



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-987

Posted: September 17, 2014
Effective October 1, 2014

SMALL DELIVERY COSTS

NOW, this 17th day of September 2014, 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 October 1, 2014.

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. In the wholesale price build up in each Milk Marketing Area, the small delivery cost shall be updated as follows:

Area 1	\$0.2638/quart
Area 2	\$0.2341/quart
Area 3	\$0.2362/quart
Area 4	\$0.2416/quart
Area 5	\$0.2437/quart
Area 6	\$0.2466/quart

b. In the wholesale price build up in each Milk Marketing Area, the average delivery cost shall be updated as follows:

Area 1	\$0.1267/quart
Area 2	\$0.0839/quart
Area 3	\$0.1248/quart
Area 4	\$0.1088/quart
Area 5	\$0.1305/quart
Area 6	\$0.1410/quart

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Lynda J. Bowman, Consumer Member

James A. Van Blarcom, Member

Date: September 17, 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW
SMALL DELIVERY COST HEARING
July 2, 2014

FINDINGS OF FACT

1. On July 2, 2014, the Pennsylvania Milk Marketing Board (“Board”) held a hearing for each milk marketing area to receive testimony and exhibits concerning the small delivery cost and incorporation of the small delivery cost into the minimum wholesale price build up.
2. Notice of the hearing was published at 44 Pennsylvania Bulletin 2603 on April 26, 2014, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1503, dated April 15, 2014.
3. Carl Herbein testified for each of the Area Milk Dealer Associations (“Dealers”) as an expert in cost accounting and milk cost accounting. Mr. Herbein reviewed the cost of making small deliveries in each of the areas. The study was conducted using small delivery routes of the dealers from the cost replacement cross sections in each area. Mr. Herbein opined that the costs associated with small deliveries have increased significantly faster than the average delivery costs experienced by milk dealers. He testified that the increase in cost, when combined with the Board’s methodology for minimum wholesale price development, had significantly contributed to deteriorated profit margin for Pennsylvania’s milk dealers.
4. Dave DeSantis testified on behalf of Board Staff as an expert in milk cost accounting and regulation. Mr. DeSantis testified that one of the goals of the Board’s pricing system is to match the delivered cost of milk with the resale price and that it is far less expensive, on a per unit basis, to deliver thousands of quarts of milk to a customer than to deliver less than a hundred quarts of milk.
5. Mr. DeSantis testified that the Dealers had indicated that there was an urgency to updating the small delivery cost in all Milk Marketing Areas. He testified that Staff was initially consulted about route selections for the Dealers’ route studies but that subsequently routes were chosen by the Dealers. Mr. DeSantis testified that Staff provided some preliminary feedback to the Dealers, but did not agree with all of the route selections and would require more time to review them thoroughly and where necessary to select and study other routes. Despite testifying that Dealer cooperation with the Staff was ongoing relative to the route studies, Mr. Herbein was unable to explain why Staff was not involved with the majority of the route selections.
6. The Board finds that Staff was not involved in any meaningful way with the routes selected for the Dealers’ route studies. We also find, based on the testimony of Mr. DeSantis and Mr. Herbein (as found in the record but not recounted in detail here), that the Staff did not have sufficient time to review and analyze the Dealers’ route studies.

We further find that Staff made all reasonable efforts to review and analyze the Dealers' route studies and, through no fault of the Staff, was unable to.

7. Mr. DeSantis proposed that existing small delivery costs in each of the Areas could be updated based on United States Bureau of Labor Statistics ("BLS") and Board data. Mr. DeSantis first determined that, for all cross-section dealers wage-related costs represent 47.44% of all delivery costs statewide. Mr. DeSantis recommended that the wage-related costs be updated to current by indexing based on the BLS information for Truck Drivers, Grocery Hourly Mean Wage. This statistic includes wages, but not fringe benefits and overtime.
8. Next, Mr. DeSantis's proposal would update the non-wage related small delivery costs. Mr. DeSantis recommended basing this adjustment on the increase in the average delivery cost in each area from the base order to the most current.
9. Mr. DeSantis also recommended that the average delivery cost in the wholesale price buildup for each area be updated to the current average delivery cost. Mr. DeSantis testified that if the small delivery cost is updated without updating the average delivery cost, the difference between them would be greater than it should be.
10. Mr. Herbein reviewed Staff's index-based update to the small delivery costs and agreed that it could work, but with changes to the percentage labor component of small delivery costs and the BLS statistic used to update the percentage labor component.
11. Based on the route studies, Mr. Herbein found that 57% of the small delivery cost relates to labor and related fringe benefits. Mr. Herbein also testified that an analysis of the subset of routes jointly selected by Staff and Dealers showed that 60.5% of small delivery costs related to labor and fringe benefits.
12. Mr. Herbein recommended using an index to update the labor component of the small delivery cost that accounted for, in addition to wages, fringe benefits and overtime. Mr. Herbein recommended using indexes from the Transportation and Material Moving category reflected on Table 1, page 10 of the "Employment Cost Index Historical Listing – Volume III – April 2014."
13. Mr. Herbein agreed that the increase in the average delivery cost was appropriate to use to update the non-wage related small delivery costs. However, Mr. Herbein recommended the use of a statewide average to moderate differences among the areas resulting from slightly different accounting classifications in the dealer cross-sections.
14. Todd Rutter testified on behalf of the Pennsylvania Association of Milk Dealers. Mr. Rutter is the president of Rutter's Dairy ("Rutter's"). Rutter's is a milk processing plant located in York. Mr. Rutter testified that a small delivery is more labor intensive and costly than a large delivery; based on two of Rutter's actual routes, he demonstrated that a small delivery could be four times more labor intensive than a large delivery. Mr. Rutter also testified that his company's labor and benefits package had increased 25%

