

Original : 2218

**CHRIST B. MILLER**  
**2888 MILLER LANE, BIRD-IN-HAND, PA 17505**

October 28, 2002

From: **CHRIST B. MILLER**

To: **Pennsylvania Milk Marketing Board**  
**2301 North Cameron Street**  
**Harrisburg, PA 17110**

Attention: **Lynda Bowman,**

I am writing with concern about the new over order premium pool regulation. I am a member of Lancaster Organic Farmers Co-op, a group of certified organic dairy farmers who produce milk in Pennsylvania. Our milk is processed in Pennsylvania as well. What concerns me and my fellow certified organic dairy farmers is that the over order pooling process will cause us substantial financial harm. Our figures show us that the over order pool will take between \$0.70 and \$0.80 cents per hundredweight from us farmers, which puts us in a position where we are being penalized. We have worked very hard to become certified organic dairy producers and have put a great deal of effort into building our markets. We feel that we have carved a successful niche out of the market and have the right to benefit from our hard work. We respectfully request that organic milk be exempted from the over order premium pool. If it would not be possible to exempt us from the over order pool we would ask to be exempted from the over order premium all together, because we feel that we can bargain that value of our milk directly with our processor. Thank you for your consideration in this matter and I will try and contact you in the near future.

Respectfully yours,



**CHRIST B. MILLER**  
**CERTIFIED ORGANIC FARMER**

P.S. I realize that this is being requested after the closing of the comment period, however we were only notified after September 23, 2002. We will appreciate your consideration in light of our situation.

Original: 2218



P.O. BOX 1006 BLAKESLEE, PA 18610.

1-800-922-6455 • 570-643-9838 • FAX 570-643-9836

February 25, 2003

Senator Mike Waugh, Chairman  
Agriculture & Rural Affairs Committee  
Senate Post Office  
Main Capitol Building  
Harrisburg, PA 17120

Dear Senator:

Please reference my previous correspondence regarding this issue.

I am writing to you on behalf of Monroe County Milk Producers Cooperative d/b/a Pocono Mountain Dairies to express our opposition to the pooling regulations that are currently being proposed by the PMMB. We have presented to you and the other members of both Agriculture Committees the many reasons why we feel that these regulations should not be approved and at this point we can only hope that we will have a favorable response to our request that these regulations not be approved.

We still are amazed, however, regulations ever made it this far in the political process that, a) will most certainly be challenged legally, b) will reduce significantly the income of hundreds of Pennsylvania dairy farmers and allow that money to be paid to farmers out of state, c) increase the layers of government required to administer this massive redistribution of premium dollars, and d) are based upon arbitrary percentages and formulas that have no basis in sound economic study.

Again, we are opposed to these regulations and hope that those with the power to stop this before it gets to the courts will do so with great haste.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Kane".

Michael A. Kane  
General Manager

Cc: Representative Raymond Bunt, Jr., Chairman  
House Agriculture and Rural Affairs Committee  
Independent Regulatory Review Commission ✓

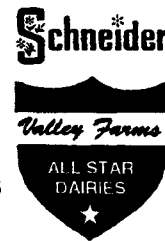


Original: 2218



1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (E70) 326-2021  
Fax: (E70) 326-2736



February 24, 2003

Honorable Michael Waugh  
Fax: 717-705-1747

**RE: PMMB POOLING REGULATIONS**

Dear Senator Waugh:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

- Pooling will encourage PA plants to seek cheaper milk from out-of-state producers.
- The administrative costs of pooling could cause license fees to increase.
- PA Class I plants will be at a disadvantage with out-of-state plants who compete in PA for milk supplies. The PA plants could be at a disadvantage of \$.31 per hundredweight.
- Under the current wording of the regulations, milk shipped out-of-state could be included in the pool.
- If the premium is pooled there is no guarantee the monies would stay in PA.
- Last year Land O'Lakes made \$100 million in profits. They and other cooperatives do not share their profits from manufacturing plants or premiums on Class II, III, and IV milk with independent farmers. (See attached articles).

Pooling of Class I milk in PA is a real concern as I really feel farmers are not only at a disadvantage, but PA milk plants will be just as much at a disadvantage. It would still allow plants from outside the state to compete at lower costs with PA plants.

Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

Robert K. H. Mertz  
General Manager

Attachments (2)

PA Milk Commission  
2003 FEB 26 11:51 AM  
1000

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# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Noah Wenger  
Fax: 717-299-7401

## RE: PMMB POOLING REGULATIONS

Dear Senator Wenger:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Robert Jubelirer  
Fax: 814-946-7268

**RE: PMMB POOLING REGULATIONS**

Dear Senator Jubelirer:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Roger Madigan  
Fax: 570-327-3703

**RE: PMMB POOLING REGULATIONS**

Dear Senator Madigan:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Terry Punt  
Fax: 717-783-0453

**RE: PMMB POOLING REGULATIONS**

Dear Senator Punt:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Robert Robbins  
Fax: 724-983-5711

## RE: PMMB POOLING REGULATIONS

Dear Senator Robbins:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Robert K. H. Mertz  
General Manager

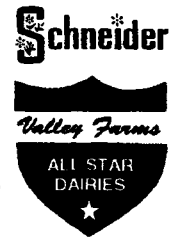
Attachments (2)



# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Donald White  
Fax: 724-357-0148

## RE: PMMB POOLING REGULATIONS

Dear Senator White:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Michael O'Pake  
Fax: 610-378-0578

**RE: PMMB POOLING REGULATIONS**

Dear Senator O'Pake:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Shirley Kitchen  
Fax: 215-560-1316

**RE: PMMB POOLING REGULATIONS**

Dear Senator Kitchen:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

RECEIVED  
FEBRUARY 26 2003  
MILK REVIEW COMMISSION

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Sean Logan  
Fax: 412-380-2249

**RE: PMMB POOLING REGULATIONS**

Dear Senator Logan:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations --

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable John Wozniak  
Fax: 814-266-0057

## RE: PMMB POOLING REGULATIONS

Dear Senator Wozniak:

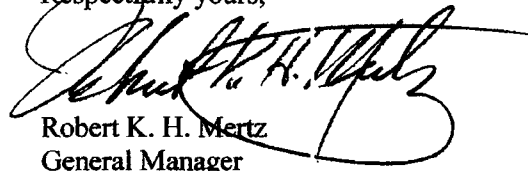
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Respectfully yours,

  
Robert K. H. Mertz  
General Manager

Attachments (2)

# Land O' Lakes Reports \$99 Million in Net Earnings for 2002

ARDEN HILLS, Minn., —Land O'Lakes today reported 2002 net earnings of \$98.9 million, as compared to \$71.5 million for 2001. Company officials indicated year-end earnings were driven primarily by proceeds received from vitamin price-fixing litigation settlements and bottom line contributions from the company's Dairy Foods and Ag Services branded and proprietary value-added business segments.

The company continued to pay down debt in 2002 and, at year-end, total long-term debt (including current portion) was down by \$55 million. The company's Long-Term-Debt to Capital ratio improved to 51.1 percent, as compared 56.1 percent at the end of 2001.

The company's liquidity position was also strong, with \$64 million in cash balances and \$320 million of unused borrowing capacity at year-end. In addition, the company is in compliance with all of its financing covenants.

For the fourth quarter, the company reported net earnings of \$63.6 million, as compared to \$18.7 million for the fourth quarter of 2001. Again, proceeds from vitamin price-fixing settlements and value-added earnings were the primary contributors.

Company officials indicated that commodity price declines; continued competitive pressures and milk supply/processing demand issues facing its Upper Midwest Dairy operations; and costs related to the start-up of its West Coast Cheese and Protein International (CPI) venture adversely affected operating earnings.

Sales for the fourth quarter were \$1.5 billion, down 9 percent from fourth quarter 2001, primarily the result of depressed commodity markets in swine, dairy and feed. For the year, sales were basically flat at \$5.8 billion.

Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) for the quarter were \$178.3 million, as calculated under the company's bond indenture. For the year, bond EBITDA was \$314.5 million, which includes \$155.5 million related to the vitamin litigation settlements. Dairy Foods Land O'Lakes reported a \$16.7 million pretax loss in Dairy Foods for the quarter and a \$32.1 million loss for the year. This compares to fourth quarter earnings of \$28.6 million and year-end earnings of \$50.7 million in 2001.

For the year, Land O'Lakes reported \$47.3 million in pretax earnings on its Dairy Foods Value-Added operations, which was offset by \$79.4 million in pretax losses on the Industrial side of the business. On the Value-Added side, Retail, Deli and Foodservice operations made significant contributions. Losses on the Industrial side were driven primarily by slumping commodity prices (cheese, whey, nonfat dry milk); milk supply/processing demand balance issues in the Upper Midwest; and the impact of higher than anticipated costs and slumping mozzarella markets on CPI. They included \$20 mil-

lion in charges related to plant shutdowns and \$30 million in losses related to the CPI—the consolidation of production and closing of the company's Perham and Faribault, Minnesota, plants; the planned 2003 closing of its Volga, South Dakota, plant; and intensified efforts to successfully complete the CPI start-up.

Company officials indicated they anticipate stronger dairy volumes and enhanced brand-driven earnings in 2003. Feed

Feed reported year-end pretax earnings of \$156.5 million, as compared to \$24.7 million in 2001. For the quarter, Feed achieved \$117.7 million in pretax earnings, at compared to \$9.4 million for the same quarter of 2001. Company officials indicated proceeds from vitamin price-fixing litigation settlements contributed significantly to Feed earnings. Excluding gains related to the vitamin settlements and one-time restructuring and integration costs, Feed generated approximately \$28 million in operating earnings for the year.

The integration of Purina Mills continued to progress well. In the first full year of a disciplined, three-year integration process, Feed generated \$46 million in annualized synergies and \$35 million in 2002 cost-savings.

