



Commonwealth of Pennsylvania  
Milk Marketing Board  
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Official General  
Order No. A-907 (CRO3)

Posted: February 5, 2003  
Effective: March 1, 2003

COST REPLACEMENT ORDER FOR THE  
CENTRAL MILK MARKETING AREA, AREA NO. 6

NOW, this 5<sup>th</sup> day of February 2003, 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 March 1, 2003.

SECTION A  
INCORPORATION

The attached Findings of Fact, Conclusions of Law, Schedules I and II, and Attachments 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, ingredient costs, shrinkage and net profit and loss on sales of bulk milk and bulk cream costs, and in-store handling costs adopted by the Board in this order will replace the costs for these cost centers embodied in Official General Order (OGO) A-907 (CRO2) and will be incorporated into the wholesale and retail prices of Class I price-controlled packaged products sold in Milk Marketing Area 6, as defined in Section B of OGO A-907. Wholesale and retail prices will be adjusted as well by the increase in labor, utility, and insurance costs that the Board adopted in this order.

(b) Wholesale and retail prices for Class II price-controlled packaged products sold in Milk Marketing Area No. 6 will reflect the costs adopted in this order.

(c) The rate of return for dealers is maintained at 3.3%. The rate of return to retailers is maintained at 2.5%.

SECTION C  
SUPERSESSSION OF OFFICIAL GENERAL ORDER A-907 (CRO2)

All parts of Official General Order A-907 not inconsistent with Section B of this order continue in effect. This order supersedes Official General Order A-907 (CRO2).

PENNSYLVANIA MILK MARKETING BOARD

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Beverly R. Minor, Chairwoman

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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Date: February 5, 2003

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
COST REPLACEMENT HEARING FOR MILK MARKETING AREA NO. 6  
NOVEMBER 4, 2002

I. FINDINGS OF FACT

A. Procedural History

1. In accordance with Section G of Official General Order A-907, the Pennsylvania Milk Marketing Board (Board) conducted a cost replacement hearing for Milk Marketing Area No. 6 on November 4, 2002.

2. Notice of the hearing was published at 32 Pennsylvania Bulletin 4792 dated September 28, 2002. It was also mailed to all interested persons by means of Bulletin No. 1320, dated September 18, 2002. The hearing notice enumerated the scope of evidence that the Board would receive. (PMMB Exhibits 1 and 2)

3. On January 8, 2003, the Board conducted a hearing for all milk marketing areas to consider container costs in each of the areas. Notice of the container cost hearing was published at 32 Pennsylvania Bulletin 5819 dated November 23, 2002, and was mailed to all interested parties by means of Bulletin No. 1324, dated November 6, 2002. The container cost hearing notice enumerated the scope of evidence that the Board would receive for the container cost hearing. (PMMB Exhibits 1 and 2 – Container Cost Hearing of January 8, 2003) To prevent duplication of effort for Area 6, the Board chose to delay issuing the Area 6 Cost Replacement Order to allow for consideration of the evidence received at the container cost hearing.

B. Validity of Dealer Cross-Section

4. The dealer cross-section used by both Board Staff and the Area 6 milk dealers (Dealers), the only parties to present dealer cost information, consisted of Dean Foods Company – Sharpsville, Dean Foods Company – Erie, Galliker Dairy Co., Inc., and Schneider – Valley Farms, Inc. (Staff Exhibit 1)

5. Clifford Ackman, appearing for Board staff as an expert in milk statistics, testified that the dealer cross-section is representative of all Area 6 milk dealers since they had the same types of containers, deliveries, and the same type of outlets. Carl Herbein, appearing on behalf of the dealers as an expert in milk cost accounting, concurred with Mr. Ackman that the dealer cross-section was representative of the dealers doing business in Area 6. The Board finds that based on the evidence presented by the two expert witnesses, the requirement of representativeness has been met.

C. Dealer Costs and Rate of Return

6. David DeSantis, testifying on behalf of Board Staff as an expert in milk accounting, and Mr. Herbein presented concurring evidence of the processing, packaging, and delivery costs of \$0.1767 per point for 2001. (Staff Exhibit 2, Exhibit D3) The Board finds that

\$0.1767 per point is the cost of processing, packaging, and delivery and that this cost should replace the existing cost.

7. At the November 4, 2002, cost replacement hearing, Board Staff presented evidence of container costs as of April 2002, while the Dealers presented container cost evidence as of September 2002. (Staff Exhibit 2, Exhibit D2) At the January 8, 2003, container cost hearing, Board Staff presented evidence of container costs as of September 2002, while the Dealers presented no additional container cost evidence. (Staff Exhibit 6 – Container Cost Hearing of January 8, 2003) Mr. DeSantis testified at the container cost hearing that in areas with special pricing for containers going into schools, that special pricing should continue. The Board finds that it is appropriate to use the blended container costs shown on Staff Exhibit 6 from the January 8, 2003, container cost hearing, except that the half-pint containers used by schools shall be at the paper half-pint container cost of \$0.0180 per unit.

