



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-958

Posted: November 5, 2008
Effective: December 1, 2008

TEMPORARY ADJUSTMENTS TO RESALE PRICES
INTERACTION BETWEEN PERCENTAGE DISCOUNTS AND HIGH MILK PRICES

NOW, this 5th day of November 2008, the Commonwealth of Pennsylvania, Milk Marketing Board (Board) adopts and 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 December 1, 2008.

SECTION I

The attached findings of fact and conclusions of law are incorporated herein by this reference as though fully set forth in this order.

SECTION II

- (a) Adjustments shall continue to be made to resale prices in each area based on the methodology adopted in Official General Order A-948;
- (b) The adjustments shall continue until the average wholesale prices for 2% gallons of milk without the small delivery and small container adjustments return to the base period prices shown in Finding of Fact 9.

PENNSYLVANIA MILK MARKETING BOARD

Richard Kriebel, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: November 5, 2008

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
TEMPORARY ADJUSTMENTS TO RESALE PRICES
OCTOBER 1, 2008**

FINDINGS OF FACT

1. On October 1, 2008, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence concerning the continuation of Official General Order A-948 regarding temporary adjustments to resale prices due to the interaction between high milk prices and percentage discounts.
2. Notice of the hearing was published at 38 Pennsylvania Bulletin 4845 on August 30, 2008, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1436, dated August 21, 2008.
3. Carl Herbein testified for the Pennsylvania Association of Milk Dealers (“Dealers”) as an expert in cost accounting and milk cost accounting. Mr. Herbein testified that current milk prices and marketing conditions were such that the analysis he conducted in 2007 that resulted in the issuance of OGO A-948 remained appropriate. He testified that the formula adopted by OGO A-948 is working properly and should be continued. In essence, Mr. Herbein recommended that OGO A-948 remain in effect as originally adopted, without expiring by its own terms on November 30, 2008.
4. Mr. Herbein testified that the change in discount levels in Area 2 between the time of his original study and his most recent review of that study was immaterial. Mr. Herbein also testified that if the formula used to determine the adjustments was changed to reflect the new discount levels, the number of gallons sold at the new discount levels would also have to be updated.

At the hearing, Board Staff questioned Mr. Herbein regarding the use of the new percentage amounts in Area 2. Mr. Herbein explained how he arrived at his conclusion that it was not necessary to do an updated study or change the formula for Area 2. Board Staff provided no evidence at the hearing to cast doubt on Mr. Herbein’s conclusion or to demonstrate that the conclusion was incorrect.

Based on Mr. Herbein’s credible, persuasive, and uncontradicted testimony regarding whether a new study for Area 2 or a change to the Area 2 formula was necessary, the Board finds that there is no need to conduct a new study for Area 2 or to change the Area 2 adjustment formula.

5. Bob Mertz, Director of Sales for Schneider – Valley Farms Dairy, testified in favor of continuing OGO A-948. Mr. Mertz testified that if the adjustment were removed, Valley Farms would lose the slim margins that it works on. Mr. Mertz also testified that his customers were opposed to changing discounts from percentages to cents per quart and that OGO A-948 allowed dealers to continue to use the percentages that customers

prefer while providing some relief against the margin erosion caused by the interaction between high milk prices and the percentage discounts.

6. Doug Roberts, Treasurer of Galliker Dairy Company, testified in favor of continuing OGO A-948. Mr. Roberts testified that the operation of OGO A-948 allowed Galliker to stabilize its controlled products gross margins, regain some measure of financial consistency, and maintain solid relationships with its customers.
7. David McCorkle testified on behalf of the Pennsylvania Food Merchants Association. Mr. McCorkle is President of the Association and testified in favor of continuing OGO A-948. Mr. McCorkle testified that the use of percentage discounts is among the most important issues to retailers, noting that retailers typically calculate their return on every department, product, service, and use of floor space on a percentage basis. So the percentage discount method allows store and dairy managers to quickly determine and track the profitability of the dairy department and easily compare it to the profitability of all the other departments within the store.

Mr. McCorkle testified that the Pennsylvania Food Merchants Association understood that some changes in the way retail milk prices are calculated may be necessary to ensure the health of the Pennsylvania dairy industry. However, he testified that the Association did not believe that dramatic changes were necessary when minor adjustments would achieve the same goal. Mr. McCorkle also testified that disruption may result from a fundamental change in the way retail milk prices are calculated or from failing to continue OGO A-948. Mr. McCorkle further testified that while OGO A-948 has been in effect there have been no retailer complaints, demonstrating that the adjustment was effective and that no further change was needed.

8. The Board finds that adjustments to resale prices should continue based on the methodology adopted in Official General Order A-948. In so finding, the Board finds credible and persuasive the uncontradicted testimony of Mr. Herbein, Mr. Mertz, Mr. Roberts, and Mr. McCorkle.
9. Based on Mr. Herbein's credible, persuasive, and uncontradicted testimony, the Board also finds that the adjustments should continue until the wholesale price for 2% gallons falls below the 15 month average base period price found in Official General Order A-948. Those base period wholesale prices, without the small delivery and small container adjustments, are as follows:

Area 1	\$2.7292
Area 2	\$2.2980
Area 3	\$2.4355
Area 4	\$2.4198
Area 5	\$2.4292
Area 6	\$2.3702

CONCLUSIONS OF LAW

1. The October 1, 2008, hearing was held pursuant to the authority granted to the Board in sections 801 and 803 of the Milk Marketing Law (Law), 31 P.S. §§ 700j-801 and 700j-803.
2. The hearing was held following adequate notice and all interested parties were given a reasonable opportunity to be heard.
3. In adopting this order, the Board considered the entire record and concludes that the order is supported by a preponderance of credible evidence and is reasonable and appropriate under sections 801 and 803 of the Law.
4. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD

Richard Kriebel, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: November 5, 2008

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