Those savings were partly offset by \$27 million in one-time restructuring and integration costs. For the year, weather, markets, and swine and dairy industry restructuring contributed to an 8 percent decline in livestock feed sales. Branded and proprietary feed products did well, led by record animal milk replacer sales and a 1 percent increase in lifestyle feed volumes.

In Seed, Land O'Lakes reported a \$1.7 million loss for the quarter and \$8.3 million in earnings for the year. This compares with a loss of \$3.5 million for the fourth quarter of 2001, and pretax earnings of \$3.6 million for the year.

Land O'Lakes conducts the majority of its agronomy business through the Agriliance joint venture, in which the company holds a 50 percent ownership position. For the quarter, the Agronomy segment reported a pre-tax loss of \$18.2 million, versus a loss of \$5.4 million for the fourth quarter of 2001. The company reported a \$1.8 million loss in Agronomy for the year, as compared to \$10.3 million in pretax earnings one year ago.

These results included \$2.7 million in impairment charges related to Agriliance's southern retail operations. Slumping hog markets (averaging approximately \$36 per hundredweight in 2002 vs. \$47 per hundredweight in 2001) contributed to a \$11.9 million fourth quarter pretax loss in Swine, as compared to a \$1.2 million loss in the fourth quarter of 2001.

For the year, the company reported a \$23.2 million pretax loss in swine, as compared to earnings of \$3.1 million in 2001. Company officials indicated progress is being made on efforts to reduce capital usage and exposure to market risk in this business segment.

## News from dairy cooperatives

# Agri-Mark will share \$6.8 million in profits

METHUEN, Mass. -- Agri-Mark dairy farmer-owners will share in a \$6.8 million profit for the company's fiscal year ended November 30, 2002, up from the \$5.7 million profit the cooperative recorded last year. For a dairy farmer milking 100 cows, that means more than \$5000 in extra added value for their milk.

The cooperative's profit allocation to its dairy farmer-members will be \$0.29 per hundredweight on their farms' milk production during the 2002 fiscal year. Checks were mailed to Agri-Mark farmers on Feb. 7 for the cash portion of their allocated share.

Officials at Agri-Mark say the continued strength of the cooperative's Cabot branded business and the contributions made by the company's whey protein manufacturing plant in Middlebury, Vt., led the way to another successful year.

"The commitment our farmers have made over the years to invest in their own processing facilities is paying off," says Carl Peterson, a dairy farmer from Delanson, N.Y., who serves as the cooperative's chairman of the board. "Our Cabot brand of dairy products continues to expand and we have an excellent market for our whey proteins. With farm prices so low, farmers need these profits and every other bit of income they can get."

Peterson said that if Northeast dairy farmers are to have more control over their milk price, they need to work together through their cooperatives and invest in value-added marketing. Agri-Mark farmers own the Cabot brand of award-winning Vermont dairy products and just recently acquired both the McCadam brand of New York cheeses and its manufacturing plant in Chateaugay, N.Y.

"As dairy farmers and suppliers of a great product, we are only at the beginning of the marketing chain," says Peterson. "We have to actively do something to change that and get closer to the consumer, so we can capture a larger portion of the dollars they spend on dairy products. That, in a nutshell, is Agri-Mark's marketing philosophy."

Paul P. Johnston, Agri-Mark CEO, says he is pleased with the progress the cooperative has made in the past several years.

"Our financial turnaround really began when we started marketing our Cabot products and expanded sales into more regions of the country," says Johnston. "The more milk we put into our own branded products, the more control we have over our price."

Johnston says the outlook for the cooperative looks good in the years ahead, and he is enthusiastic about Agri-Mark's recent merger with the Chateaugay Cooperative and the

purchase of the assets of McCadam Cheese.

"We're trying to position our overall business in a way that will bring us to the level of profitability for our farmer-owners," says Johnston. "That's our mission. That's what we work to do every day."

Agri-Mark, with approximately \$550 million in 2002 sales, markets more than 1 million gallons of farm fresh milk each year for 1450 dairy farm families in New England and New York. The cooperative has been marketing milk for dairy farmers since 1950 and also represents their legislative interests in the Northeast and in Washington, D.C.

In addition to its manufacture and sale of branded dairy products, Agri-Mark has invested in operations to manufacture and market valuable whey proteins and sells farm milk from its farmers to the region's large dairy processors.

## Md. & Va. diviend beats average

RESTON, Va. -- Maryland & Virginia Milk Producers' 13th check is 24 cents per hundredweight as a result of over-order premiums from raw milk sales in 2002. The annual check, issued to Federal Order 1 members on February 1, is almost five cents higher than the cooperative's 25-year average of 19.4 cents.

Overall, the distribution totaled close to \$3.5 million paid on more than 1.4 billion pounds of milk marketed in 2002. About 20 percent of Federal Order 1 members received their 13th check monthly in 2002, ranging from 13 to 42 cents and averaging 24 cents for the year. Given the tightening

milk supplies on the East Coast, the cooperative's 13th check is higher than expected.

"We know this has been a challenging year for dairy farmers. Prices have never been this low for this long. We hope the money comes at a good time after such a long period of depressed milk prices," says General Manager Jay Bryant.

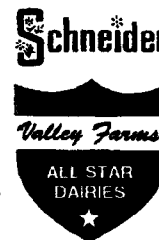
"Maryland & Virginia is committed to marketing our members' milk to generate the most returns possible. By focusing on Class I sales, working with other cooperatives and being involved in the legislative process, Maryland & Virginia continues to work hard on behalf of our members," Bryant added.

Original: 2218

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Ray Bunt, Jr.  
Fax: 610-287-4348

**RE: PMMB POOLING REGULATIONS**

Dear Representative Bunt:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

- Pooling will encourage PA plants to seek cheaper milk from out-of-state producers.
- The administrative costs of pooling could cause license fees to increase.
- PA Class I plants will be at a disadvantage with out-of-state plants who compete in PA for milk supplies. The PA plants could be at a disadvantage of \$.31 per hundredweight.
- Under the current wording of the regulations, milk shipped out-of-state could be included in the pool.
- If the premium is pooled there is no guarantee the monies would stay in PA.
- Last year Land O'Lakes made \$100 million in profits. They and other cooperatives do not share their profits from manufacturing plants or premiums on Class II, III, and IV milk with independent farmers. (See attached articles).

Pooling of Class I milk in PA is a real concern as I really feel farmers are not only at a disadvantage, but PA milk plants will be just as much at a disadvantage. It would still allow plants from outside the state to compete at lower costs with PA plants.

Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Robert K. H. Mertz". The signature is written in a cursive style and is positioned above the printed name and title.

Robert K. H. Mertz  
General Manager

Attachments (2)



**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Sheila Miller  
Fax: 610-927-3584

**RE: PMMB POOLING REGULATIONS**

Dear Representative Miller:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Sandra Major  
Fax: 570-278-2952

**RE: PMMB POOLING REGULATIONS**

Dear Representative Major:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Robert K. N. Mertz".

Robert K. N. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (610) 326-2021  
Fax: (610) 326-2736



February 24, 2003

Honorable Bob Bastian  
Fax: 814-472-1955

**RE: PMMB POOLING REGULATIONS**

Dear Representative Bastian:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (E 70) 326-2021  
Fax: (E 70) 326-2736



February 24, 2003

Honorable Martin Causer  
Fax: 814-362-4405

**RE: PMMB POOLING REGULATIONS**

Dear Representative Causer:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Jeff Coleman  
Fax: 724-763-9788

**RE: PMMB POOLING REGULATIONS**

Dear Representative Coleman:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable Allan Egolf  
Fax: 717-582-8979

## RE: PMMB POOLING REGULATIONS

Dear Representative Egolf:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable John Gordner  
Fax: 570-759-4527

## RE: PMMB POOLING REGULATIONS

Dear Representative Gordner:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable C. Adam Harris  
Fax: 717-436-5362

**RE: PMMB POOLING REGULATIONS**

Dear Representative Harris:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Robert K.H. Mertz  
General Manager

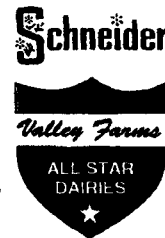
Attachments (2)



**Schneider**  
*Valley Farms Dairy*

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (570) 326-2021  
Fax: (570) 326-2736



February 24, 2003

Honorable Arthur Hershey  
Fax: 610-593-7041

**RE: PMMB POOLING REGULATIONS**

Dear Representative Hershey:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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Thank you for your consideration. Looking forward to defeating this regulation.

Respectfully yours,

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Robert K. H. Mertz  
General Manager

Attachments (2)

# Schneider Valley Farms Dairy

1860 East Third Street  
Williamsport, PA 17701-3992

Phone: (717) 326-2021  
Fax: (717) 326-2736



February 24, 2003

Honorable David Hickernell  
Fax: 717-367-6425

**RE: PMMB POOLING REGULATIONS**

Dear Representative Hickernell:

In regards to the issue of the PMMB Pooling Regulations, we at Schneider-Valley Farms are against any pooling in the state. We feel it would be against the best interest of our farmers in the state to have Class I pooling. There are many reasons why we are against the market-wide pooling regulations –

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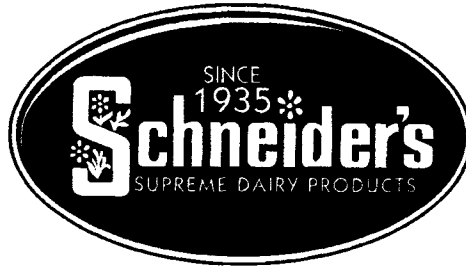
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Robert K. H. Mertz  
General Manager

Attachments (2)

Original: 2218



February 20, 2003

IRRC  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

RE: Market-wide Pooling

To Whom It May Concern:

The purpose of this letter is to register our, as well as our 100+ independent farmers, opposition to the Market-wide Pooling and to request that you vote against the proposed legislation.

