



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@pa.gov

Official General
Order No. A-976

Posted: May 2, 2012
Effective: June 1, 2012

AN ORDER ESTABLISHING MULTI-STORE DISCOUNT PROVISIONS IN THE WESTERN MILK MARKETING AREA, AREA NO. 5

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all parts of Milk Marketing Board official general orders inconsistent with this Official General Order No. A-976 are superseded with respect to the Western Milk Marketing Area, known as Milk Marketing Area No. 5. This order will become effective at 12:01 a.m. on June 1, 2012.

SECTION A SCOPE; INCORPORATION

- (a) This official general order governs multi-store discounts in Area No. 5.
- (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 DEFINITIONS

The following words and terms have the meanings set forth in this section unless the context clearly indicates otherwise:

Dealer – As defined in Section 103 of the Law (definition of “‘milk dealer’ or ‘handler’”).

Full Service Delivery – Delivery of Class I or II price-controlled packaged products to an individual stop, in connection with which the seller provides one or more of the following services: stocking cases with the delivered products, pricing the delivered products, rotating stock, and removing leakers and defective products.

Law – The Pennsylvania Milk Marketing Law (31 P. S. §§700j-101 – 700j-1204).

Limited Service Delivery – Delivery of Class I or II price-controlled packaged products to one specified point, including the cooler, used normally for the receiving of food products, with the purchaser being responsible for any further handling of the products and the seller providing none of the services associated with full service delivery.

Multi-Store Group - Three or more stores that satisfy the requirements in Section C, Provision 1.

Price-Controlled Packaged Products – All packaged Class I and Class II milk products listed on Pennsylvania Milk Marketing Area price sheets (Schedules I & II) issued by the Board, when these products are sold in Pennsylvania.

Primary Supplier – A milk dealer making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group for a price that may be discounted under Section C, Provisions 1 and 3, based on the volume of sales by that milk dealer to the multi-store group.

Secondary Supplier – A milk dealer making a wholesale sale of Class I or II price-controlled packaged products to one or more stores within a multi-store group for a price that may be discounted under Section C, Provisions 1 and 3, based on the volume of sales by the primary supplier to the multi-store group.

Subdealer – As defined in Section 103 of the Law.

Weekly Average Delivery – The total number of quarts of Class I or II price-controlled packaged products, net of returns of defective products, delivered to or picked up by the purchaser at an individual stop for resale in the original package, divided by the number of actual deliveries of price-controlled packaged products made from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday.

Wholesale Sale – The sale of Class I or II price-controlled packaged products by a person other than a producer to a person other than a consumer.

SECTION C MULTI-STORE DISCOUNTS

PROVISION 1 - MULTI-STORE DISCOUNT: QUALIFICATION, PRIMARY SUPPLIER

(a) Multi-Store Group Membership: Three or more stores, no matter where located, may form a multi-store group to which multi-store discounts hereunder may be granted by milk dealers only, provided all of the following are satisfied:

- (1) The stores are owned by the same person or persons, or are operated under franchises granted by the same franchiser, or purchase Class I or II price-controlled packaged products through arrangements with a common purchasing agent;
- (2) All invoices for Class I or II price-controlled packaged products purchased by the stores are received, processed, and paid by the common owner, franchiser, or common purchasing agent;
- (3) Payment for all Class I or II price-controlled packaged products purchased under a multi-store discount is guaranteed by the common owner, franchiser, or common purchasing agent;

(4) A milk dealer seeking to serve as the primary supplier files with the Board a sworn statement listing the name and address of each store in the multi-store group and the estimated weekly average aggregate volume of purchases of Class I or II price-controlled packaged products by all stores in the multi-store group. The primary supplier shall give notice to the Board when adding or removing stores from the multi-store group or when there are volume changes that affect any discount eligibility for the group or a store within the group. The multi-store group may file the information required by this paragraph if the primary dealer fails to do so.