8. Board Staff presented evidence of ingredient costs as of April 2002, while the Dealers presented ingredient cost evidence as of September 2002. (Staff Exhibit 3, Exhibit D4) The ingredient costs presented by Board Staff and Dealers were identical, despite being based on costs of two different months. The Board finds the ingredient costs presented by both parties to be appropriate and shall replace the ingredient costs in the current order.

9. Board staff and Dealers presented concurring evidence regarding the cost update of \$0.0116 per point for labor, insurance, and utility costs between the second quarter of 2002 and the second quarter of 2001. (Staff Exhibit 7, Exhibit D5) The Board finds that the cost update for labor, insurance, and utility costs of \$0.0116 per point shall replace the existing cost in the current order. The Board further finds that it is appropriate to simply replace the existing cost update adjustment with \$0.0116 and to make no further adjustment such as was suggested by Dealers in their testimony, exhibits, and brief.

10. Board staff and Dealers presented similar evidence regarding Class II product costs as of April 2002. (Staff Exhibit 5, Exhibit D6) Board Staff and Dealers also presented evidence relative to a fixed cream add-on that is derived by comparing the cost to purchase the Class II product with the cost to manufacture that same product. (Staff Exhibit 6, Rebuttal Exhibit D7) Board Staff calculated the fixed cream add-ons shown in Staff Exhibit 6 using some container sizes for Class II products that were not included in prior years' data. Mr. DeSantis acknowledged that these containers represented a small part of the market in Area 6. Board Staff submitted a revised Staff Exhibit 6 with its brief, showing fixed cream add-ons with the containers in question omitted from the calculation. The fixed cream add-ons shown in the revised Staff Exhibit 6 are the same as those shown in Rebuttal Exhibit D7. The Board finds the Class II product costs presented by both the Board Staff and Dealers to be accurate and further finds that the fixed cream add-ons presented by Board Staff in the revised Staff Exhibit 6 and by Dealers in Rebuttal Exhibit D7 are accurate and reflect the Area 6 market and shall replace the existing fixed cream add-ons in the current order.

11. Board Staff did not present evidence regarding an adjustment for shrinkage, sales of bulk products, and cream processing costs. Mr. DeSantis explained that this was so because there were some problems with the data used to calculate this value. Mr. DeSantis recommended that the existing value stay in place. The Board finds that the existing adjustment for shrinkage, sales of bulk products, and cream processing costs shall remain and be used in the new order.

D. Retailer Costs and Rate of Return

12. John Liptock testified on behalf of the Pennsylvania Food Merchants Association (PFMA) as an expert in milk cost accounting and retail cost accounting. Mr. Liptock testified that the use of the Consumer Price Index system to change in-store handling costs has proven effective. The Board also believes that the use of the Consumer Price Index system has been effective, particularly in accounting for increased retailer costs based on inflation. Mr. Liptock did opine, however, that it was being applied to too low of an in-store handling cost. Mr. Liptock explained that stores with in-store handling costs higher than the in-store handling costs used in the retail price build-up were losing money. He recommended that the rate of return to stores be increased to address this situation. The Board is aware that, in establishing the base in-store handling cost, some stores would have an in-store handling cost higher than that established and conversely, some stores would have an in-store handling cost lower than the one we established. The Board does not believe that the fact that some stores have a higher in-store handling cost than the cost in the order is reason to increase the rate of return to stores. Therefore, the Board finds that the rate of return to retailers shall remain at 2.5%.

## II. CONCLUSIONS OF LAW

1. The November 4, 2002, cost replacement hearing for Milk Marketing Area No. 6 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 November 4, 2002, hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard.

3. The January 8, 2003, container cost hearing was held pursuant to authority granted to the Board in section 801 of the Milk Marketing Law (Law), 31 P.S. § 700j-801.

4. The January 8, 2003, hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard.

5. The cross-section used to establish dealer costs met the requirement of representativeness by section 801 of the Law.

6. The record of the cost replacement hearing for Milk Marketing Area No. 5 held on November 4, 2002, was included in the record for Milk Marketing Area No. 6 by reference.

6. In establishing the attached order, the Board has considered the entire record and has concluded that the adoption of this order is supported by a preponderance of the evidence and is reasonable and appropriate under section 801 of the Law, subject to any 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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Luke F. Brubaker, Member

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Barbara A. Grumbine, Consumer Member

Date: February 5, 2003

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