We firmly believe that the proposed legislation, if enacted, will lower prices overall for Pennsylvania farmers, as voluntary premiums will be eliminated. Furthermore, the current form of the legislation does not insure that the pooled premium stays with Pennsylvania farmers and could be shared with non-Pennsylvania farmers as well as the fact that milk shipped out-of-state would also be included in the pool.

From a dealer's perspective, the legislation creates disadvantages with out-of-state plants that would not be required to pay into the pool for milk produced in Pennsylvania. It is also most likely that the dealers would be required to pay additional licensing and other PMMB fees to cover the additional administrative costs to administer Market-wide Pooling. The additional costs and/or disadvantages caused by the enactment of this legislation will encourage dealers to seek an out-of-state source of milk in order to remain competitive with out-of-state plants.

We request that you vote no on Market-wide Pooling. Please feel free to contact me on (412) 881-3525 ext. 405 with any questions that you may have regarding our position.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Jones, Jr.', is written over a faint, illegible typed name.

William F. Jones, Jr.  
Chief Operating Officer

Original: 2218

**Thelen Reid & Priest LLP**  
Attorneys At Law

Charles M. English, Jr.  
202.508.4159 Direct Dial  
202.654.1842 Direct Fax  
cenglish@thelenreid.com

701 Pennsylvania Avenue, N.W., Suite 800  
Washington, DC 20004-2608

Tel. 202.508.4000  
Fax 202.508.4321

www.thelenreid.com

February 12, 2003

**VIA E-MAIL AND FACSIMILE**

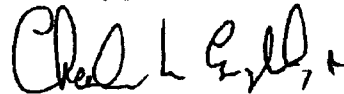
Ms. Lynda Bowman  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: **Dean Foods Company**

Dear Ms. Bowman:

Enclosed please find Dean Food Company's February 2003 comments regarding The Milk Marketing Board's Revised (as of February 2003) Pooling Regulations.

Sincerely yours,



Charles M. English, Jr.

CME/

Attachments

cc: Honorable Beverly R. Minor, Chairwoman  
Honorable Luke Brubaker, PMMB Board Member  
Honorable Barbara Grumbine, PMMB Board Member  
Doug Eberly, Esq., General Counsel  
John Howard, Esq., Staff Attorney  
Honorable Raymond Bunt, Jr., Majority Chairman, House Agriculture and Rural Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Chip Brighthill  
Honorable John Perzel  
Senate Agriculture Committee  
House Agriculture Committee

DC #137221 v1

**Dean Foods Company's February 2003 Comments Regarding  
The Milk Marketing Board's Revised (as of February 2003) Pooling Regulations**

**Introduction**

On behalf of Dean Foods Company's five fluid milk processing plants located across the Commonwealth of Pennsylvania, the following comments are being filed this 12th day of February 2003. These comments are intended to answer the Pennsylvania Milk Marketing Board's February 5, 2003 request for comments regarding the technical aspects of implementation and administration of the revised proposed pooling regulations. Dean Foods takes seriously this opportunity to comment because we recognize and appreciate that the Board has demonstrated some willingness to address some of Dean's technical concerns expressed in past comments filed both 5 months and approximately one and a half-years ago. Many of these comments are linked directly to the comments filed by Dean Foods Company on September 23, 2002. We have attempted to avoid repetition and attach those September 23, 2002 comments as part of this submission (Attachment A).

Please note, however, that Dean Foods remains adamantly opposed to the Pennsylvania Milk Marketing Board's decision to pool the Pennsylvania Mandated Over-Order Premium. Dean Foods continues to believe that it is neither equitable nor consistent with the Board's mandate under section 801 of the Pennsylvania Milk Marketing Law to take away money that is paid exclusively by Class I processors for milk procurement and give that money to non-Class I processors to subsidize their milk procurement efforts. Thus, these comments are offered first as an attempt to make pooling workable from the Class I processor's perspective if pooling should be finally adopted and upheld as lawful. Due to the complexity of these regulations, many of our comments were presented in bullet form in the September 2002 submission. However, there are a few overarching concerns that can be expressed separately herein. Following the technical and

legal discussion, there are certain policy issues that simply cannot be ignored. For 9 months, the Board has examined the question of whether the over-order premium level can be sustained without threatening the ability of Pennsylvania producers to market their milk for Class I uses. Those hearings and the results of those hearings cannot be ignored when the effect of pooling necessarily will be exacerbation of those serious issues.

### **Technical Problems with the Regulations**

As noted in Dean's September 23, 2002 submission, these regulations remain difficult to understand, and we suggest will be subject to interpretation and debate because they do not provide sufficient definitions. While some definitions have been modified since the September comments were filed, potentially serious issues remain. The regulations use numerous words that are "terms of art" which could be interpreted differently depending on who is doing the interpreting. This makes it terribly difficult for Dean Foods to adequately comment on the technical aspects of the regulations. Indeed, because these regulations are so lacking in definitions, we would appreciate the opportunity to comment on a yet another round of revisions once the Board has the opportunity to bolster the definitions' section. Haste makes waste. And there remains no reason for haste.

Second, notwithstanding some apparent effort on the Board's part since the September submission, these regulations still appear to go beyond the Board's stated intention to "expand the distribution of the over-order premium." Pennsylvania Milk Marketing Board, Press Release (Dec. 13, 2001) *available at* [www.mmb.state.pa.us/mmb/lib/mmb/Other/pooling\\_decision.pdf](http://www.mmb.state.pa.us/mmb/lib/mmb/Other/pooling_decision.pdf). While we continue to genuinely believe this is unintentional, we are obliged to point out our concerns. In the proposed pooling regulations the over-order premium appears to be defined in a way that could increase the volume of milk on which processors are liable to pay the Over-Order Premium by imposing a charge on, among other things, milk involved in interstate commerce.

To Dean's knowledge, the Board did not notify interested parties of such an intention to expand the scope of the Over-Order Premium obligation.

The new regulations appear to reach milk involved in interstate commerce by stating that Pennsylvania Production includes "milk produced by Pennsylvania producers and sold to Pennsylvania Pool Plants." The term "sold" is not defined. In milk regulations, there are more precise terms that can and should be used, for instance "received" is a better term because milk may be sold to one plant, but received at a plant in New Jersey. Presently milk received in New Jersey would not be subject to the premium, but the new rule either does regulate such a milk receipt or at least leaves the door ambiguously open. These regulations are far too important to leave any stone unturned. Thus the newly revised definition still suggests that processors may be required to pay the Over-Order Premium on milk that is diverted out-of-state. The problem becomes more obvious and more acute when one carefully examines the "definition" of "Qualified Pounds" found at § 148.5. That definition, unlike Pennsylvania Production, specifically excludes milk transferred or diverted to non-Pennsylvania pool plants. Almost since the beginning of this process, and certainly since September, Dean Foods has been asking one very basic question: Why is the definition of Qualified Pounds different from Pennsylvania Production? Pennsylvania Production should not exceed Qualified Pounds at a Class I plant; otherwise, by definition the Class I plant is being required to pay a higher premium because the definition for payment purposes has been broadened. The PMMB's failure to correct this issue leaves the regulations fatally flawed.

Additionally, by stating Pennsylvania Production is milk produced by Pennsylvania producers and physically processed by Pennsylvania Pool Plants, this definition also suggests that processors may be required to pay the Over-Order Premium on milk that is sold to retailers or distributors outside of the Commonwealth of Pennsylvania. Both outcomes are

unprecedented. *See e.g.*, Discussion in the September 2002 submission regarding "Pennsylvania Production." *Also see* analysis of interstate commerce issues in the September 2002 discussion beginning at the bottom of page 2. Notwithstanding Dean Foods' September 2002 comments, not only was no change made to this portion of the provision, but also no explanation was provided to either contradict Dean Foods' conclusions or justify the result. Such a refusal to discuss legitimate comments certainly leaves one with the appearance, if not the reality, of unlawful arbitrary and capricious action by the agency.

While Dean believes it was not the Board's intention, the regulations are written in a way that it is not clear whether the historical limitations on and exemptions from having to pay the Over-Order Premium remain in place. Due to a lack of clarity with respect to, among others, the definitions for Class I utilization, Producer Milk, Pennsylvania Class I Pounds, Pennsylvania Production, it is not clear that provisions have been structured to insulate Transfers, Purchased From Other Dealers Packaged Milk or Shrink, among other things, from double counting or the reach of the Over-Order Premium charge.

It appears that under these proposed regulations, a Class I processor could find itself paying into the pool on milk that will not be eligible for pool distributions (the allotment). This concern stems in large part from a conclusion that the definitions of "Pennsylvania Production" and "Qualified Pounds" continue not to be parallel as discussed briefly above. An attempt at a fuller analysis of this admittedly complicated issue is articulated in the September 2002 submission in the bullets relating to "Pennsylvania Production," "Qualified Pounds," § 148.3, and § 148.5. At the core of this analysis is the determination that the Board's own example in the pre-September 2002 version of the regulations suggested that these revised proposed pooling regulations have expanded the scope of the Over-Order Premium obligation. If that analysis was correct, Dean respectfully objects to such inequitable treatment.



Unfortunately for everyone concerned, the PMMB's response to Dean's comments was to conclude that the examples were confusing. This led the Board to the extraordinary (and Dean believes unlawful) decision to delete the important example in § 148.5, rather than fixing it! In addition, the newly revised regulations deleted the example found in pre-September 2002 § 148.4. This leaves the industry with no meaningful way to test the regulations to see whether they function as intended and publicized. Moreover, since the examples themselves resulted in comments concerning the accuracy of the regulations, and since the definitions remain confusing and incomplete at best, removing the examples is akin to an admission of error without correction of the error. The breathtaking audacity of simply deleting examples because they were complex (and wrong) reinforces Dean Foods' reluctant conclusion that this Board intends to implement these Pooling regulations notwithstanding significant industry concerns and in total abdication of its legal responsibilities as an agency rule making body. Dean respectfully requests that the Board clearly and forthrightly ensures that milk that is subject to the Over-Order Premium charge also be eligible for distributions from the pool (Pool allotments).

