

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Milk Marketing Board

MINUTES

SUNSHINE MEETING

June 1, 2022

1:12 P.M.

Room 202 - Ag Building - Harrisburg, PA

Call in: 267-332-8737 - ID: 145 971 73#

1. CALL OF MEETING TO ORDER/ROLL CALL:

Chairman Rob Barley called the regular Sunshine Meeting of the Pennsylvania Milk Marketing Board to order at 1:12 P.M. in Room 202, which he opened with the pledge of Allegiance, and a moment of reflection.

Steven Zalman called the roll. Those in attendance and constituting a quorum were:

Board Members:

Present: Chairman Robert Barley, Consumer Member Kristi Kassimer,
Member James Van Blarcom

Absent: None

2. ACCEPTANCE OF MINUTES:

A. Acceptance of Minutes of the May 4, 2022 Sunshine Meeting.

PRESENTED by: Chairman Barley

MOTION by: Member Van Blarcom

Moved to accept the meeting minutes for the May 4, 2022 Sunshine Meeting. *Note:* Minutes were prepared and distributed to the Board members for their review prior to the June 1, 2022 Sunshine Meeting). **Seconded by Consumer Member Kassimer. Motion carried without dissent.**

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

3. PUBLIC INPUT (PERTAINING TO GENERAL ISSUES:

N/A

4. OLD BUSINESS:

N/A

5. NEW BUSINESS:

1. PDA Petition for PMMB Hearing Re Over-Order Premium Alternatives

PRESENTED by: Chairman Barley

DISCUSSION: Attorney Howard spoke on behalf of PDA Secretary Redding, stated that based on previous hearings held there are some concerns about the current Over-Order Premium, and the issues were identified at that time. Particularly the fact that we know that there is a lot of milk sold at retail that is not purchased from PA dealers. That carries a retail price which carries an Over-Order Premium built into the price, but there is no obligation for that to go back to Pa. producers. We know that there is different farmers who get different levels of premiums based upon where they ship their milk, yet they all have same cost expenses. The Boards own information shows that independent producers get 4 or 5 times more of a premium, than cooperative producers. PDA believes that system is broken and needs to be fixed. He mentioned that Secretary Redding uses the term to ‘reset’ and look at what other options there might be. There is no magic wand, and we don’t have all the answers, but would like to explore what those options might be. That is the reason for making the petition. Specifically asked for these issues to be addressed, prior to any consideration of level in duration of the present order, which is set to expire on September 30. We ask the Board to consider this petition. We are not opposed to an initial workshop to focus on the issues, but don’t want something that will be prolonged. It needs to be addressed sooner rather than later. It may take more than one day of hearing, a workshop would be a prelude to a hearing, but the information should be on record, as to what can be done or not, and if there are legislature changes needed, it can be pursued. We think the Board does have a role to protect the consumers as well as there is a Consumer Member on the Board. Presently, consumers are paying a portion of the retail price which they assume that goes back to the farmer when we know some portion doesn’t. The Dept is in process of having a survey conducted by the Temple Fox School of Business, to do a study about retail sales to see what they are in PA, to the extent that is allowed. It is helpful to have a third party conduct the study as it adds to the credibility of itself. Hopefully that will be part of any information we provide during a hearing.

Chairman Barley asked if there is any time table on that. **Attorney Howard** stated that originally, they were asked to have something in July, but didn’t know if that is doable or not.

Mr. Jay Howes stated that he received a message from Attorney Beshore that folks attending the meeting online, presently could not hear the meeting.

Attorney Howard reiterated all he had said prior in repeat, due to virtual attendees not having good audio feedback from room 202. The duration of the meeting Attorney Howard’s laptop was used to conduct the meeting for better audio for all virtually present.

Chairman Barley asked if July was the expected firm for acquiring the information, as the petitioner, so we can schedule something for August?

Deputy Secretary Hostetter stated that is just the expected time line for that report. There was nothing concrete currently.

Attorney Howard stated that July was given as the earliest to have the report but are not tied to that.

Member Van Blarcom stated that he didn’t have a lot of confidence in workshops.

Consumer Member Kassimer concurred with that.

Attorney Howard stated that if the Board is not opposed to sometime later, they would work with that. If there is not a concern with the expiring Over-Order Premium, the preference would be for later time frame.

Attorney Yoviene stated that she usually has problems in getting experts and or staff in August due to vacations/set plans. September is much better. She stated that before a hearing there needs to be a focus on the issues and the criteria, she stated that the criteria that the Secretary sets out is his petition is not statutory.

