



Commonwealth of Pennsylvania
Milk Marketing Board
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Official General
Order No. A-975

Posted:
Effective

March 12, 2012
March 19, 2012

SERVICE CONTRACTS

NOW, this 12th day of March 2012, 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 March 19, 2012.

SECTION A

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

Provision 1 – A milk dealer intending to perform manufacturing, processing, bottling, or delivery services for another milk dealer, pursuant to a service contract, shall submit an application for approval to the Board at least seven Commonwealth business days prior to the effective date of the service contract

If the application is complete and indicates compliance with the Milk Marketing Law and the regulations and orders of the Board, based upon information available to Board Staff, the Board Secretary may approve the service contract pending audit and a decision by the Board pursuant to Section B, Provision 3.

Provision 2 – An application for approval of a service contract shall include:

- a. a copy of the service contract;
- b. a schedule of cost center and operating ledger accounts as described in 7 Pa. Code §149.43 for the dealer performing the manufacturing, processing, bottling, and delivery services. This schedule shall be prepared for the most recent month available and shall state the number of points for each cost center and operating ledger account during the period including, at the option of the dealer, a separate accounting for milk volumes and expenses anticipated under the service contract, and shall correspond to the most recently submitted Form PMMB-60;

- c. a detailed description of the services to be provided pursuant to the service contract;
- d. a detailed description of the prices by cost center to be paid pursuant to the service contract, set forth by product, container size, and unit price;
- e. a statement of the average weekly volume of milk, in quarts, to be handled by each location pursuant to the service contract;
- f. a statement of the source of raw milk to be handled pursuant to the service contract; and
- g. a statement identifying the party responsible for paying for the raw milk, furnishing any required bond, and making any required payments to the Milk Producers' Security Fund.

Provision 3 – The Board shall approve or disapprove a service contract within 90 days of the submission of a complete application unless a party to the service contract has failed to cooperate with Board Staff in the conduct of such audits or investigations deemed necessary to determine compliance with the Milk Marketing Law or this Official General Order. The Board may conduct a hearing prior to disapproving an application for approval of a service contract. The Board shall assign a service contract number to all service contracts submitted for approval.

Provision 4 – A service contract shall be approved unless any of the following occur:

- a. either party to the service contract does not hold or is not granted a milk dealer's license;
- b. the prices to be paid for the manufacturing, processing, bottling, or delivery services are less than the cost of the services provided. Costs shall be based upon average per unit cost of the services provided at the plant providing services, as determined in accordance with generally accepted accounting principles and adjusted for significant changes in average per unit cost. In determining the cost of the services provided, the costs of raw milk to all dealers and handlers shall be computed at not less than the minimum prices to producers as determined in accordance with the Milk Marketing Law or Federal law which prices shall also be paid to producers; or
- c. the total volume of milk handled pursuant to the service contract does not average at least 100,000 quarts per week and 1,500 quarts per delivery per location.

SECTION C

An existing service contract not previously approved by the Board shall be deemed approved, irrespective of any other provision of this Official General Order, provided:

- a. all parties to the service contract hold milk dealer's licenses issued by the Board; and
- b. a copy of the service contract and proof of its existence prior to February 1, 1993, were submitted to the Board on or before April 4, 1993.

SECTION D

Provision 1 – A milk dealer providing services pursuant to a service contract shall submit separate invoices for milk and finished products sold pursuant to a service contract to the purchaser at least weekly. Each invoice shall set forth:

- a. the dates of delivery;
- b. the names and addresses of the purchaser and the dealer providing the service;
- c. the service contract number assigned by the Board; and
- d. the quantity, product, container size, type, number of units, and unit price, detailed as to processing, packaging, delivery, and raw product costs of each finished product handled pursuant to the service contract.

Provision 2 – The Board may periodically audit each approved service contract. If, as a result of any such audit, it is determined that services are being provided for less than cost, the parties shall be given 30 days to adjust such prices. If the parties fail to adjust any prices that are determined to be below cost, within such 30 day period, the Board may revoke its approval of the service contract.

Provision 3 – Dealers providing services pursuant to a service contract shall provide annually, with their milk dealer's financial statement, a current price list for each service contract. Each price list shall note the service contract number assigned by the Board and shall set forth the prices detailed as to processing, packaging, delivery, and raw milk charges and the period during which the prices were applicable.

SECTION E

Where a milk dealer is purchasing services from another milk dealer pursuant to a Board-approved service contract which satisfies the volume requirements of Section B, Provision 4c, another milk dealer may provide services to the purchasing milk dealer without

regard to the volume requirements of Section B, Provision 4c. All other provisions of the Milk Marketing Law and this Official General Order shall apply to any such service contract.

SECTION F

This Official General Order supersedes Official General Order A-875.

PENNSYLVANIA MILK MARKETING BOARD

Luke F. Brubaker, Chairman

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: March 12, 2012

FINDINGS OF FACT AND CONCLUSIONS OF LAW
SERVICE CONTRACTS HEARING
FEBRUARY 1, 2012

FINDINGS OF FACT

1. On February 1, 2012, the Pennsylvania Milk Marketing Board (“Board”) convened a hearing for all milk marketing areas to receive testimony and evidence concerning whether to remove the service contract initial fee and renewal fee from Official General Order A-875.
2. Notice of the hearing was published at 41 Pennsylvania Bulletin 5606 on October 15, 2011, and was mailed to those who have requested mailed notice of Board hearings by means of Bulletin No. 1480, dated October 6, 2011.
3. David DeSantis testified on behalf of Board Staff as an expert in milk accounting. Mr. DeSantis is the Board’s Chief of Enforcement and Accounting. He testified that the service contract initial application and renewal fees found in Official General Order A-875 were originally intended to cover the costs of auditing to ensure that the prices charged in service contracts were at least the dealers’ costs.
4. Mr. DeSantis testified that all of the dealers with service contracts are now included in cost-replacement hearing cross sections. Therefore, regardless whether a dealer has a service contract in effect, Board Staff is performing the audits necessary to ascertain whether the dealer’s prices are in compliance with Official General Order A-875 and the Milk Marketing Law. Mr. DeSantis therefore recommended that the initial application and renewal fees be eliminated from Official General Order A-875. Mr. DeSantis also recommended that no other changes be made to Official General Order A-875.
5. Based on Mr. DeSantis’s credible, persuasive, and uncontradicted testimony, the Board finds that the initial application and renewal fees should be eliminated from Official General Order A-875. The Board further finds that no other substantive changes should be made to Official General Order A-875.

CONCLUSIONS OF LAW

1. The February 1, 2012, hearing regarding the initial application and renewal fees found in Official General Order A-875 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

Richard Kriebel, Member

Lynda J. Bowman, Consumer Member

Date: March 12, 2012

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