Dean Foods' concerns are bolstered significantly by the statement made by pooling proponent Dennis Schad at the Board's Sunshine Meeting on December 4, 2002 (*See* Transcript of Sunshine Meeting - Attachment B): "We got the -- the fact that it's not just milk produced in Pennsylvania, it's milk delivered to Pennsylvania -- so it's milk tied to the state, to the Commonwealth, to the Class I and the balance of facilities that --" *See*, p. 2 of Attachment B. So proponents genuinely thought that they were receiving the very thing that Dean Foods is complaining about -- money on milk in interstate commerce. Some minor changes to the regulations since that time, do not, in Dean Foods' opinion change that result.

Finally as to the technical issues, Dean notes that the Board has made special provisions for Producer-Dealers and Dean would ask (as it did to no avail in its September 2002

submission) the Board to consider whether similar provisions should be made for tolling arrangements/service contracts presently in place.<sup>1</sup> It may be appropriate to affirmatively state that nothing in these regulations is intended to alter the service contracts that have been previously approved by the Board. In support of this concept, Dean reminds the Board that as part of the approval process, these service contracts have long been deemed necessary and appropriate for the Pennsylvania dairy industry. If pooling is permitted to alter these arrangements, then there is reason to believe that their intended purpose would be undermined without prior industry discussion or approval.

### The Policy Problems

Dean acknowledges that industry opinion is divided on the policy issue based upon perceived industry “winners” and “losers.” However, Dean Foods believes that the larger issue of whether the entire Pennsylvania industry will be the loser if these regulations are adopted has been overlooked or underplayed.

Pennsylvania’s admirable system protecting consumers and farmers alike does not exist in a vacuum. Dean Foods has labored hard to impress upon the Board the importance of examining national and regional issues in addition to the all-important Pennsylvania issues when setting producer over-order premiums. Adoption of Pooling will necessarily upset any careful balance that the Board has managed to attain. Dean thanks the Board for dealing with Dean’s issues genuinely. However, to have taken the time to study those issues in four over-order premium hearings in May, July, November 2002 and January 2003, the Board would have all but wasted its time if it now adopts pooling without an acknowledgment and preferably an attempt to deal with the competitive problems that pooling will necessarily create.

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<sup>1</sup> Specifically, Dean believes it is important to preserve the integrity of the service contracts/tolling agreements that while private between the parties and not subject to public disclosure have been previously Grandfathered by the Board.

Turning to an example (Dean does find examples extremely illuminating), assume that pooling is adopted as presently structured and that the over-order premium remains unchanged at \$1.40 per cwt.<sup>2</sup> Assume further, for simplicity sake, that Class I Pennsylvania Production equals 50% and non-Class I Pennsylvania Production equals 50%. Today, the producer shipping to a 100% Class I operation receives the full \$1.40 per cwt for his milk. Under a 45% pooling scenario, that producer will now receive only \$1.085 (55% of \$1.40 plus 50% of 45% of \$1.40). However, that producer serving the Class I market still incurs the same costs to serve the Class I market. Simple economics (backed up by the reality that Dean Foods' fluid milk suppliers have corroborated this) indicates that the producers serving the Class I market will come forward and demand replacement of some or all of the \$0.315 wealth transfer to those not supplying the Class I market. Moreover, the producers receiving this wealth transfer are now \$0.315 better off, meaning that the cooperatives receiving that money on their behalf have gained another \$0.315 in competitive procurement advantage (providing a relative \$0.63 advantage gain over the present). The costs to Class I processors are going to be higher than the \$1.40 over-order premium. And that will reinforce the pressures to either source milk from out-of-state or for customers to build warehouse facilities outside of Pennsylvania. Has the Board considered the economic impact on Pennsylvania of such a result? Again to avoid repetitiveness, Dean Foods attaches copies of its recent post-hearing brief submissions regarding the proper level of the over-order premium (Attachment C).

Simply put, Dean Foods fully expects Pooling to be extremely disruptive. **No processor is going to pay a portion of the Class I premium to other competitor entities in order to put those entities in a better procurement position if there are alternative choices available.**

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<sup>2</sup> This example significantly understates the competitive problem if, as Dean believes, the regulations also result in the over-order premium being paid on raw milk transferred or diverted out-of-state or sold in packaged form to

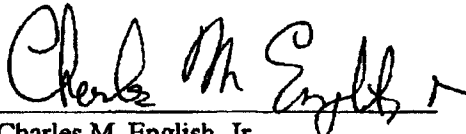
Dean Foods has made it abundantly clear in its recent submissions that alternative choices are available. In adopting pooling regulations, the PMMB risks destroying or at least severely undermining the very laudable goals which it is sworn to uphold. In the meantime, while the industry adapts to pooling, economic disruptions could well spread well beyond the expected impacts on the dairy industry (e.g. retailer investment decisions).

**Conclusion**

For the above-mentioned reasons Dean Foods Company respectfully requests that the Board undertake a further revision of the Proposed Pooling Regulations to address the concerns raised herein prior to the presentation of the proposed regulations to the Independent Regulatory Review Commission and the General Assembly. Accordingly, Dean also requests the opportunity to comment on any further technical revisions. Thank you for this opportunity to provide the aforementioned comments.

February 12, 2003

Respectfully submitted,



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retailers out-of-state. Since the Board chose to remove the examples rather than fix them, the magnitude of this additional impact is difficult, if not impossible, to ascertain.

**ATTACHMENT A**

**Dean Foods Company's Comments Regarding  
The Milk Marketing Board's Revised Pooling Regulations  
Filed September 23, 2002**

**Dean Foods Company's Comments Regarding  
The Milk Marketing Board's Revised Pooling Regulations**

On behalf of Dean Foods Company's five fluid milk processing plants located across the Commonwealth of Pennsylvania, the following comments are being filed this 23rd day of September 2002. These comments are intended to answer the Pennsylvania Milk Marketing Board's September 6, 2002 request for comments regarding the technical aspects of implementation and administration of the revised proposed pooling regulations. Dean Foods takes seriously this opportunity to comment because we recognize and appreciate that the Board has demonstrated a willingness to address some of Dean's technical concerns expressed in past comments filed approximately one-year ago.

Please note, however, that Dean Foods remains adamantly opposed to the Pennsylvania Milk Marketing Board's decision to pool the Pennsylvania Mandated Over-Order Premium. Dean Foods continues to believe that it is neither equitable nor consistent with the Board's mandate under section 801 of the Pennsylvania Milk Marketing Law to take away money that is paid exclusively by Class I processors for milk procurement and give that money to non-Class I processors to subsidize their milk procurement efforts. Thus, these comments are offered merely as an attempt to make pooling workable from the Class I processor's perspective if pooling should be finally adopted and upheld as lawful. Due to the complexity of these regulations, many of our comments will be presented in bullet form. However, there are a few overarching concerns that can be expressed at the outset.

First, these regulations are difficult to understand and we suggest will be subject to interpretation and debate because they do not provide sufficient definitions. The regulations use numerous words that are "terms of art" which could be interpreted differently depending on who is doing the interpreting. This makes it terribly difficult for Dean Foods to adequately comment on the technical aspects of the regulations. Indeed, because these regulations are so lacking in

definitions, we would appreciate the opportunity to comment on a second round of revisions once the Board has the opportunity to bolster the definitions section. The specific words with which Dean Foods has difficulty are discussed below in bullet format.

Second, these regulations appear to go beyond the Board's stated intention to "expand the distribution of the over-order premium." Pennsylvania Milk Marketing Board, Press Release (Dec. 13, 2002) *available at* [www.mmb.state.pa.us/mmb/lib/mmb/Other/pooling\\_decision.pdf](http://www.mmb.state.pa.us/mmb/lib/mmb/Other/pooling_decision.pdf). While we genuinely believe this is unintentional, we are obliged to point out our concerns. In the proposed pooling regulations the over-order premium appears to be defined in a way that could increase the volume of milk on which processors are liable to pay the Over-Order Premium by imposing a charge on, among other things, milk involved in interstate commerce. To Dean's knowledge, the Board did not notify interested parties of such an intention to expand the scope of the Over-Order Premium obligation.

The new regulations appear to reach milk involved in interstate commerce in the following ways: By stating that Pennsylvania Production includes "milk produced by Pennsylvania producers and sold to Pennsylvania Pool Plants, *regardless of the location of the plant of physical receipt,*" this definition suggests that processors may be required to pay the Over-Order Premium on milk that is diverted out-of-state. Additionally, by stating Pennsylvania Production is milk produced by Pennsylvania producers and physically processed by Pennsylvania Pool Plants, this definition suggests that processors may be required to pay the Over-Order Premium on milk that is sold to retailers or distributors outside of the Commonwealth of Pennsylvania. Both outcomes are unprecedented. *See e.g.,* Discussion herein regarding "Pennsylvania Production."

With respect to the milk volumes involved in interstate commerce, such a result we believe, would create a direct burden on interstate commerce that would violate the proscriptions

of the negative Commerce Clause of the United States Constitution. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935). Moreover, such a result would impose an additional unanticipated burden on dealer and subdealer or dealer and retailer relationships involving out-of-state transactions. For instance, Dean Foods is party to contracts with out-of-state entities where the contracts are premised on the fact that the Over-Order Premium does not apply to milk sold to these out-of-state entities. Under the proposed regulations, it appears that the Over-Order Premium would be charged against this milk. If this were to occur, Dean's contracts would be so altered (affecting Dean's profit or Dean's ability to compete with out-of-state plants), that our Pennsylvania plants might lose or need to give up such accounts.

