



**Commonwealth of Pennsylvania**  
Milk Marketing Board  
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Official General  
Order No. A-899

Posted: June 3, 1998  
Effective: June 10, 1998

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**AN ORDER ESTABLISHING DISCOUNTS FOR MILK PURCHASED BY SCHOOLS  
IN THE SOUTHEASTERN MILK MARKETING AREA, AREA NO. 1**

NOW, this 3rd day of June 1998, the Commonwealth of Pennsylvania, Milk Marketing Board (Board) issues this official general order under 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 June 10, 1998.

**SECTION A - INCORPORATION BY REFERENCE**

The attached Findings of Fact and Conclusions of Law are incorporated herein by this reference as though fully set forth in this order.

**SECTION B - SUPERSESSION**

This order supersedes Section F, Provision 10 of Official General Order No. A-890A, Section B, Subsection (d) of Official General Order No. A-890A (CRO 1), and Section B, Subsection (d) of Official General Order No. A-890A (CRO 2), all of which relate to school discounts.

**SECTION C - SCOPE**

This order governs discounts for Class I and Class II price-controlled packaged products purchased by schools and school districts in Area No. 1, as defined in Section B of Official General Order No. A-890A.

**SECTION D - SCHOOL DISCOUNTS**

(a) A milk dealer making a wholesale sale of Class I or Class II price-controlled packaged products to a school district may reduce Board-mandated minimum prices by 18%, coupled with a stop charge equivalent to the 12-month moving average cost shown on the monthly price schedule for Area No. 1, if the weekly delivery to schools within the school district is at least 50,000 quarts.

(b) A milk dealer making a wholesale sale of Class I or Class II price-controlled packaged products to a school may reduce Board-mandated minimum prices by:

(1) 13% if the weekly average delivery to the purchasing school is at least 1,200 quarts, and the school satisfies the requirements set out in Section F, Provision 6 of Official General Order No. A-890A (relating to limited service discount);

(2) 7% if the weekly average delivery to the purchasing school is at least 700 quarts, and the school satisfies the requirements set out in Section F, Provision 6 of Official General Order No. A-890A (relating to limited service discount); and

(3) 4% if the weekly average delivery to the purchasing school is at least 275 quarts.

(c) A milk dealer may consider only its own sales and not sales by other milk dealers in determining whether a school district meets the volume requirement for the 18%-plus-stop-charge discount set out in Subsection (a).

(d) A milk dealer making a delivery to which the 4% discount set out in Subsection (b)(3) applies may provide one or more of the following services: (i) taking the delivered products from the school dock to the dairy case or cooler, (ii) removing leakers and defective products, (iii) rotating cases or stock within the dairy case or cooler. The purchasing school is responsible for any further handling of the products; the milk dealer is prohibited from providing any other service listed in the definition of “full service delivery” in Section B of Official General Order No. A-890A.

(e) As used in Subsection (b), “weekly average delivery” means the total number of quarts of Class I or Class 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 pick-ups made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. The milk dealer may consider only its own sales and not sales by other milk dealers in determining whether the purchasing school meets the volume requirement for a 13%, 7%, or 4% discount.

PENNSYLVANIA MILK MARKETING BOARD

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Beverly R. Minor, Chairwoman

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J. Robert Derry, Consumer Member

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Luke F. Brubaker, Member

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**HEARING ON SCHOOL MILK DISCOUNTS, MILK MARKETING AREA NO. 1**  
**JANUARY 21, 1998**

1. FINDINGS OF FACT

1. On January 21, 1998, the Pennsylvania Milk Marketing Board (Board) conducted a hearing on school milk discounts for Milk Marketing Area No. 1.

2. Notice of the hearing was mailed to interested persons by means of Bulletin No. 1262, dated November 3, 1997, and was published at 27 Pennsylvania Bulletin 5845 on November 8, 1997. The hearing notice identified the scope of evidence that the Board would receive. (PMMB Exhibits 1 and 2)

3. At the commencement of the hearing, the Board accepted a stipulation of all parties in support of maintaining the current discount system of up to 18% plus a stop charge for school districts that receive at least 200,000 half pints a week. (N.T. 8 - 18) In the absence of evidence to the contrary, the Board finds that the school discount system currently in effect in Area No. 1 should be available only to school districts with weekly delivery volumes of 50,000 quarts or more. As with all other discounts in Area No. 1 (see Official General Order No. A-890A), determination of whether a school district meets the volume requirement shall be based on the number of quarts purchased per week from one individual milk dealer.

