



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 25, 2022

Robert N. Barley, Chair
Pennsylvania Milk Marketing Board
2301 North Cameron Street, Room 110
Harrisburg PA 17110

**Re: Over-Order Premium Hearing, March 2, 2022
Pennsylvania Association of Milk Dealers' Motion to Strike Testimony**

Dear Chairman Barley and Members of the Board:

The Pennsylvania Department of Agriculture opposes the Motion to Strike filed by the Pennsylvania Association of Milk Dealers (PAMD) in its entirety.

Pursuant to the Board's regulations at 7 Pa. Code § 141.2, proceedings before the Board are governed by the General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II. The Board has the authority to "rule on the admissibility of evidence . . . so as to confine it to the issues in the proceeding." 1 Pa. Code § 35.162. In proceedings before the Board, all "relevant and material evidence shall be admissible" as long as it is not repetitious or cumulative. Furthermore, the Commonwealth's Administrative Law Practice and Procedure law provides that "Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received." 2 Pa.C.S. § 505.

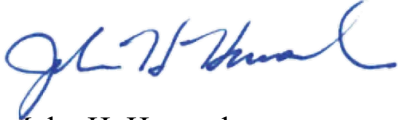
This is a very broad standard, and the Board has considerable discretion to allow any evidence that it believes will be helpful in making a decision. Historically, the Board has been very liberal in allowing evidence and testimony from various parties in over-order premium hearings. We believe the testimony of Deputy Secretary Hostetter, as well as that of Mr. Painter and Mr. Wood, are well within the scope of admissible evidence for this proceeding.

As the Board knows, the OOP does not automatically renew every 6 months, but requires a hearing to determine whether it should continue and if so, at what level and for what duration. The fact that a party has petitioned for a hearing and that the Board has granted the petition, does not, by itself, determine that the OOP should continue at any level or duration. Implicit in the stated purpose for the hearing to "receive testimony and exhibits concerning the level and duration of the Class I over-order premium" is that a level of \$0.00 for any duration is *always* within the scope of the hearing. The Board needs to receive competent evidence at the hearing in order to establish *any* level of premium, and a \$0.00 is always on the table.

Furthermore, any party advocating for a discontinuation or for a level of \$0.00 is entitled to present its reasons and evidence in support of its position, including that the current OOP charges consumers too much in relation to the amount returned to dairy farmers, that it may lower the amount of PA producer milk that ends up in the PA Class I market, or that it treats different producer groups unfairly to mention just a few. The proposed testimony of Mr. Hostetter, Mr. Painter and Mr. Wood clearly falls within this scope. Significantly, no party has, at this point, advocated for any specific change in the distribution, and all have acknowledged in their testimony that such changes would require additional consideration by the Board and may involve legislative changes.

Therefore, we ask the Board to deny the PAMD's Motion to Strike, and allow all proposed testimony to be presented at the hearing, and to give that testimony the weight that the Board believes is appropriate.

Sincerely,



John H. Howard
Chief Counsel
Pennsylvania Department of Agriculture