Third, while Dean believes it was not the Board's intention, the regulations are written in a way that it is not clear whether the historical limitations on and exemptions from having to pay the Over-Order Premium remain in place. Due to a lack of clarity with respect to, among others, the definitions for Class I utilization, Producer Milk, Pennsylvania Class I Pounds, Pennsylvania Production, it is not clear that provisions have been structured to insulate Transfers, Purchased From Other Dealers Packaged Milk or Shrink, among other things, from double counting or the reach of the Over-Order Premium charge. Moreover, although Dean understands and supports what appears to be an effort by the Board to disqualify from pool allotments (distributions from the Pennsylvania pool) the milk of manufacturing plants that ride the Federal Order pool during times of advantageous price relationships and which choose not to participate in the Federal Order pool during times of disadvantageous price relationships, Dean is concerned that the definition for "Qualified Pounds" as it relates to "Federally Depooled Milk" is imprecise and may go beyond this ostensible and laudable purpose. This may inadvertently disqualify milk, including Class I milk, that achieves non-pool status under the Federal order by virtue of being transferred or shipped to a partially regulated federal order plant located inside of Pennsylvania.



Fourth, it appears that under these proposed regulations, a Class I processor could find itself paying into the pool on milk that will not be eligible for pool distributions (the allotment). This concern stems in large part from a conclusion that the definitions of "Pennsylvania Production" and "Qualified Pounds" may not be parallel. An attempt at a fuller analysis of this admittedly complicated issue is articulated below in the bullets relating to "Pennsylvania Production," "Qualified Pounds," § 148.3, and § 148.5. At the core of this analysis is the determination that the Board's own example suggests that these revised proposed pooling regulations have expanded the scope of the Over-Order Premium obligation. If this analysis is correct, Dean respectfully objects to such inequitable treatment. Dean asks the Board to ensure that milk that is subject to the Over-Order Premium charge also be eligible for distributions from the pool (Pool allotments).

Finally, Dean notes that the Board has made special provisions for Producer-Dealers and Dean would ask the Board to consider whether similar provisions should be made for tolling arrangements/service contracts presently in place.<sup>1</sup> It may be appropriate to affirmatively state that nothing in these regulations is intended to alter the service contracts that have been previously approved by the Board. In support of this concept, Dean reminds the Board that as part of the approval process, these service contracts have been deemed necessary and appropriate for the Pennsylvania dairy industry. If pooling is permitted to alter these arrangements, then there is reason to believe that their intended purpose would be undermined.

**A. Section 148.1 Definitions**

• **Diversions**

In order to be consistent with federal milk order terminology, the term "enter(s)" should be replaced by the term "received."

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<sup>1</sup> Specifically, Dean believes it is important to preserve the integrity of the service contracts/tolling agreements that while private between the parties and not subject to public disclosure have been previously Grandfathered by the Board.

- **Over Order Premium Value.**

It appears that this definition would impose an over order premium charge on a larger volume of milk, including milk in interstate commerce, than the existing Over Order Premium structure presently reaches. Under the present regulation, the Over Order Premium applies to milk that is "produced, processed, and sold in the Commonwealth." Official General Order No. A-894 (Supplemental) (Jul. 15, 1997), incorporated by reference in subsequent Over-Order Premium Decisions; see also Pennsylvania Milk Marketing Board, Industry Terms defining the Over-Order Premium. Under the proposed regulations, no such limitation is expressly stated.

Indeed, the statement that the Over-Order Premium charge will apply to "all milk" produced in the state and included in the Class I utilization of Pennsylvania Pool Plants suggests the contrary. In part, this may be due to the fact that "Pennsylvania Class I utilization of Pennsylvania Pool Plants" is undefined. However, even with a much needed clarification of "Pennsylvania Class I utilization of Pennsylvania Pool Plants", Dean respectfully suggests that an express statement akin to that which has been made in Order No. A-894 (Supplemental) should be included.

With respect to the undefined phrase "Pennsylvania Class I utilization of Pennsylvania Pool Plants," Dean believes that the Board should clearly identify milk that is produced, processed and sold in Pennsylvania, consistent with Official General Order 894 (Supplemental). Dean also recommends the clarification of other limitations on the scope of "Pennsylvania Class I Utilization." Among other limitations, it should be made clear that "Pennsylvania Class I utilization of Pennsylvania Pool Plants" is net of shrink and purchased from other dealers packaged product.

- **Over-Order Premium Rate.**

Although this definition seems to capture the concept that the Over-Order premium should only apply to milk that is produced, processed and utilized in Pennsylvania, Dean is not confident that the lack of clarity in other key definitions that are used to calculate the volume of milk subject to the charge will not undermine this limitation and confuse required calculations. Indeed, the Board's own calculations, as discussed below regarding section 148.5, indicate that the Over-Order Premium seems to have been expanded.

- **Pennsylvania Class I Pounds**

This term is also unclear because it is defined using terms that are themselves undefined. For instance, the term "Pennsylvania Milk" does not appear to be defined anywhere in these regulations. Without clarification, "Pennsylvania Class I Pounds" might be interpreted to capture milk that is diverted out-of-state. In addition, without clarification, "Pennsylvania Class I Pounds" might be interpreted to capture milk that is sold in an out-of-state transaction to out-of-state distributors or retailers. To Dean's knowledge, such divergence from existing standards for determining a plant's Over-Order Premium obligation has not been part of the official discussion and consideration by the Board. Moreover, there is a significant risk that such a result may be challenged as an unlawful extension of Pennsylvania regulation into interstate commerce.

Moreover, this definition should expressly state what "adjusted for purchases from other dealers" means. For example, does it mean that Pennsylvania Class I Pounds do not include transfer milk and packaged milk purchases. Dean respectfully suggests that this adjustment should clearly provide for the subtraction of these purchases in order to avoid double counting. Dean also believes that such adjustments should be carried through the definitions that are used to calculate the Over-Order Premium obligation.

- **Pennsylvania Producer**

This definition should be modified to apply to the production of Grade A milk. To the extent the Board has sought to limit the participation of manufacturing plants and their producer milk when they choose to enter and leave the Federal Order pool based on price relationships, producers of Grade B milk should not be eligible for Pennsylvania Pool distributions because Grade B producers may not participate in Federal Order pools and cannot provide any service to the Class I market.

- **Pennsylvania Production**

This definition, which is used to calculate a processor's Over-Order Premium obligation whether inadvertently or otherwise seems to expand the breadth of the Over Order Premium Obligation in two untenable ways. By stating that Pennsylvania Production includes "milk produced by Pennsylvania producers and sold to Pennsylvania Pool Plants, *regardless of the location of the plant of physical receipt*", this definition suggests that processors may be required to pay the Over-Order Premium on milk that is diverted out-of-state. Additionally, by stating Pennsylvania Production is milk produced by Pennsylvania producers and physically processed by Pennsylvania Pool Plants, this definition suggests that processors may be required to pay the Over-Order Premium on milk that is sold to retailers or distributors outside of the Commonwealth of Pennsylvania. Both outcomes are unprecedented. Moreover, advance notice of such a result was not provided to the interested parties. Finally, this presents an interstate commerce concern. Because this definition is used to determine the Over-Order Premium obligation for Class I processors, it appears that this definition would unlawfully extend the Over-Order Premium into interstate commerce.

It is also critical to note that this definition does not appear to be correlated with the "Qualified Pounds" definition, and appears to bring about inequity in the system. The Board has long represented that processors paying 45% of the Over-Order Premium into the pool will get its fair share back out of the pool since all (presumably Pennsylvania produced, processed and sold) milk will be eligible for distributions from the Pennsylvania Milk Pool so that the loss of revenue for Class I producers would be something less than 45%. Perhaps inadvertently, the Board has created a different situation that we believe is inconsistent with prior statements, and would be inequitable. Specifically, a comparison of the definitions of "Pennsylvania Production", which appears broad, especially in the context of the examples, and "Qualified Pounds", which appears to be more narrowly defined, especially in light of the examples, Pennsylvania Pool plants are forced to pay the Over-Order Premium on a larger volume of milk than the volume of milk that is eligible to receive a pool distribution. See Discussion in Part D for a more detailed explanation.

While the regulations expressly exclude from eligibility for a pool distribution, milk in interstate commerce and/or federally depooled milk (a term that also needs clarification), the regulations appear to impose the Over-Order Premium charge on such milk. If the milk is not entitled to participate in pooling it should not be subject to a pool charge.

- **Qualified Pounds**

The term "Pool Plant" is undefined unless modified by the term "Pennsylvania." While minor and probably meant to refer to "Pennsylvania Pool Plant," we think this is important because there may be a risk that milk that is going to an out-of-state pool plant within the meaning of the federal orders could be construed as somehow being eligible to share in the Over-Order Premium. We also think the term "non-pool plant" should be defined. We think, but cannot be sure that it means a plant that either (a) is not in Pennsylvania, or (b) is in Pennsylvania but receives all of its milk from out-of-state.

In addition, we think that the phrase "non-Class I milk depooled from a federal milk marketing order" should be defined so that is not construed more broadly than was intended. It is unclear, though we infer that this provision seeks to limit eligibility for sharing in the Pennsylvania Over Order Premium to the milk of manufacturing plants that regularly pool their milk on a Federal order and stand ready to service the Class I market. However, Dean is concerned that this provision may inadvertently disqualify for pool allotments milk that is delivered to Federal Order plants that are not fully regulated under a Federal Order. If this were the case, this would be especially problematic because it appears that the Over-Order Premium would nonetheless be charged on such milk.

- **Qualified Producer**

This definition is unclear and appears to be a description of producer milk rather than producers. While this may not be the intended meaning, it is also confusing because it suggests that if a Pennsylvania producer's milk is diverted to an out-of-state distributing plant, then that Pennsylvania producer is not a qualified producer. If the Board means to say that the portion of the producer's milk so diverted is not qualified, the definition should clarify that that portion of the producer's milk is not qualified. This definition is also problematic in that any and all milk that is diverted out-of-state, regardless of whether it is diverted to an out-of-state distributing plant or cheese plant, should not be able to receive pool dollars (as indicated above, nor should it be the subject of Over Order premium charges). Accordingly, Dean is concerned that this definition leaves open the possibility that diversions to out-of-state manufacturing plants would be eligible for allotments out of the Pennsylvania pool.