(b) Qualified Store is a store within a multi-store group that receives a weekly average delivery (as calculated pursuant to Section B herein) of at least 200 quarts of Class I or Class II price-controlled packaged products.

(c) A milk dealer making a limited service sale of Class I or II price-controlled packaged products to a multi-store group whose total weekly volume exceeds 30,000 quarts may reduce the prices set forth in Schedule I for all qualified stores within the group by:

- (1) 4 percent if the weekly average aggregate delivery of Class I and II price-controlled packaged products to all qualified stores within the group is at least 400 quarts;
- (2) 7 percent if the weekly average aggregate delivery of Class I and II price-controlled packaged products to all qualified stores within the group is at least 700 quarts.

(d) A milk dealer making a limited service sale of Class I or II price-controlled packaged products to a multi-store group whose total weekly volume exceeds 100,000 quarts may reduce the prices set forth in Schedule I for all qualified stores by 10% if the weekly average aggregate delivery to all qualified stores in the group is at least 1,400 quarts.

(e) The weekly average aggregate delivery shall be determined by dividing the total number of quarts of Class I or II price-controlled packaged products delivered to all qualified stores in the multi-store group by the primary supplier, net of returns of defective products, by the number of actual deliveries of those same Class I or II price-controlled packaged-products to all qualified stores within the multi-store group by the primary supplier between 12:01 a.m. on Monday to 12:00 midnight on the following Sunday.

(f) The total weekly volume for the multi-store group as a whole shall be the total number of quarts of Class I and Class II price-controlled packaged products, net of returns of defective products, delivered from 12:01 a.m. on Monday to 12:00 midnight on the following Sunday to all stores within the group.

(g) Volumes by any other dealer serving as a secondary supplier shall not be used to compute the discounts a primary supplier may offer a multi-store group, except as provided in Provision 2(b).

(h) The multi-store discounts available to a member of a multi-store group formed pursuant to this Provision 1 that is outside this marketing area shall be determined by the multi-

store delivery discounts available under the Official General Order governing the location in which the store's milk is located when it leaves the selling dealer's control.

PROVISION 2 - MULTI-STORE GROUP: SECONDARY SUPPLIER

(a) One or more milk dealers may serve as a secondary supplier making a wholesale sale of Class I or II price-controlled packaged products to a store that is a member of a multi-store group and may reduce the prices set forth in Schedule I by the same percentage that the primary supplier is permitted to reduce its prices.

(b) A secondary supplier selling Class I or II price-controlled packaged products to a member of a multi-store group must comply with all requirements set forth in this Order that apply to the primary supplier, except for the payment and guarantee requirements in Provisions 1(a)(2) and 1(a)(3) and the volume requirements in Provisions 1(c) and 1(d) which must be satisfied by the primary supplier; provided however, the required weekly average delivery of 200 quarts for a member store may be received from either the primary supplier or the secondary supplier to be eligible for the discounts in Provisions 1(c) and 1(d). Purchases from the primary supplier and secondary supplier cannot be combined to meet a particular volume requirement.

(c) When a store is eligible to be a member of a multi-store group, but the store has not received Class I or II products from the primary supplier from 12:01 a.m. on Monday to midnight on the following Sunday, one or more secondary suppliers may give the same delivery discounts to such store as the primary supplier gives to the group pursuant to Provisions 1(c) and 1(d) as long as the store receives a weekly average delivery of 200 quarts from one of the secondary suppliers and the primary supplier has otherwise satisfied the requirements to offer the delivery discounts.

(d) A secondary supplier may file with the Board a sworn statement listing the name and address of each store in the multi-store group that is not being served by a primary supplier, or where a secondary supplier supplies the majority of price-controlled packaged product to a particular store within the multi-store group, along with the estimated weekly average volume of purchases of Class I and II price-controlled packaged products by those stores. The secondary supplier shall give notice to the Board when adding or removing stores from the multi-store group or when there are volume changes that affect any discount eligibility. The multi-store group may file the information required by this paragraph if the primary or secondary supplier fails to do so.