Attorney Howard stated that there is No statutory authority for the Over-Order Premium, other than the Board's ability to oversee the entire milk industry in PA.

Attorney Yoviene stated there is guidance on pricing, to the extent that it would follow to alternative pricing in section 801, and other sections.

Attorney Howard stated that they are trying to think outside of the box of the current structure of the Over-Order Premium. The current structure has an add on to minimum producer price, which goes up through the chain to retail price, and then only that portion that meets the 3-part criteria flows back to the producer, and that is what they are trying to get away from. They are trying to get away from that pricing structure. There are different methods to that. The Secretary has talked about things like a new program, the Dairy Innovation programs. Something different than the Over-Order Premium. It's obviously broad, and they are trying to look at all options.

Attorney Yoviene stated that it needs to be understood as to what that something different is, so to prepare for, and not prepare for infinite numbers of options. There needs to be clear discussion for clear hearing notices, to prepare efficient response.

Chairman Barley stated that the Board will decide if a hearing will be held, and part of that, is that we need to understand what we are holding a hearing for. The petition is very open ended, and it is important that it be clarified.

Dep. Secretary Hostetter shared that the intent started out with a workshop since the petition doesn't outline certain direction, or path of choosing for some alternative models for distribution, and to hear from stakeholders from the industry, and consumers, and try to narrow that focus on what that one, or two options would be. That was the intent. It is up to the Board if they want to go right to a hearing. We can be open and fluid in our discussion, on what a new model would look like, or right path before we start getting into specifics. That is where the Dept. is at right now. We testified previously looking for a more equitable distribution model and system, but we didn't have the exact answer as to what that is.

Attorney Howard said that initially in their Petition under letter A, it was what was talked about last time, in a fabricated hearing, first addressing the issues in A. Later, work on B and C as to what the alternatives are.

Secretary Hardbarger inquired if PMMB would be the entity responsible for these workshops?

Dep. Sec. Hostetter stated that PMMB would preside over workshops, to put the call out to hear from farm organization and consumers, for their thoughts and ideas, as it needs to be an open discussion.

Secretary Hardbarger stated that PMMB at this time doesn't have the staf, nor resources to do that. And PDA does not need PMMB permission to hold workshops.

Attorney Howard asked if Carol Hardbarger was suggesting that PDA hold workshops outside of PMMB involvement.

Secretary Hardbarger stated that PMMB could have a presence but does not have the staffing resources to do any coordination's, and /or invitations, or that type of need. We can provide a speaker or two, depending on what the workshop would entail. As far as outlining the things to be addressed at the workshop we cannot take on that responsibility at this time.

Dep. Sec. Hostetter said what they were anticipating was a workshop like an informal hearing, no lawyers need to be present, and could hear from different representatives from the industry.

Chairman Barley stated that PMMB could probably be part of a roundtable setting/discussion. It could be coordinated between PDA and Chief Counsel Eberly. PMMB is not adamantly opposed to workshops, it may delay things, but on the other side, PMMB is not sure what the Petition is saying. PMMB has been more than happy for alternatives and have had discussions, but most of them require legislative changes.

Attorney Howard stated that as the Petitioner, they have the obligation to come forth with evidence. Pre-submit evidence and testimony: evaluate and backup with counter proposals and or arguments etc.

Attorney Yoviene stated that hearing notices needs to be clear.

Attorney Howard stated that what the Petition made clear, is that the continuation of Over-Order Premium as it currently is, the Dept. is not in favor of. Until we get things squared away, we don't want it to continue as is.

Attorney Statler inquired that as far as the workshop goes there would not be any fact findings coming from that. It would be an open forum, so a hearing notice would not need to be fine-tuned, if no fact findings would be forthcoming.

Attorney Eberly stated that there would not be a hearing notice if there is a workshop. That it can be broad and open ended. Facts are available for answering the questions in letter A, as we will come up with something close. If there is a workshop, it can acquire some facts or suitable for official notice, but there would not be a hearing notice.

Dep. Sec. Hostetter stated that there would be no official action by the Board.

MOTION by: Member Van Blarcom

Moved to accept the PDA Petition for a Hearing Re Over-Order Premium Alternatives. **Seconded by Consumer Member Kassimer.**

DISCUSSION: **Chairman Barley** confirmed that no date is being set, and a workshop can be held prior to a hearing. He stated that PMMB could hold a Level Duration hearing.

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

DISCUSSION: **Chairman Barley** reiterated that there will be a hearing notice without a date, with a date for interested parties to file their notices, and this will let PDA and interested parties know when to proceed with pre-submissions. Establish a pre-submission schedule, and a hearing date based on information from PDA.