4. Data presented in the exhibits and testimony of Board staff and the petitioners were gathered from a cross-section of dealers comprised of Milk Industry Management Corporation t/a Balford Farms, Wawa Dairy, Bechtel Dairies, Inc., and Rosenberger's Dairies, Inc., and from a cross-section of 44 schools in Area No. 1. Depending on the nature of the study, the parties selected from the school cross-section those members with the appropriate characteristics. The cross-section dealers account for nearly 60% of the school milk business in Area No. 1 and serve a broad and comprehensive range of school districts in the area, from the largest, Philadelphia, to the smallest. The school cross-section was drawn from every county in Area No. 1 and was stratified as to small, medium, and large purchasers of milk. Witnesses testifying as experts in milk accounting or milk statistics agreed that the two cross-sections were representative of the school milk market in Area No. 1. (N.T. 20 - 22, 97 - 99, 120 - 21, 134 - 38, 142 - 43, 168 - 70; Staff Exhibits 1 and 2) The Board finds that the cross-sections used by the parties were representative of dealers serving schools in Area No. 1 and of the schools in that area.

5. The petitioners' witness, qualified as an expert in milk marketing accounting, testified in support of a school discount of 4% for deliveries of at least 275 quarts, which he characterized as reinstating the discount established following the Board's statewide hearing on school discounts. Board staff offered no evidence on this issue. (N.T. 40 - 41, 109 - 110) The Board finds that the 4% discount established by Official General Order No. A-883, effective June 1, 1994, and embodied in Official General Order No. A-890A, effective December 1, 1995, should be reinstated (with the deviation approved under Finding of Fact 7). In accordance with those orders, the 4% discount will be available for wholesale sales of Class I or Class II price-controlled packaged products if the weekly average delivery to individual schools is at least 275 quarts. Also in accordance with those orders, weekly

average delivery shall be the total number of quarts of Class I or Class 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 pick-ups made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. Each milk dealer making a wholesale sale may consider only its own sales and not sales by other milk dealers in determining whether the purchasing school qualifies for the discount.

6. The petitioners' witness also recommended that schools be permitted to receive the limited service discounts currently available to other wholesale purchasers under Official General Order No. A-890A. That order establishes discounts of 7% and 13% for weekly average deliveries to an individual stop of at least 700 quarts and 1,200 quarts, respectively. (The witness, as well as Rebuttal Exhibit D-5, erroneously linked the 13% discount with volumes of over 1,200 quarts.) Board staff offered no evidence on this issue. (N.T. 41, Rebuttal Exhibit D-5, Official General Order No. A-890A) The Board finds that schools should have the same opportunity as other wholesale purchasers to receive the limited service discounts established in Area No. 1.

7. The petitioners' witness testified in support of allowing schools to receive discounts on a special school service, rather than limited service, basis. School service would allow the seller to provide one or more of the following services: (1) taking the delivered products from the school's dock to the dairy case or cooler, (2) removing leakers and defective products, (3) rotating cases or stock within the cooler. The purchaser would be responsible for any further handling of the products, and the seller would not be permitted to provide other services associated with full service delivery. Permitting these additional services would, according to the witness, maintain the quality of school milk by assuring its prompt refrigeration. The witness initially recommended that school service be available only for deliveries receiving the 4% discount but subsequently offered it as appropriate for all school deliveries. Board staff offered no evidence on this issue. (N.T. 43 - 46, 110, 127, Exhibit D-7) The Board concurs fully with the proposition that school milk must be stored promptly at an appropriate temperature, and it wishes to advance that goal. The Board observes as well that services (2) and (3) identified above are incidental to refrigerating the milk and are easily combined with that activity. At the same time, the Board does not wish to undermine the goal underlying limited service discounts, which is to reward purchasers that receive more efficient deliveries--that is, deliveries with higher volumes and fewer services. The Board finds therefore that the 4% discount described in Finding of Fact 5, which is available only to schools, is the sole discount category to which expanded school services, as proposed by the petitioners, may apply. Schools that wish to avail themselves of the deeper discounts of 7% and 13% may receive no more than limited service.

**II. CONCLUSIONS OF LAW**

1. The hearing of January 21, 1998, was held pursuant to authority granted 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. In adopting the attached official general order, the Board has considered the entire record and has concluded that the order is supported by a preponderance of credible evidence and is reasonable and appropriate under section 801, subject to revisions or amendments the Board may make in the manner set forth in the Law.

PENNSYLVANIA MILK MARKETING BOARD

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Beverly R. Minor, Chairwoman

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J. Robert Derry, Consumer Member

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Luke F. Brubaker, Member

Dated: June 3, 1998

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