PROVISION 3 - MULTI-STORE DISCOUNT: ADDITIONAL DISCOUNT

(a) A primary supplier or a secondary supplier or both making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group on a limited service basis may reduce the prices set forth in Schedule I to all in-area stores in the multi-store group, regardless of an individual store's ability to qualify for discounts in Provision 1, by an additional 2 percent of the total amount due (after application of any discounts set forth in Provision 1 where applicable) if the primary supplier's weekly total deliveries of Class I or II price-controlled packaged products to all stores within the multi-store group are at least 30,000 quarts.

(b) The weekly total deliveries of Class I or II price-controlled packaged products to the multi-store group shall be determined by adding the total number of quarts of Class I or II price-controlled packaged products delivered to each member of the multi-store group, net of returns of defective products, between 12:01 a.m. on Monday and 12 midnight on the following Sunday.

(c) The additional discount permitted by this Provision may be given to the common owner, franchiser, or purchasing agent only and not to the individual store members of the multi-store group. A common owner, franchiser, or purchasing agent that accepts the additional discount permitted under this Provision guarantees payment to the primary supplier or the secondary supplier or both for all price-controlled products delivered to member stores.

**SECTION D
SEVERABILITY**

If any section, provision, subsection, paragraph, or clause of this order is determined to be unconstitutional or otherwise contrary to law, the remainder of the order shall be given effect as though that section, provision, subsection, paragraph, or clause has not been included.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: May 2, 2012

IF YOU REQUIRE THIS INFORMATION IN AN ALTERNATE FORMAT, PLEASE CALL 717-787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS).

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AREA 5 MULTI-STORE DISCOUNT PROVISIONS
FEBRUARY 1, 2012

FINDINGS OF FACT

1. On February 1, 2012, the Pennsylvania Milk Marketing Board (“Board”) convened a hearing to receive testimony and exhibits concerning multi-store discount provisions in Milk Marketing Area No. 5.
2. Notice of the hearing was published at 41 Pennsylvania Bulletin 4513 on August 13, 2011, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1477, dated August 3, 2011.
3. Carl Herbein testified as an expert in milk cost accounting and cost accounting on behalf of the Western Dairy Industry Association. Mr. Herbein reviewed the multi-store discount provisions contained in Official General Order (“OGO”) A-954 and interviewed the cross-section dealers that have multi-store customers to determine current market conditions. Mr. Herbein testified that, based on his review and the interviews, that retail store operations had experienced changes in service levels and the volume of controlled product sales since the adoption of OGO A-954.
4. Mr. Herbein testified that, due to reductions in controlled product sales in Area 5, the per-store multi-store discount provisions were no longer practical. He testified that the reduction in sales made it difficult to monitor compliance with the per-store delivery requirement and also caused some stores in multi-store groups to lose their discount eligibility more rapidly.
5. Mr. Herbein also testified that the per-store requirement was not consistent with the original intent of multi-store discount provisions. He testified that an aggregate delivery requirement was more appropriate given some of the justifications for multi-store discounts, which include encouraging volume, stability, and efficiency through groups.
6. Mr. Herbein also proposed that the additional 2% discount should include deliveries to all in-area stores regardless of the volume delivered to any particular individual store. He testified that such a provision was cost-justified because the multi-store groups bring volume to processing plants on a consistent and determinable basis, resulting in efficiencies in the plant and the delivery system and further providing a guarantee of milk receivables. Mr. Herbein testified that expanding the availability of the 2% discount would not result in a significant expansion of the discount as the number of stores affected would be minimal.
7. The proposal would also allow stores with delivery volumes of less than 200 quarts, regardless of where located, to be counted toward a multi-store group’s total weekly volume requirement, but would limit the delivery discounts to stores with at least a 200

quart average weekly delivery. Mr. Herbein testified that this change made practical sense for multi-store customers and was consistent with the goal of encouraging efficiencies that come with multi-store groups. Mr. Herbein testified that central billing entities incur costs associated with the less than 200 quart stores and that dealers save costs for billing related to those stores, and that the change was thus cost-justified.

