2A) The Board notes that this is the first instance where the record indicates use of plastic for containers other than gallon and half-gallon, except for reference to the plastic pouch, which is primarily marketed to schools. The Board observes from Exhibit S-3 that the quart equivalent difference between paper and plastic containers for quart and pint containers is much greater than the half-gallon container. Dealers have made substantial investment in equipment used to fill and distribute the plastic containers. (N.T. 55) Both the plastic add-on advocated by Board Staff and the blended price advocated by the dealers will return to the dealers the cost of the containers on average. School milk has been marketed in paper containers and the plastic pouch. (N.T. 20, 21, 53) It has been the past

practice of the Board to use a blended price where there is an emerging container to prevent putting dealers using the new container at a disadvantage. In all cases the paper price is lower than the blended price. (Staff Exhibit 3) The Board finds that the blended price for all containers should be used. Because schools primarily purchase in paper containers, the Board finds that sales to schools may be reduced by the difference between the paper price and the blended price.

8. Mr. Moyer and Mr. Herbein presented concurring evidence of cost per point for the receiving, standardization & pasteurization, bottling and cold room cost centers. There was a minor difference in the delivery cost center. (staff -- 0.0857, dealers -- 0.0856) In the selling cost center, staff and dealers differed by 0.0017 cost per point. (N.T.23 – 25, 34 & 35, 59 -- 64, 80 – 83, 87 – 89, 92 – 97, 100 & 101, 105 – 108, Exhibits S-4, D-3, and D-3A) This difference is attributed to the dealer's inclusion of costs associated with vending machine sales. The dealers own vending machines. (N.T. 81) The Board finds that vending machines are stores and that costs attributable to their operation, stocking and servicing must be excluded.

9. Mr. Moyer and Mr. Herbein presented concurring evidence of ingredient costs per pound current to May of 1999. The information was weighted using the percentage of sales method. (N.T. 25 & 26, 65 – 67, Exhibits S-5, D-4, and D-4A). The Board finds that the ingredient costs in Exhibits S-5 and D-4 are credible and should replace those in OGO A-890A (CRO 3).

10. Mr. Moyer and Mr. Herbein presented concurring evidence of updated labor, insurance, and utility costs, which were calculated by comparing costs per bottling point for the first quarter of 1998, and 1999. Both witnesses found a total upward adjustment of 0.0083 (N.T. 30 – 32, 67 – 69, Exhibits S-8 & D-5). The Board finds that an increase of 0.0083 per point increase in labor, insurance, and utility costs appropriately account for those costs in relation to plant volume and should be incorporated into the new order.

11. Mr. Moyer testified concerning a method for establishing prices for Class II products. That method involves arriving at a theoretical cost to process each Class II product, including the cost of the raw milk, container cost if known, and processing cost. The raw milk cost reflects the Class II price adjusted by the butterfat differential to the amount of butterfat in each Class II price-controlled packaged product. The theoretical cost is compared to the dealer actual cost for purchasing, storing, delivering and selling the packaged Class II products. The average difference between the actual cost and the theoretical cost represents the Class II fixed add-on adjustment (N.T. 26 – 30). Mr. Herbein endorsed the Staff methodology for establishing and adjusting Class II resale prices, recognizing that staff differed in presentation in the areas of delivery cost, selling cost and container cost (N.T. 75). The Board finds that continued use of the present methodology for establishing and adjusting Class II products is appropriate. The Board also finds that the container and selling cost differences are resolved in findings 7 and 8. The differences in delivery cost are in presentation and timing (N.T. 71).

12. Mr. Herbein testified that the current rate of return is insufficient owing to cost increases that occurred beyond March 1999: (a) \$ 0.0013 per quart attributable to labor and fringe benefits and (b) \$0.0019 attributable to increased depreciation expense due to capitol improvements made by the cross-section dealers. Mr. Herbein concluded that these cost increases would erode the rate of return by .56% (N.T. 75 – 79, Exhibit D-7). The Board finds that labor and depreciation costs will be captured as appropriate in the next cost replacement hearing. The Board finds therefore that continuation of the current rate of 3.25% is appropriate.

## II. CONCLUSIONS OF LAW

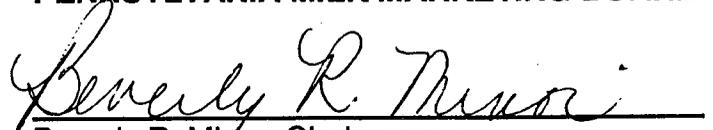
1. The September 1, 1999 cost replacement hearing for Milk Marketing Area No. 1 was held pursuant to authority granted to the Board in section 801 of the Milk Marketing Law (Law), 31 P.S. § 700j-801.

2. The hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard. (Finding of Fact 2)

3. The cross-section used by Board staff and the dealer meets the requirement of representativeness imposed by section 801. (Findings of Fact 4 – 6)

4. In establishing the attached official general order, the Board has considered the entire record and concludes that adoption of the order is supported by a preponderance of the evidence and is reasonable and appropriate under section 801, subject to any revisions or amendments the Board may make in the manner set forth in the Law.

**PENNSYLVANIA MILK MARKETING BOARD**

  
Beverly R. Minor, Chairwoman

  
J. Robert Derry, Consumer Member

  
Luke Brubaker, Member

Dated: January 5, 2000

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