between 2007 and January 1, 2014; he recommended that any index methodology should index not just wages, but wages and benefits.

15. John Pierce testified on behalf of the Pennsylvania Association of Milk Dealers. Mr. Pierce is a senior manager for Lehigh Valley Dairies and Swiss Dairy, which are owned by Dean Foods Company. Mr. Pierce testified that labor as a component of small delivery costs will be higher than labor as a component of large or average delivery costs. Mr. Pierce testified that Staff's method of calculating the labor percentage would necessarily result in a lower labor calculation because it included larger deliveries which have lower labor components. Mr. Pierce also testified that the labor component should be updated using an index that includes wages and fringe benefits; he testified that at his plants benefits have increased at a faster rate than wages.
16. Joe Carson testified on behalf of the Pennsylvania Association of Milk Dealers. Mr. Carson is the president of United Dairy, which operates a plant in Uniontown. Mr. Carson testified that benefits have increased much more than wages since the last small delivery studies were conducted. Mr. Carson also testified that wages and benefits as a percentage of the small delivery cost is well in excess of 50%; he testified that labor and benefits accounted for over 60% of small delivery costs for the Uniontown plant.
17. The Board finds that the small delivery costs used in each of the current Area price orders do not accurately reflect current conditions and should therefore be updated. In so finding, the Board relies on the persuasive and credible testimony of Mr. DeSantis, Mr. Rutter, Mr. Pierce, Mr. Carson, and Mr. Herbein to that effect.
18. The Board finds that in conjunction with updating the small delivery cost, the average delivery cost in each area should also be updated. In so finding the Board relies on the credible and persuasive testimony of Mr. DeSantis.
19. The Board finds that the Dealer route studies should not form the basis for updating small delivery costs. We do not find the studies persuasive because a thorough review and analysis of the studies was not done by any other party to the hearing. The studies may be perfect, or they may have flaws that would be detected by another party had a review been possible. Since we have no way to confirm the reliability of the route studies, we will not rely on them.
20. The Board finds that small delivery costs should be updated using an indexing method. Mr. DeSantis and Mr. Herbein generally followed the same methodology, but differed in some of the details. We find that the indexing methodology presented at the hearing by Mr. DeSantis and Mr. Herbein will update the small delivery costs appropriately.

Left for the Board to decide are 1. the labor component, as a percentage, to be used in the index; 2. the BLS statistic to use to update the labor component; and 3. how to index the non-labor component.

21. The Board finds that the appropriate labor component to use in the index is 47.44%. In so finding, we rely on the credible and more persuasive testimony of Mr. DeSantis. Notwithstanding the testimony of Mr. Rutter, Mr. Pierce, and Mr. Carson that would tend to corroborate the labor component arrived at by Mr. Herbein, we simply find, based on the entire record and our reluctance to rely on the route studies, that Mr. DeSantis's testimony is more persuasive on this issue.
22. The Board finds that the labor component should be updated using a BLS statistic that takes into account benefits and overtime, in addition to wages. In so finding, we first note that the 47.44% labor component includes wages and benefits. We further rely on the credible and persuasive testimony of Mr. Rutter, Mr. Pierce, and Mr. Carson that the non-wage component of labor costs is significant and significantly higher than it was when the current small delivery costs were calculated. Therefore, we find that the labor component should be indexed using the BLS statistic presented by Mr. Herbein, the Transportation and Material Moving category reflected on Table 1, page 10 of the "Employment Cost Index Historical Listing – Volume III – April 2014."
23. Mr. DeSantis and Mr. Herbein agreed that it would be appropriate to adjust the non-labor component of small delivery costs using the change in average delivery costs since the time the current small delivery costs were established. Mr. DeSantis recommended using area-specific changes to the average delivery costs, while Mr. Herbein recommended using a statewide average. The Board finds that area-specific changes to the average delivery costs should be used to update the non-labor component. In so finding, we find Mr. DeSantis's testimony on this issue more persuasive than Mr. Herbein's.

CONCLUSIONS OF LAW

1. The July 2, 2014, hearing regarding small delivery 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. 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

Luke F. Brubaker, Chairman

Lynda J. Bowman, Consumer Member

James A. Van Blarcom, Member

Date: September 17, 2014

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