## **B. Reporting Requirements (§ 148.2)**

Dean appreciates that the Board adjusted the reporting dates as requested in past comments. Moreover, Dean appreciates the opportunity to provide additional commentary, however, Dean believes it is still problematic that the forms required to satisfy these reporting requirements are not available for comment. We genuinely believe that we cannot adequately comment on the reporting requirements or these regulations in the absence of the required forms.

In addition, Dean believes that the Board should make provision for a good cause exception in subpart (b) for failure to file by the 14<sup>th</sup>. In the event that there is a good reason, such as natural disaster, death, or other major event, we think the Board should be able to make exceptions for a late filing deadline. Indeed, it is the flexibility of the Board that has made it so successful. Treating all milk as produced outside of Pennsylvania is such a significant penalty that some exceptions might be appropriate.

### **C. Calculation of the Contributing Pool Plant Over-Order Premium Level (§ 148.3)**

Dean finds it difficult to adequately comment on this provision and the example used thereunder in the absence of the forms that will be the basis of the calculation. Without seeing the forms, it is difficult to ascertain the calculation of the variables that have been identified hereunder. Many of the concerns and questions that have been raised in these comments may well be resolved once the forms are made available so that Dean can test the examples using real life numbers.

In addition, with respect to 148.3(a), "Pennsylvania Production" seems to have been defined more broadly than had been anticipated. See discussion in the definitions section above. To the extent it is used to calculate the over order premium obligation of Pool Plants, it appears to create a direct burden on interstate commerce. Moreover, Dean is concerned that section 148.3(a), uses the term "total producer purchases" without first defining it. The term "total producer purchases" includes Class I diversions by other plants, which suggests that double counting may be taking place.

Further, whether inadvertently or otherwise, Dean sees a potential inconsistency in the calculation of the numerator and the denominator in the section 148.3 example. It appears that the numerator may be over-inclusive for the reasons explained in the discussion of "Pennsylvania Production." It is in light of this, that we express concern that the denominator may be under-inclusive, thus resulting in a higher than appropriate calculation of "Percentage of Pennsylvania Purchases." Dean recognizes that there may be an explanation that is founded in Official General Order No. A-893, but is unable to ascertain it at this time. In light of pooling, however, Dean respectfully sets forth the query that if non-Class I diversions are subtracted out of the denominator on the basis that they are not part of the plant volume, then should they not be subtracted out of the numerator on that basis as well.

In section 148.3(b), the "Percentage of Pennsylvania Purchases" should probably be clarified. It defined by example, in large part, instead of by words. Plant accounting is complex and difficult. Without knowing all details of a plant, it is extremely difficult to know the definition of the "Percentage of Pennsylvania Purchases" using an example only. Moreover, because of criticism of subpart (a), subpart (b) seems to have created a broader Over-Order obligation than exists under the present system.

Additionally, section 148.3(b) does not define Class I utilization. As discussed above, it would be helpful to have clarification of whether or how packaged milk receipts or shrink are subtracted out of the "Class I utilization." Without a clear definition, we cannot adequately comment on whether this formula would be overbroad in other unforeseen ways.

#### D. Collection and Distribution of the Pool (§ 148.5)

Regarding § 148.5(a) (the Pool Allotment For Each Plant), there seems to be a disconnect between the pounds of milk that a pool plant is required to pay into the pool on, and the pounds of milk that a pool plant may collect from the pool on.

For example, Dairy A calculates its Pennsylvania Percentage and thus its payment into the pool based on 300,000 pounds of Pennsylvania Production. Ultimately, that 300,000 pounds is used to calculate the percentage of Pennsylvania Class I Utilization for which Dairy A is liable to pay the Over-Order Premium.<sup>2</sup> In the example, this amount appears to be 200,000 pounds. However, based on our review of the example in § 148.5(a), that same dairy is only eligible to receive a distribution from the pool on 150,000 pounds. As such, it appears that under these proposed regulations, a Class I processor will find itself paying into the pool on milk that will not be eligible for pool distributions (the allotment). According to our calculations, the distribution for Dairy A should be based on a minimum of 200,000 pounds instead of 150,000 and thus should receive \$649 instead of \$525.<sup>3</sup>

While we cannot be sure, the disconnect seems to stem from the fact that Class I processors apparently have to pay into the pool on out-of-state diversions and federally depooled milk, but are not entitled to share in pool distributions on that same milk (per Pennsylvania Production Definition) (see example for § 148.4, A<sup>a</sup>, K<sup>a</sup>, L<sup>a</sup> as it relates to the examples for § 148.3 and § 148.5). If our interpretation is correct, this result was, we believe, unanticipated. Moreover, we believe that if the milk is not entitled to participate in the Pennsylvania pool, it should not be subject to a pool charge. This unequal treatment would be inequitable and we believe unlawful.

Additionally, Federally Depooled milk should be defined. Dean is concerned such lack of clarity leaves open the possibility that this section could be interpreted to mean that milk that was once shipped to a Federal Order Distributing Plant, but that is then shipped to a partially Regulated Class I Plant located in Pennsylvania, which is not subject to full Federal regulation by virtue of the level of route disposition in a Federally regulated territory, would be denied a pool allotment. Such an interpretation, if correct, would be unfair in that there appears to be no parallel provision exempting such partial regulated Federal Class I Plant from having to pay into the pool on such milk. Moreover, the Board provided no notice of such a result to the interested parties at the time these regulations were being discussed and formulated.

Regarding § 148.5(a), Dean believes there should be a performance requirement for Pool Plants that are not Contributing Pool Plants in exchange for participation in the pool or entitlement to pool allotments. Otherwise, pooling as propose represents a wholesale wealth transfer akin to a Taking. This is unlike the Federal Order System, which tends to impose

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<sup>2</sup> An important question remains how the Pennsylvania Class I Utilization (400,000 lbs) exceeds by 33% the Pennsylvania Pounds of Production (300,000 lbs). The very fact that it does, suggests that Contributing Plants are paying into the pool on a larger volume of milk than they are eligible to receive pool allotments on, or it suggests that double counting is taking place. Without a definition, it is not possible to pinpoint the exact cause of the problem.

<sup>3</sup> Indeed, the pay-in to distribution ratio should not be one-for-one. Rather, Pennsylvania Class I plants generally would have other classes of milk that should be eligible for pool allotments though not subject to the over-order premium charge.

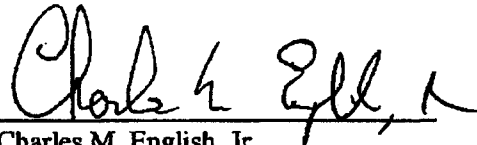
performance requirements on manufacturing plants in exchange for the right to share in the pool. While we think we agree with the Board's intentions in preparing § 148.5(b) regarding depooled milk, Dean is concerned, as explained above, that the provisions regarding "depooled" milk may be overbroad.

**Conclusion**

For the above-mentioned reasons Dean Foods Company respectfully requests that the Board undertake a further revision of the Proposed Pooling Regulations to address the concerns raised herein prior to the presentation of the proposed regulations to the Independent Regulatory Review Commission and the General Assembly. Accordingly, Dean also requests the opportunity to comment on any further technical revisions. Thank you for this opportunity to provide the aforementioned comments.

September 23, 2002

Respectfully submitted,



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**ATTACHMENT B**

**Minutes of the  
Commonwealth of Pennsylvania  
Pennsylvania Milk Marketing Board  
Sunshine Meeting  
Held on December 4, 2002**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA MILK MARKETING BOARD  
SUNSHINE MEETING

\*\*\*\*\*

DECEMBER 4, 2002

1:00 P.M.

ROOM 309 AGRICULTURE BUILDING  
HARRISBURG, PENNSYLVANIA

\*\*\*\*\*

MINUTES

BEFORE: BEVERLY MINOR, CHAIRWOMAN  
LUKE BRUBAKER, MEMBER  
BARBARA GRUMBINE, CONSUMER MEMBER  
  
DOUG EBERLY, CHIEF COUNSEL  
  
LYNDA J. BOWMAN, SECRETARY

Preamble was very well written and I'd like you to indulge us. I'd like to point out a few things that was said in the Preamble which I'm sure that we're going to be questioned about the regulation going forward. And, the point that was made was that the over-order premium has been implemented to address conditions such as drought, fuel costs, cost of production, and marketing of production affecting all of the milk producers in Pennsylvania; not just producers of Class 1 milk, but the over-order is meant to address conditions peculiar to producers of milk for Class 1 market.

The other point I'd like to bring up is over and over again in the Preamble, the point is made that this is a compromise. Land O'Lakes would probably have offered a different compromise than this. However, it is a compromise. We didn't get everything we wanted, but we did get quite a few things. We got the -- the fact that it's not just milk produced in Pennsylvania, it's milk delivered to a Pennsylvania -- so, it's milk that is tied to the state, to the Commonwealth, to the Class 1 and the balance of facilities that --

We'd like to again thank and commend the Board and to also insure that the Board knows that Land O'Lakes and Maryland Virginia will support this regulation. We will do what we need for its implementation.

CHAIRWOMAN MINOR: Thank you for your comments. It is so nice to hear. And, as you know as we're all aware that was a joint effort between

everybody around this table. Terrific effort on Sharon and Lynda's part and now terrific effort on Doug's part. Good job. Thank you for your comments. Any other public input?

[No response.]

CHAIRWOMAN MINOR: Moving down to New Business. We need to call for the adoption of a motion dealing with the Official General Order A-918, the over-order premium.

MR. EBERLY: We didn't pass those out yet.

CHAIRWOMAN MINOR: Okay, we didn't pass those out?

MR. EBERLY: No.

CHAIRWOMAN MINOR: Where are they?

MR. EBERLY: We wanted to make sure they weren't going to be changed at the last minute.

