

**CHAPTER 146. TRANSACTIONS BETWEEN
DEALERS AND CUSTOMERS****REFRIGERATION EQUIPMENT**

- Sec.
146.1. Applicability.
146.2. Gifts of refrigeration equipment.
146.3. Leasing agreements.
146.4. Sale of equipment.
146.5. Exceptions for certain schools regarding refrigeration equipment.
146.6. Maintenance of equipment.
146.7. Identification of ownership of equipment.
146.8. Unfair pricing.
146.9. Financing.

DEALER INDUCEMENTS

- 146.21. Giveaways.
146.22. Sampling prospective retail customers and established retail customers.
146.23. Gifts to established retail customers.
146.24. Samples or gifts to wholesale customers.
146.25. Extension of credit to wholesale customers.

Authority

The provisions of this Chapter 146 issued under section 307 of the Milk Marketing Law (31 P. S. § 700j-307), unless otherwise noted.

Source

The provisions of this Chapter 146 adopted June 6, 2008, effective September 5, 2008, 38 Pa.B. 2654, unless otherwise noted.

REFRIGERATION EQUIPMENT**§ 146.1. Applicability.**

(a) Dealers and subdealers purchasing refrigeration equipment directly for use by, or sale to, or lease or rental to their wholesale customers are governed by this chapter.

(b) Dealers and subdealers providing refrigeration equipment to their wholesale customers in conjunction with, or through, or in coordination with, a third party refrigeration equipment manufacturer or supplier are deemed to be supplying the refrigeration equipment directly and are governed by this chapter.

(c) A manufacturer or seller of refrigeration equipment may not sell, deliver, arrange for delivery, or in any way handle, as defined by the act, milk within this Commonwealth without a dealer or subdealer license.

(d) This chapter does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent

the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

Cross References

This section cited in 7 Pa. Code § 147.12 (relating to contracts for sale or lease of refrigeration equipment).

§ 146.2. Gifts of refrigeration equipment.

(a) A dealer or subdealer may not give or lend refrigeration equipment or milk or cream dispensers of any type to customers for storing or dispensing milk or cream.

(b) Nothing in subsection (a) prohibits a dealer or subdealer from selling or leasing any of the described equipment to a wholesale customer.

§ 146.3. Leasing agreements.

(a) Whenever a dealer or subdealer leases refrigeration equipment, or milk or cream dispensers or similar facilities to a wholesale customer, the lease agreement must be reduced to writing and provide for a payment of at least the minimum price established by the Board plus an additional charge of at least \$0.0025 per quart equivalent for every unit of controlled products sold to that wholesale customer at the site at which the equipment is used.

(b) The agreement must contain a complete description of the equipment with respect to type, style, model and serial number, manufacturer and year of manufacture.

§ 146.4. Sale of equipment.

(a) Whenever refrigeration equipment, or milk or cream dispensers, or similar facilities are sold to stores or other wholesale customers, the agreement of sale must be reduced to writing and contain the following:

(1) A complete description of the equipment with respect to type, style, model and serial number, manufacturer and year of manufacture.

(2) An itemized record of the actual cost of new equipment to the dealer, or the value of used equipment as determined in accordance with subsection (c), at the time it was placed at the customer's location, including handling, installation, freight, tax if applicable and interest.

(3) A provision that title to the refrigeration equipment, or milk or cream dispensers, or similar facilities does not pass until the last payment has been made under the agreement.

(b) Equipment may be purchased outright by payment in full at or before the time of installation or by payment of an additional charge per quart equivalent purchased until the full purchase price has been made. If payment is to be made by means of an additional charge per quart equivalent, each agreement must pro-

vide for a payment of at least the minimum price posted by the Board plus an additional charge of at least \$0.01 per quart equivalent for every unit of controlled products sold to that wholesale customer at the site at which the equipment is used. When the cumulative sum of the additional charges is equal to the itemized cost or value established in subsection (a)(2), the dealer may eliminate the additional charge. At that time, ownership of the equipment may be transferred to the customer.

(c) Used equipment may be sold to a wholesale customer at a price determined by adjusting its original cost to the dealer for annual straight line depreciation at a rate of 8-1/3% per annum plus all ancillary costs.

(d) A dealer or subdealer selling equipment under an agreement providing for payment by means of an additional charge per unit shall maintain the following records for review by the Board for the time period specified in § 147.9 (relating to equipment records):

(1) A complete list of all wholesale customers purchasing equipment pursuant to this provision, showing the location of each piece of equipment and the date the equipment was placed at that location.

(2) A record of the number of quart equivalents of price-controlled packaged products sold to each customer in this program along with the cumulative sum of the additional charges since the equipment was placed at the customer's location.

§ 146.5. Exceptions for certain schools regarding refrigeration equipment.

