



Commonwealth of Pennsylvania

Milk Marketing Board
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Official General
Order No. A-939

Posted: August 2, 2006
Effective: September 1, 2006

**AN ORDER REGARDING EIGHT OUNCE PLASTIC CONTAINERS AND
ESTABLISHING MILK MARKETING AREA-SPECIFIC DIESEL FUEL
ADJUSTMENTS TO MINIMUM WHOLESALE AND RETAIL PRICES**

NOW, this 2nd day of August 2006, 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 September 1, 2006.

SECTION I

The attached findings of fact and conclusions of law and Exhibit D3 are incorporated herein by this reference as though fully set forth in this order.

SECTION II

(a) In each Milk Marketing Area the eight ounce plastic container cost add-ons adopted by the Board in this order and listed in Finding of Fact 5 shall replace the add-ons for those containers embodied in the Official General Orders/Cost Replacement Orders and price announcements for the respective Milk Marketing Areas. Those add-ons shall be adjusted monthly based on the methodology currently in use to adjust plastic container costs.

(b) Dealers with significant changes to their container cost structures or that add an eight ounce plastic container to their lines shall notify the Board of the change. After a two month period following introduction of the new container or following the significant change to the container cost structure, during which time a sales history will be established and costs will be audited, the new costs shall be incorporated into resale prices on a sales-weighted basis.

(c) In each Milk Marketing Area the wholesale and retail prices of fluid milk products shall be adjusted monthly using the methodology set forth in the attached Exhibit D3. The adjustment shall continue until the next cost replacement hearings in each area, at which time it will be evaluated and necessary adjustments made.

PENNSYLVANIA MILK MARKETING BOARD

Boyd E. Wolff, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Date: August 2, 2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

EIGHT OUNCE PLASTIC CONTAINER AND DIESEL FUEL COSTS

July 12, 2006

FINDINGS OF FACT

1. On July 12, 2006, the Pennsylvania Milk Marketing Board (Board) convened a hearing for all milk marketing areas to receive testimony and evidence to consider the costs of eight ounce plastic containers and to consider the effects, on an area-specific basis, of changes in diesel fuel costs on minimum wholesale and retail prices.
2. Notice of the hearing was published at 36 *Pennsylvania Bulletin* 3062 on June 17, 2006, and was mailed to those who have requested notice of Board hearings by means of Bulletin No. 1397 dated June 7, 2006.
3. At the conclusion of the hearing, a briefing schedule was established, with briefs due July 28, 2006, and reply briefs due July 31, 2006.

Eight ounce plastic containers

4. Carl Herbein testified for the Pennsylvania Association of Milk Dealers (Dealers) as an expert in milk cost accounting. Mr. Herbein testified that during the last year, the marketing of eight ounce plastic containers in Pennsylvania had changed, with new eight ounce containers being introduced and some being discontinued or used less. Currently three dealers, Galliker Dairy, Schneider's Dairy, and Schneider – Valley Farms Dairy, market eight ounce plastic containers. Mr. Herbein arrived at sales-weighted costs for eight ounce plastic containers in Milk Marketing Areas 3, 5, and 6 (the only areas where eight ounce plastic containers are being currently marketed). To arrive at costs for Milk Marketing Areas 1, 2, and 4, Mr. Herbein weighted the three dairies' costs equally, a method which Mr. Herbein testified was consistent with past Board Staff practice. In regard to Areas 1, 2, and 4, Mr. Herbein testified that having a price based upon real costs elsewhere in Pennsylvania would facilitate the marketing of eight ounce containers in those areas.
5. Mr. Herbein recommended that the Board adopt the plastic add-ons that he presented: Area 1 - \$0.0419; Area 2 - \$0.0414; Area 3 - \$0.0414; Area 4 - \$0.0410; Area 5 - \$0.0443; Area 6 - \$0.0436. Mr. Herbein also recommended that the cost of eight ounce plastic containers continue to be updated on a monthly basis pursuant to the current methodology. Mr. Herbein further recommended that when and if other dealers begin marketing eight ounce plastic containers the Board should utilize the monthly reporting system to gather cost information from those dealers to include their costs in subsequent price announcements utilizing the methodology currently in place. Mr. Herbein testified that the new costs should be included in price announcements in the third month