CHAIRWOMAN MINOR: Do we have them to pass out?

MR. EBERLY: Yes.

CHAIRWOMAN MINOR: We'll wait a few minutes until you all see that final form on those. I thought we passed those out this morning though.

MR. EBERLY: We did, but not the signed copies.

CHAIRWOMAN MINOR: Okay.

MR. ERERLY: Didn't want to waste any paper if anything else got changed.

CHAIRWOMAN MINOR: Okay. Thank you. All right, now if you look that over quickly, I would like to call for a motion of the adoption of the Official General Order A-918. Do I have a motion?

MR. BRUBAKER: Madam Chairman, I make a motion that we adopt General Order A-918.

CHAIRWOMAN MINOR: And a second?

MS. GRUMBINE: Madam Chairman, I'll second the motion.

CHAIRWOMAN MINOR: Do we have discussion?

MR. BRUBAKER: Yes, I'd like to talk about it.

CHAIRWOMAN MINOR: I knew you did.

MR. BRUBAKER: Well, I'm happy for all the comments that was said this morning. Maybe not happy about all the comments, but I think there is some merit in some of the comments that were said this morning. A lot of merit in what was said from both sides for and against the way that we have designed this over-order premium for the next six months. I thank you, John, for your comments.

As a dairy farmer it was hurting me the whole way through to even make a decision like this, but on the other hand I did feel that there was a couple

comments that you made that I wasn't sure that I didn't agree with quite 100% -- that we were looking at one deal or one segment of the industry and actually I think the testimony said that we're probably looking at about 40 or 42% of the milk in Pennsylvania. So, I just wanted to get that off my mind and I thought that the other price that farmers are in -- As a dairy farmer I know it was very, very, very difficult trying to pay bills this past 2000 --

CHAIRWOMAN MINOR: Six months.

MR. BRUBAKER: In 2002, yes, I'm sorry, in 2002 it was very difficult to pay the bills which we did receive a little of that milk payment, but the average dairy farmer in Pennsylvania, I think, will receive all of that payment and I think it will give them and they should have received that if they applied for it -- a breath of fresh air, compared to what they got on the marketplace. And, I think some of this helped to make the decision that we know as a fact that they'll receive this for the next six months -- they're going to receive it for the next three years, but either in the marketplace or else the payment that we receive from the government. So, which in the testimony brought it to the fact that there was a -- I think it was \$13.61 -- is that what you've quoted -- which is I guess you got to say it in the light of who you're talking to as a good price -- some would say it's not a good price -- \$15.00 felt a lot better, but we know that that's not going to be a fact that it's going to stay there all the time, but \$13.61

add on some premiums or take away some transportation, that's a much better price that the average Pennsylvania farmer is going to receive over the next six month and plus years. With our premium on top of that it just seemed like that now was the time that maybe we did make a mistake -- maybe I made a mistake in the past that we shouldn't have had the premium as high as it was, but maybe we were setting a precedent that we shouldn't have set. And, it seemed like now is the time that maybe we should adjust it down. We know that the average Pennsylvania farmer is going to receive more than what the marketplace is going to give unless the marketplace is this high.

What else did I want to say -- so, in general, I hope the way you said it, John, was that we're not being as hard on the dairy farm in Pennsylvania as it was said, that they're not going to get very much money because they're going to get a reason dollar for their milk here. It's not that they can't use more because I know we can use every cent that we can get. And, I'd love to do it, but I think for the betterment of the marketplace, to me it seemed like this was the right place to be for now. If it's not -- I want to be the first one that will be ready to change it.

CHAIRWOMAN MINOR: Any other discussion?

[No response.]

CHAIRWOMAN MINOR: Okay, I'll call for a vote. All in favor, say aye.

[Unanimous.]

CHAIRWOMAN MINOR: All right, License Application. No, Report of Chief Counsel, I'm sorry, Doug, didn't mean to offend you there.

MR. EBBRLY: That's quite all right. Well, the only thing that we might report is that I believe the Board may meet to discuss some plans for the International Association of Milk Control Agencies Conference which will be here in August. And, I suspect we'll do that, the Board will do that right after this Sunshine Meeting.

CHAIRWOMAN MINOR: Yes, we will. We'll probably be extending invitations to everybody. It's a good conference. It's a great conference.

Anything else?

MR. EBBRLY: That's it.

CHAIRWOMAN MINOR: All right, License Applications, Tim?

MR. MOYER: We have one application today. We've received notification from Reller Akron, Inc. a plant in Akron, Ohio, that's part of Dean Plant, Dean Group. And, they've requested a dealer license. They'll purchase and process milk from independent producers and sell a full line of dairy

products to customers in Pennsylvania and out-of-state. They have completed the application and provided proper fees and security and [speaker inaudible] and with Board approval a dealer license will be issued.

CHAIRWOMAN MINOR: Do we have a motion? Some discussion, questions?

MR. BRUBAKER: I'll make the motion that we give them a provisional license.

CHAIRWOMAN MINOR: A provisional license or a license?

MR. BRUBAKER: Well, what are you suggesting?

MR. MOYER: I'm promoting a license.

MR. BRUBAKER: Well, then I'll change that to a license.

MS. GRUMBINE: I'll second the motion.

CHAIRWOMAN MINOR: And, I would probably just like to interject, I surely wish we could put in that line, one Pennsylvania producers, but all in favor, say aye.

[Unanimous.]

CHAIRWOMAN MINOR: Good, okay. Reminders, we will have a container cost hearing on January 8<sup>th</sup> at 9 o'clock in the morning for Milk Marketing Areas 1, 2, 3, 4, 5, & 6. That's at 9 o'clock. And, the Sunshine Meeting is at 1 o'clock. I'd also like to remind you that there is a Dairy Stakeholders



Meeting, our Annual Dairy Stakeholders Meeting is December 11 and 12 and it is a great meeting, too. There are 250 people registered. It sounds like it's going to be very, very good. And, Dave McCorkle with the Food Merchants is in charge of it this year and it's a power-packed program. So, I invite all of you to get registered and come.

Okay, anything else to bring before this meeting?

[No response.]

CHAIRWOMAN MINOR: Do I have a motion for adjournment?

MS. GRUMBINE: Madam Chairwoman, I move we adjourn.

CHAIRWOMAN MINOR: And, a second?

MR. BRUBAKER: I will second that.

CHAIRWOMAN MINOR: All in favor, say aye.

[Unanimous.]

CHAIRWOMAN MINOR: This meeting is adjourned.

**ATTACHMENT C**

**Dean Foods Company's  
Briefs Regarding Over-Order Premium Level**

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November 25, 2002

**VIA E-MAIL**

Ms. Lynda Bowman  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Post-Hearing Brief for November 6, 2002, Over-Order Premium  
Hearing for Areas 1, 2, 3, 4, 5 and 6.

Dear Ms. Bowman:

As I write this letter brief on behalf of Dean Foods' five Pennsylvania fluid milk processing plants in support of a Over Order Premium level of \$1.20 for the six-month period beginning January 1, 2003, I am reminded of Aesop's Fable about the goose that laid the golden egg. The teaching of the fable – "much wants more and loses all" – is not far off the mark in the instant situation. The record reflects a competitive disequilibrium between Pennsylvania and other states that clearly justifies the requested \$1.20 Over Order Premium level. Nevertheless, the Pennsylvania farm groups testifying at the hearing on November 6, 2002 were unwilling to support Dean's recommendation to establish the Premium at \$1.20. This understandably short-sighted mentality is not that different from the mentality of the farmer who killed the Golden Goose because one golden egg each day was not enough.

Dean Foods understands the financial concerns of the Pennsylvania farmer organizations. With this in mind, Dean Foods has not requested zeroing out the Over Order Premium. Instead, the requested \$1.20 level reflects Dean's attempt to balance the producers' reasonable return against the very real competitive threat to Pennsylvania-produced milk that the record evidence clearly and without contradiction demonstrates already exists. Unless the Board establishes a \$1.20 Over Order Premium in lieu of the higher requested \$1.65, customers will continue to go out of state for their milk supply or find other ways of denying Pennsylvania farmers the Over Order Premium altogether.

On July 30, 2002 and November 6, 2002, Dean Foods presented substantial evidence that the present \$1.65 level of the Over Order Premium is too high relative to the level of voluntary premiums in surrounding states, and that the requested \$1.20 level is necessary to bring about competitive equilibrium.

First, on July 30, 2002, on behalf of the Pennsylvania Association of Milk Dealers, and on November 6, 2002, on behalf of Dean Foods, Carl Herbein testified that as a factual matter, there is a substantial price wedge between the level of the Pennsylvania-mandated Over Order Premium and the voluntary premiums paid in surrounding states. Tr. at 187-190. According to Mr. Herbein, his survey of the months of March, April, and May indicated a Class I wedge of 52-cents, and his survey of the months of June, July, and August indicated a Class I wedge of 46-cents.<sup>1</sup> Tr. at 191. Following Mr. Herbein's testimony, three witnesses, including two Pennsylvania industry insiders and one expert on milk marketing indicated that Mr. Herbein's results were entirely consistent with what they were seeing in the marketplace. Tr. at 248-249, 266, and 278.

Second, Mr. Carl Conover, a qualified expert in milk marketing, testified that such differences were substantial enough that "a Pennsylvania plant facing competition from plants with lower premiums has the incentive to look for a supply of milk at a premium that will keep the plant competitive with respect to the raw milk cost of other plants." Tr. at 279. He explained that because of the significant premium wedge it can be economical to acquire milk from lower priced out-of-state sources in order to avoid the Pennsylvania Over Order Premium. While he found this to be the case in the eastern side of the Commonwealth on the basis of the premium wedge alone, Mr. Conover indicated that the economic incentive to acquire out-of-state milk was even higher in the west. Tr. 280-282. This, he explained, was because dairy farmers on the Mideast Order also had the added incentive of moving milk to a higher Class I differential area in the Northeast Order. Tr. at 281-282.