8. Additional modifications were proposed by Mr. Herbein to the multi-store discount provisions. These additional modifications were made in consultation with Board Staff to clarify existing enforcement policy and/or to reflect existing industry practices in Area 5. Board Staff did not oppose any of the additional modifications nor did Board Staff or any other interested party oppose any of the proposals offered by Mr. Herbein.
9. Jed Davis testified on behalf of Dean Foods and the Western Dairy Industry Association. Mr. Davis is the General Manager of Dean Dairy Products in Sharpsville, Pennsylvania, and Meadow Brook Dairy in Erie, Pennsylvania. Mr. Davis testified that there are significant benefits in dealing with multi-store groups, including providing volume to the plants, reducing complexity, and improving efficiencies. He testified that keeping multi-store groups together helps stabilize volume in the plants, helps improve decision-making with regard to capital investments, and reduces disruptions to routes, all of which lead to improved operating efficiency.
10. Mr. Davis testified that using the weekly average aggregate delivery of all of the qualified stores in a group to calculate the discount available, rather than the weekly average delivery for each individual store, would allow the bulk of the stores in a group to qualify for the same discount, thus reducing the administrative burden of managing multiple pricing levels and benefitting both the dealer and the customer.
11. Mr. Davis agreed with Mr. Herbein that allowing deliveries to all stores in a group to qualify for the 2% additional discount would strengthen multi-store groups and help provide volume to plants, maintain routing consistency, and help control costs.
12. David DeSantis testified on behalf of Board Staff as an expert in milk accounting and enforcement of the Milk Marketing Law. Mr. DeSantis testified that Board Staff did not oppose any of the changes proposed by the Western Dairy Industry Association. The purpose of Mr. DeSantis's testimony was to highlight for the Board several aspects of the proposal.
13. Mr. DeSantis testified that that the proposal does not specifically say that subdealers cannot grant multi-store discounts and suggested that if the intent is to exclude subdealers from granting multi-store discounts that specific language be added to that effect. The Board finds that the proposed language is clear regarding subdealers' inability to grant multi-store discounts. Both primary suppliers and secondary suppliers are defined as being "dealers;" they are not defined as being "licensees," "persons," "entities," or in any other manner that could be read to include "subdealers." Therefore, the Board finds that no additional language needs to be added to the order regarding subdealers.

14. Mr. DeSantis testified that Board Staff intended, “as an enforcement matter, to require the common owner, franchiser, or purchasing agent to agree in writing to the applicable requirements in the order.” The Board finds that this is not necessary. Regardless whether any person agrees in writing to the requirements of any order, all persons are required to adhere to the applicable requirements of Board orders. If a person violates any of the provisions or requirements of a Board order, enforcement action may be taken whether or not that person has agreed in writing to the requirements of the order.

15. Based on the credible and persuasive testimony of Mr. Herbein and Mr. Davis, the Board finds that the multi-store discount provisions proposed by the Western Dairy Industry Association should be adopted. The Board finds that conditions have changed in Area 5 since the adoption of OGO A-954 and that those changes warrant changing the multi-store discount provisions as proposed by the Western Dairy Industry Association. The Board finds that the changes will help to promote the benefits of multi-store groups for dealers, retailers, and consumers.

CONCLUSIONS OF LAW

1. The February 12, 2012, hearing to consider multi-store discount provisions for Milk Marketing Area No. 5 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. 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

Luke F. Brubaker, Chairman

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: May 2, 2012

IF YOU REQUIRE THIS INFORMATION IN AN ALTERNATE FORMAT, PLEASE CALL (717) 787-4194 OR 1-800-654-5984 (PA RELAY SERVICE FOR TDD USERS).