6. Reid Ritchey testified on behalf of Ritchey's Dairy and Vale Wood Farms. Mr. Ritchey opposed reducing the plastic add-on adjustment, primarily in Area 6, because it would put a hardship on small companies. Mr. Ritchey questioned Mr. Herbein's calculations because Mr. Ritchey believed that additional labeling would be required for Galliker Dairy's eight ounce container that Mr. Herbein had not accounted for.
7. Clifford Ackman testified on behalf of Board Staff as an expert in milk statistics. Mr. Ackman testified that the dealer cross sections used by Mr. Herbein in each of the Milk Marketing Areas were the same cross sections used in the most recent cost replacement hearing in each Area and that the cross sections continued to be representative of all dealers doing business in the respective Areas. The Board finds that the cross sections used by Mr. Herbein in developing the eight ounce container costs and the diesel fuel adjustments are representative of milk dealers doing business in the respective Milk Marketing Areas.
8. Gary Gojsovich testified on behalf of Board Staff as an expert in milk accounting. Mr. Gojsovich testified that the data used by Mr. Herbein to calculate the eight ounce plastic container adjustments were identical to the audited data in the Staff's files. Mr. Gojsovich agreed with Mr. Herbein's recommendations regarding the adjustments to resale prices based on the eight ounce plastic container costs. Mr. Gojsovich also testified that only bottle and cap costs should be adjusted each month.
9. Mr. Gojsovich explained some of the market changes that necessitated the hearing. The Staff's monthly plastic container surveys only address changes in the cost of the container and cap; the monthly surveys do not account for changes in other container-related costs such as cardboard trays and shrink wrap. One of the dealers marketing eight ounce plastic containers was using a cardboard base on which they would package several containers in one multi-pack – all of the additional costs for packaging were part of the eight ounce plastic container cost, but were not captured in the monthly surveys. When that dealer lowered or eliminated those additional costs, the plastic container survey did not account for that significant change, causing resale prices that were no longer reflective of the real costs. Mr. Gojsovich also testified that when a new dealer adds the eight ounce plastic container to its line, Board Staff needs a sales history to know how to weight that dealer's sales relative to other dealers in the market. Mr. Gojsovich recommended that the Board require dealers with significant changes to their container cost structures or who add an eight ounce plastic container to their lines to notify the Board of the change. Mr. Gojsovich testified that following a two month period, during which a sales history could be established, and any significant cost changes audited, the new costs would then be incorporated into resale prices.
10. The Board finds that the eight ounce plastic container add-ons calculated by Mr. Herbein should be incorporated into resale prices. The Board also finds that those add-ons should be adjusted monthly pursuant to the methodology currently being used for all plastic containers. In so finding, the Board finds credible and persuasive the testimony of Mr. Herbein and Mr. Gojsovich that there have been changes in the marketing of eight ounce plastic containers in Pennsylvania, and that current resale prices do not account for the real costs in the marketplace.

11. The Board finds that the monthly plastic container cost surveys do not account for all changes in plastic container costs in the market. Therefore, the Board finds that dealers who incur significant changes to their container cost structures should notify the Board of the change. We further find that it is appropriate to adopt Mr. Gojsovich's recommendation that the new costs be incorporated into resale prices following a two month period to allow a sales history to be established and significant cost changes to be audited. In so finding, the Board finds credible and persuasive Mr. Gojsovich's testimony regarding the monthly surveys and the inability of those surveys to account for all significant container-related costs. We also believe that accounting for significant container-related costs in this manner will address the issue raised by Mr. Ritchey regarding potential label changes.
12. The Board finds that dealers who add eight ounce plastic containers to their line should notify the Board. The Board further finds that after a two month period following introduction of the new container to allow a sales history to be established and costs to be audited, the new costs should be incorporated into resale prices. In so finding, the Board finds credible and persuasive the testimony of Mr. Gojsovich and Mr. Herbein to that effect.

