



Commonwealth of Pennsylvania
Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110-9408

717/787-4194
Fax 717/783-6492

WEB SITE: <http://www.mmb.state.pa.us>

E-mail: ra-pmmb@state.pa.us

Official General
Order No. A-960

Posted: February 4, 2009
Effective: March 1, 2009

**ORDER ESTABLISHING IN-STORE HANDLING COST FOR MILK
AND MILK PRODUCTS IN THE WEST CENTRAL MILK
MARKETING AREA, AREA NO. 6**

The Commonwealth of Pennsylvania, Milk Marketing Board, under the authority conferred by the Milk Marketing Law, 31 P.S. §§ 700j-101 – 700j-1204, hereby orders that all parts of Milk Marketing Board official general orders inconsistent with this Official General Order No. A-960 are superseded with respect to the West Central Milk Marketing Area, known as Milk Marketing Area No. 6. This order will become effective at 12:01 a.m. on March 1, 2009.

**SECTION A
SCOPE; INCORPORATION**

- (a) This official general order governs in-store handling cost for milk and milk products in Milk Marketing Area No. 6.
- (b) 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
COST REPLACEMENT**

Annually, after submission of the Milk Dealer's Financial Statement, the Board will schedule a cost replacement hearing to receive evidence of in-store handling costs. The foregoing evidence shall be based on the audited costs of a cross-section of stores doing business in Area No. 6. In addition, the Board will receive evidence bearing on a reasonable rate of return for retailers.

PENNSYLVANIA MILK MARKETING BOARD

Richard Kriebel, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: February 4, 2009

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FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN-STORE HANDLING COST HEARING FOR MILK MARKETING AREA NO. 6
JANUARY 7, 2009

I. FINDINGS OF FACT

A. Procedural History

1. On January 7, 2009, the Pennsylvania Milk Marketing Board (“Board”) held an in-store handling cost hearing for Milk Marketing Area No. 6.

2. Notice of the hearing was published at 38 Pennsylvania Bulletin 6671 dated December 6, 2008. It was also mailed to those who have requested mailed notice of Board hearings via Board Bulletin No. 1442, dated November 21, 2008. The hearing notice enumerated the scope of evidence that the Board would receive.

B. Validity of Store Cross-Section

3. The store cross-section used by both Board Staff and the Pennsylvania Food Merchants Association (“Retailers”), the only parties to present in-store handling cost information, consisted of Uni-mart – Pleasant Gap; Giant Eagle 54 – Somerset; Fezzel’s Market – Punxsutawney; Konkdak’s – Clarendon; Stem’s Clover Leaf Quick Shop – Johnstown; Weis Market – State College; Grocery Stretcher – Bradford; Red Apple Kwik Fill – Johnstown; Quality 626 – Kane; Martin’s General Store – Alexandria; and Nittany Oil Mini Mart – State College.

4. John Liptock, appearing on behalf of Retailers as an expert in retail store accounting and dairy in-store handling costs, opined that the cross-section stores were representative of all stores in Area 6. Clifford Ackman, appearing on behalf of Board Staff as an expert in milk statistics, also opined that the cross-section stores were representative of all stores doing business in Area 6. Mr. Ackman based his opinion on the variety of stores, their locations, store types, the discount structure in Area 6, and their overall volumes. Based on the factors outlined by Mr. Ackman and the testimony of Mr. Ackman and Mr. Liptock, the Board finds that the store cross section used by both Board Staff and Retailers is representative of stores doing business in Area 6.

C. Retailer Costs and Rate of Return

5. Mr. Liptock testified that the in-store handling cost for the cross-section stores was \$0.1249 per quart. Ann Asbury, testifying on behalf of Board Staff as an expert in milk cost accounting and retail milk in-store handling costs, also testified that the in-store handling cost for the cross-section stores was \$0.1249 per quart. Both Mr. Liptock and Ms. Asbury based their testimony on April 2008 costs.

Based on the testimony of Mr. Liptock and Ms. Asbury, the Board finds that the April 2008 in-store handling cost for the cross-section stores was \$0.1249 per quart. The Board further finds that \$0.1249 per quart is the base in-store handling cost that should be used in Area 6. The Board also finds that the in-store handling cost for volumes other than quarts shall be calculated based on each different volume's relationship to a quart (divided by two for a pint, multiplied by four for a gallon, etc.).

6. Mr. Liptock recommended that the monthly adjustment to the in-store handling cost, based on changes in the Consumer Price Index, continue. The Board finds that the adjustment should continue, using April 2008 as the base period.

7. Mr. Liptock recommended that the retail rate of return remain at 2.7%. The Board finds that the retail rate of return should be 2.7%.

II. CONCLUSIONS OF LAW

1. The January 7, 2009, in-store handling cost 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 hearing was held following adequate notice, and all interested persons were given a reasonable opportunity to be heard.

3. The cross-section used to establish in-store handling costs met the requirement of representativeness of section 801 of the Law.

4. 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.

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