Attorney Howard stated that if PMMB holds a hearing on Level Duration that it be wide enough to include whether it continues at all, so not to have the same situation as in the previous year. That the scope of that hearing will include if we have it at all.

2. Amendments to 7 Pa. Code Chapters 146 and 149

PRESENTED by: Chairman Barley

MOTION by: Member Van Blarcom

Moved to accept Amendments to 7 Pa Code Chapters 146 and 149. **Seconded by Consumer Member Kassimer. Motion carried without dissent.**

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

6. REPORT OF CHIEF COUNSEL:

DISCUSSION: Attorney Eberly stated a follow up on the Amendments to 7 Pa. Code Chapters 146 and 149. Posted on the website, under public hearings and other public hearings is the proposed text for the Amendments 149. PMMB is waiting for information from the milk dealers association regarding Amendment Chapter 146. Those are not posted yet. The reminder says that there will be a hearing on July 6, regarding this, but that is not set in stone yet. Don't plan on showing up virtually, as it will be at the FarmShow in the Monongahela Room, if the hearing takes place. The second item was that the Board met to discuss the procedural possibilities surrounding the Petition it received from PDA, and no deliberations or official actions undertaken. He stated as a final note, that he would get with Attorney Howard to find a ball park date for a workshop availability, and would speak to Steven Zalman about the possibilities of him providing some information regarding the Letter A items in the PDA Petition, to help answer some of the questions.

7. LEGAL CASE DISPOSITIONS

1. DFA Dairy Brands Fluid, LLC – Lansdale Dealer

PRESENTED by: Attorney Petrascu

DISCUSSION: Attorney Petrascu presented **1. Legal Docket No. CE-22-002 DFA Dairy Brands Fluid, LLC – Lansdale**, provided controlled products at prices below PMMB minimums during the month of December 2021. A consent order was signed and a penalty of \$500.00 was paid.

MOTION by: Member Van Blarcom

Moved to accept the consent order as presented. **(1. Legal Docket CE-22-002 – DFA Dairy Brands Fluid, LLC – Lansdale) Seconded by Consumer Member Kassimer. Motion carried without dissent.**

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

8. LICENSE APPLICATIONS:

1. Emerald Valley Artisans LLC Subdealer

PRESENTED by: Attorney Petrascu

DISCUSSION: Attorney Petrascu presented that Emerald Valley Artisans LLC, has submitted an application for a subdealer license for 2021-2022. Applicant will purchase packaged milk/cream products from a dealer for resale to Foodbank distribution in Area 5. A COD has been provided in lieu of a bond. Appropriate staff has reviewed the application to ensure that adequate forms and fees have been received and are in order, and that the applicant has met the requirements of the Milk Marketing Law. Board Staff recommends approval, and with Board approval of this application, a subdealer license will be issued.

MOTION by: Consumer Member Kassimer

Moved to approve a subdealer license to Emerald Valley Artisans as presented. **Seconded by Member Van Blarcom. Motion carried without dissent.**

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

2. SmithFoods, Inc. Dealer

PRESENTED by: Attorney Petrascu

DISCUSSION: Attorney Petrascu presented that SmithFoods, Inc. has submitted an application for a dealer license for 2021-2022. Applicant will purchase milk from out of state individual producers, and cooperatives. Applicant will process/package milk products, for resale to stores, subdealers, and dealers in all six Areas. No bond is required. Appropriate staff has reviewed the application to ensure that adequate forms and fees have been received and are in order, and that the applicant has met the requirements of the Milk Marketing Law. Board Staff recommends approval, and with Board approval of this application, a dealer license will be issued.

MOTION by: Member Van Blarcom

Moved to approve a dealer license to SmithFoods, Inc. as presented. **Seconded by Consumer Member Kassimer. Motion carried without dissent.**

Assenting: Chairman Barley, Member Van Blarcom, Consumer Member Kassimer

Dissenting: None

9. REMINDERS:

PRESENTED by: Chairman Barley

<u>MEETING (s)</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Regular Sunshine meeting	Wed. Jul 6, 2022	1:00 P.M.	FarmShow complex Monongahela Room

HEARING (s)

Amendments to 7 Pa. Code Chapters 146 and 149	Wed. Jul 6, 2022	10:00 A.M.	FarmShow complex Monongahela Room
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DISCUSSION: Chairman Barley reminded all that the hearing listed above for July 6, is still in question and will be clarified later.

10. ADJOURNMENT:

Chairman Barley hearing no further matters to come before the Board, adjourned the meeting 1:59 P.M.