Diesel fuel

13. Mr. Herbein recommended that the Board adjust resale prices based on diesel fuel costs on an area-by-area basis, rather than a statewide basis. Mr. Herbein testified that there are significant differences among the Milk Marketing Areas in size and population density. Mr. Herbein noted that with diesel fuel consumption being directly related to miles driven, the more rural Areas require considerably more miles to service customers than the more urban and smaller Areas.
14. Mr. Herbein arrived at area-by-area diesel fuel cost-based adjustments using the same basic methodology used by the Board to calculate the statewide adjustment. To calculate an area specific adjustment, Mr. Herbein used area-specific weighted points delivered and weighted fuel costs for the base period, rather than statewide points delivered and fuel costs. All other aspects of the current statewide methodology remained the same. Mr. Herbein recommended that the area-by-area adjustments be implemented immediately and then updated at the next cost replacement hearing for each Area. Mr. Herbein presented his adjustments in Exhibit D3, which is attached to this order.
15. Mr. Gojsovich concurred with Mr. Herbein's recommendations and methodology for going to an area-by-area adjustment to resale prices based on diesel fuel costs. Mr. Gojsovich also testified that the data used by Mr. Herbein in Exhibit D3 were identical to audited data contained in Board Staff's files.
16. The Board finds that it is appropriate to adjust resale prices based on changes in diesel fuel costs on an area-by-area basis. The Board finds that making the adjustment on an area-by-area basis will more closely reflect the actual conditions in each Milk Marketing Area. In so finding, we find credible and persuasive Mr. Herbein's testimony that there

are differences among the Milk Marketing Areas, primarily in size and population density, that warrant making the adjustment on an area-by-area basis.

17. The Board finds that the area-specific adjustments to resale prices based on diesel fuel costs shall be based on the methodology presented by Mr. Herbein in Exhibit D3. In so finding, the Board finds persuasive and credible the testimony of Mr. Herbein and Mr. Gojsovich that the data are accurate and that the methodology is the same as currently used by the Board to adjust prices on a statewide basis.

CONCLUSIONS OF LAW

1. The July 12, 2006, hearing regarding eight ounce plastic containers and diesel fuel costs 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. The cross sections used are representative of all dealers doing business in the respective Milk Marketing Areas.
4. In adopting the attached order, the Board has 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.
5. The attached order may be amended pursuant to the procedures set out in section 801 of the Law.

PENNSYLVANIA MILK MARKETING BOARD

Boyd E. Wolff, Chairman

Luke F. Brubaker, Member

Barbara A. Grumbine, Consumer Member

Dated: August 2, 2006

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PMMB AREAS 1 -- 6

2006 HALF PINT PLASTIC CONTAINER AND DIESEL FUEL HEARING

CALCULATION OF DELIVERY COST INCREASE BY PMMB AREA CAUSED BY DIESEL FUEL INCREASE

AS OF MAY 2006

USING CALENDAR 2004 AS THE BASE YEAR

Pennsylvania Association of Milk Dealers

Line	Period	Area 1	Area 2	Area 3	Area 4	Area 5	Area 6	Summary
1	2004	181,133,265	85,578,626	111,840,162	213,838,894	256,215,595	100,928,608	949,535,150
2	2004	\$ 1,117,589	\$ 372,434	\$ 651,342	\$ 1,164,928	\$ 2,295,788	\$ 1,115,434	\$ 6,717,515
3	2004	<u>\$ 0.0062</u>	<u>\$ 0.0044</u>	<u>\$ 0.0058</u>	<u>\$ 0.0054</u>	<u>\$ 0.0090</u>	<u>\$ 0.0111</u>	<u>\$ 0.0071</u>
4	2004	\$ 1,9043	\$ 1,9043	\$ 1,9043	\$ 1,9043	\$ 1,9043	\$ 1,9043	\$ 1,9043
5	2004	<u>586,877</u>	<u>195,575</u>	<u>342,037</u>	<u>611,736</u>	<u>1,205,581</u>	<u>585,745</u>	<u>3,527,551</u>
6	May 2006	\$ 2,9916	\$ 2,9916	\$ 2,9916	\$ 2,9916	\$ 2,9916	\$ 2,9916	\$ 2,9916
7	May 2006	<u>\$ 1,755,701</u>	<u>\$ 585,082</u>	<u>\$ 1,023,798</u>	<u>\$ 1,830,069</u>	<u>\$ 3,606,616</u>	<u>\$ 1,752,315</u>	<u>\$ 10,553,022</u>
8	May 2006	\$ 0.0097	\$ 0.0068	\$ 0.0091	\$ 0.0086	\$ 0.0141	\$ 0.0174	\$ 0.0111
9		<u>\$ 0.0035</u>	<u>\$ 0.0024</u>	<u>\$ 0.0033</u>	<u>\$ 0.0032</u>	<u>\$ 0.0051</u>	<u>\$ 0.0063</u>	<u>\$ 0.0040</u>

(A) As established at Cost Replacement Hearings in 2005

(B) Source of Annual Average Diesel Costs: U. S. Department of Energy
<http://toronto.csa.doe.gov/oog/info/wohndj/diesel.asp>

(C) From Exhibit D4