Dealers or subdealers installing refrigeration equipment, including milk vending machines, dispensers and milkshake dispensers in schools which are approved for the school milk program and which are eligible for reimbursement, in whole or in part, for the amortization of the equipment need not execute and submit to the Board a formal lease or contract of sale if the dealer submits to the Board a sworn statement setting forth the type, style, model and serial number, manufacturer, year of manufacture, cost of the equipment to the dealer plus handling, installation, tax and freight charges, and date of installation, together with the method of amortization.

§ 146.6. Maintenance of equipment.

(a) Maintenance of equipment when it is leased to the customer may be the responsibility of the lessor. When maintenance is performed by the lessee, no charge may be made to the lessor dealer for maintenance.

(b) Maintenance of equipment, whenever it is sold either by lump sum payment or on a time payment sales basis, shall be the responsibility of the purchaser.

§ 146.7. Identification of ownership of equipment.

Dealers or subdealers leasing equipment to customers shall identify the equipment as the property of the dealer by painting, decal or metal plate affixed to the equipment. Identification shall be placed on all equipment in place by October 6, 2008. New identifications shall be so identified not later than 15 days after installation. Dealers or subdealers shall replace mutilated or missing identification within 15 days after either observing the requirement or being notified by the Board of the requirement.

§ 146.8. Unfair pricing.

(a) Sale of equipment by a dealer or subdealer to a wholesale customer at a price less than the brand or retail list price or fair market value of the equipment when there is no list price, is prohibited.

(b) When purchasing any equipment or property from a wholesale customer or prospective wholesale customer, a dealer or subdealer may not pay the customer a price in excess of the fair market value of the equipment or property at the time for the transfer to the milk dealer.

§ 146.9. Financing.

Milk dealers and their affiliates, subsidiaries or representatives thereof may not provide financial accommodations for a wholesale customer by lending money to the customer, or by paying or guaranteeing the payment of any obligation of the customer, or by acting as a cosigner on a promissory note or other obligation of the customer, or by depositing money or collateral with a third party, person or organization which will lend money or extend credit to the customer. This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

DEALER INDUCEMENTS**§ 146.21. Giveaways.**

Milk dealers and their affiliates, subsidiaries or representatives thereof may not give or lend any milk, milk products, money, article, prize, award or any other item to a customer or a prospective customer, as an inducement for the purpose of soliciting or securing business. This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

§ 146.22. Sampling prospective retail customers and established retail customers.

The practice of providing free samples to prospective retail customers or to established retail customers may not be permitted. This section does not apply to on-the-premises consumption in stores or restaurants.

§ 146.23. Gifts to established retail customers.

(a) Dealers may distribute to any of their established retail customers, but not to prospective retail customers, free of charge, in any one calendar year, any gift including milk, milk products, or other item, if the cost to the dealer of the gift does not exceed the sum of 60¢.

(1) Dealers may provide utilitarian gifts to any of their established retail customers who have purchased milk for at least 60 days prior to the birth of a child.

(2) The cost to the dealer of the gift may not exceed \$2.

(3) The gift must have particular and exclusive relationship to the care of newborn children.

(4) A dealer is limited to one gift for each child.

(b) The word “gift” may not be construed to prohibit a dealer from lending a porch box to an established retail customer provided the box is imprinted with the name of the dealer and the unit cost to the dealer does not exceed \$5.

§ 146.24. Samples or gifts to wholesale customers.

(a) Samples of a product may not be given to a wholesale customer or prospective wholesale customer by or on behalf of a milk dealer.

(b) Gifts of any value may not be given by a dealer to a wholesale customer or to a purchasing agent, contracting officer or other person or organization whose position, rank or other means of influence, enables him to select or to influence the selection of milk vendors.

§ 146.25. Extension of credit to wholesale customers.

(a) Extension of credit to a wholesale customer, excluding a hospital, school or government agency, beyond 30 days from the date of invoice is prohibited.

(1) The invoice from dealers to customers must be rendered at least monthly.

(2) If a customer fails to pay an invoice within 30 days, the dealer shall place that customer on a cash basis.

(b) For the purpose of this section, cash payment basis may, at the option of the dealer, be interpreted to mean weekly payments for the delivery of the past weeks plus at least 4% of the past due account to be received by the dealer, on a regular and continuing weekly basis until the customer has reduced the past due balance below the maximum 30-day credit limitation. A dealer who has placed a

customer on a cash payment basis under this section may, with approval of the Board, require the customer to execute a promissory note in favor of the dealer, or to grant the dealer a lien on assets of the customer, or to otherwise secure payment of the past due balance to the dealer. The dealer shall immediately notify the Board of the full details of an action taken to secure the payment of a past due balance under this section.

(c) This section does not apply to transactions between grocery wholesalers and their subsidiaries, affiliates, franchisees or wholesale customers to the extent the transactions occur in the normal course of the grocery wholesaler's business and are only incidentally related to acquisition or retention of the fluid milk business of the subsidiary, affiliate, franchisee or wholesale customer.

[Next page is 147-1.]