Mr. Conover also demonstrated that his conclusions were not theoretical, but could be implemented because alternative sources of milk were available to Pennsylvania processors and could be transported to Pennsylvania for less than the premium wedge through a process known as stair-stepping. Tr. at 279-280. Moreover, Mr. Conover explained that excess milk supplies need not be available for these significant incentives to make it economic for plants and retailers to take steps to avoid the Pennsylvania Over Order Premium. Indeed, he testified that in a multi-plant scenario, for example, a Pennsylvania plant could obtain a similar result through an exchange of milk, whether across state lines or among fluid and manufacturing plants. Tr. at 291. Mr. Conover also explained that the incentive for Pennsylvania processors to take these steps to become competitive with out-of-state dairies is increased to the extent the \$1.65 premium has become a fixture – according to Mr. Conover "a year pretty well makes it a fixture." Tr. at 290. Importantly, when asked if an Over Order Premium level of \$1.45 would help alleviate the competitive disequilibrium, Mr. Conover indicated that it would not. Tr. at 313.

Third, Mr. Frank Mariello, General Manager of Lehigh Dairy's two fluid milk processing plants located in Lansdale and Schuylkill Haven testified in support of an Over Order Premium level of \$1.20 explaining that the current difference between the

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<sup>1</sup> Mr. Herbein indicated that, in his opinion, differences in the cross section accounted for much of the difference between the two surveys. Tr. at 191.

Pennsylvania Over Order Premium and the voluntary premiums on Class I milk in surrounding states has had an impact on his business. Tr. at 249. In fact, he explained that a major customer recently decided to relocate, moving its distribution facility out of Pennsylvania to New Jersey, at least in part to avoid the Pennsylvania Over Order Premium. Tr. at 249. Indeed, Mr. Mariello indicated that the decision was only made after the Board rejected the emergency petition of the Milk Dealers in July 2002 to lower the Pennsylvania Over Order Premium. Tr. at 251.

Fourth, Mr. Frank Chrastina, Vice President and General Manager of Dean Dairy Products in Sharpsville, testified in support of an Over Order Premium level of \$1.20 because his operations on the western side of the state are also being impacted by customer objections to the current \$1.65 level of the Pennsylvania Over Order Premium. Explaining that his customers have become more educated about milk procurement in recent years and have begun to pay attention to premiums (Tr. at 267), Mr. Chrastina testified that one of Dean Sharpsville's major customers challenged him to get the Pennsylvania Over Order Premium more in line with Ohio premiums. Tr. at 268. He indicated that right now, Dean Sharpsville and this major customer are on hold waiting for the Board's determination for January 1, 2003. Tr. at 268. In addition, Mr. Chrastina also testified that his plant has actually lost customers in the past six months to out-of-state sales that could be priced without the Pennsylvania Over Order Premium.<sup>2</sup> Tr. at 273.

These facts require a finding that the market for Pennsylvania-produced milk is being threatened, indeed has already been lost, whether by outright replacement using out-of-state sources, or by other mechanisms intended to deny Pennsylvania dairies the Over Order Premium. The Pennsylvania Legislature was keen enough to acknowledge in the Milk Marketing Law the need for the Board to be able to place the marketing of Pennsylvania-produced milk above all other pricing considerations when the market for the Pennsylvania produced milk is threatened. See The Milk Marketing Law, Article III, Section 801 ("However, where the board determines that the market for Pennsylvania produced milk is threatened it may establish producer prices designed to market the milk."). In light of the testimony on November 6, 2002 and the testimony on July 30, 2002, which was admitted into evidence pursuant to 1 PA 35.167 (Tr. at 172-178), it is clear that the market for Pennsylvania produced milk is under siege and as such the Board should act to alleviate the threat by lowering the Over Order Premium.

As Mr. Conover testified, the reduction in the Over Order Premium is a short run cost to the Pennsylvania dairy farmer that should prevent longer term losses on a larger scale. Such longer term losses, according to Mr. Conover, include (1) the loss of the opportunity to earn the Over Order Premium if Pennsylvania processors accelerate efforts to avoid it; (2) the loss of local Class I markets if Pennsylvania processors increase purchases of out-of-state milk; and/or (3) a lower Federal Order blend price if Class I

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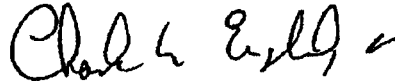
<sup>2</sup> While some producer representatives questioned the methodology used by Mr. Herbein, those producer organizations provided no contrary evidence regarding competitive impacts. They did not, because they could not, contradict Messrs. Mariello and Chrastina who testified about the real and threatened loss of market for Pennsylvania-produced milk.

sales to Pennsylvania retailers are replaced by processors located in the Mideast Order. Tr. at 292-293. Dean Foods has adjusted and finds itself in the middle of meeting competition. Tr. at 291. If economic forces require, Dean will continue to take all necessary steps to meet competition from out-of-state processors. In recommending an Over Order Premium level of \$1.20, however, Dean is simply trying to give this Board and the Pennsylvania dairy industry the chance to fight for its own competitive well-being so that the Pennsylvania regulatory program is not rendered moot.

Under present circumstances, Dean Foods believes this is not the time for the Pennsylvania industry to "want more", or to even maintain the status quo. As the testimony reflects, competition has become more fierce and aggressive in recent years, and the price wedge that is created by the Pennsylvania Over Order Premium has been noticed by our customers and has become a factor in how business deals are arranged and from where milk is sourced. Tr. at 250 and 267.

Accordingly, for the continued health and vitality of the Pennsylvania dairy industry, Dean Foods urges the Board to adopt an Over Order Premium of \$1.20 for the six-month period beginning on January 1, 2003. In so doing, Dean Foods reminds the Board that they are writing on a blank slate and there is no presumption of validity as to the current level because it is, without action, set to expire December 31, 2002. Serious erosion of Pennsylvania produced and processed sales of milk in Pennsylvania is not a matter of speculation, but rather an ongoing fact directly resulting from the producers' past and present insistence that the premium be set at \$1.65 regardless of economic reality.

Respectfully submitted,



Charles M. English, Jr.

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November 27, 2002

**VIA E-MAIL**

Ms. Lynda Bowman  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110

Re: Rebuttal – November 6 Over-Order Premium Hearing

Dear Ms. Bowman:

Dean Foods submits this letter brief in rebuttal regarding the November 6 Over Order Premium Hearing.

Producer groups as proponents of a \$1.65 Over Order Premium appear to assert that the burden is on Dean Foods to prove that the Over Order Premium must be reduced. However, with the existing Over Order Premium set to expire on December 31, 2002, producers asking this Board to establish a \$1.65 premium for the following six month period must be required to carry their burden of proof that the premium should be as high as \$1.65. They have not done so.

In a futile effort to ignore economic reality and the threat to the PMMB system, opponents of Dean Foods' position redefine Section 801 of the Milk Marketing Law as requiring this Board to be "convinced" that "serious erosion of Pennsylvania markets will occur unless the premium is adjusted." But that is not what is required by the statute (" . . . where the Board determines that the market for Pennsylvania produced milk is threatened . . . "), and that assertion regardless ignores the evidence that the threat is more than theoretical. The storm is already breaking. To start though, Webster's New World Dictionary, Second College Edition, defines the intransitive verb "threaten" as follows: "to be an indication or source of potential danger." The examples include "a warning of impending danger by words, actions, events, conditions, signs, etc." The legislature is deemed to have known and intended the common usage of the term, unless otherwise expressly stated. This Board cannot and should not wait for the danger to overwhelm us, rather Section 801 expressly authorizes the Board to guard against the potential danger. That is an ounce of prevention indeed is worth a pound of cure.

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Frankly, the indication or source of potential danger has been discussed for a number of months. As of the November 6 hearing, we have moved beyond the testimony in May and July foretelling the decision of a major distributor to relocate its redistribution facility into New Jersey and the loss of customers in the West to out-of-state milk sources. And the Board and interested parties should make no mistake, that both impending situations were indeed at the heart of the request for hearing and the testimony given earlier this year. Both are also important examples (and more are likely coming (Tr. 251, 268-269)) of what has, can and will happen, unless strong medicine is taken now. Moreover, they put the lie to the theory that out-of-state premiums can and are adjusted so as to avoid competitive disequilibrium. Sales to a New Jersey distribution center are treated for competitive premium purposes as being in New Jersey, not Pennsylvania, even if the distribution center distributes its milk in Pennsylvania. Tr. 246. Without losing a customer in the east, the loss of Pennsylvania premium is no less real than it is with the loss of customers in the west.

One of the most important considerations is that Dean Foods has no economic reason to cry wolf. To the contrary, it is simple economics that has forced Dean to come to the Board to convince it of the potential danger. The Over Order Premium is an automatic part of the cost replacement process. In addition, dealers receive a minimum margin on all their costs. A \$1.65 Over Order premium generates a larger minimum margin for the dealers than does a \$1.20 Over Order premium. So why would a dealer voluntarily forgo the margin on that \$0.45? Because this dealer has correctly concluded that the threat is real and for its part has decided to put the good of the entire system ahead of that lost margin.

Finally, while Dean Foods would prefer a \$1.20 premium statewide, it can accept the Staff's recommendation of a \$1.20 Over Order premium in the east and west. Again, this hearing was held to determine what level, if any, should be established for an Over Order premium. There are, or should be, no preconceptions from the industry as to how the Board will act. Therefore, it was and is entirely foreseeable, based upon the May and July hearings and the pre-hearing submissions of Dean Foods, that an interested party could conclude that the competitive threat discussed at length could be addressed as proposed by the Staff. The Staff's compromise position (which we assume would apply as a point-of-sale premium) is a responsible approach. The producer position that any decision based upon Staff's recommendation should be postponed to another day is nothing more than a rear guard action designed to avoid dealing with the fact that the threat is real, the threat has been realized, the threat is growing, and the threat is not going away.

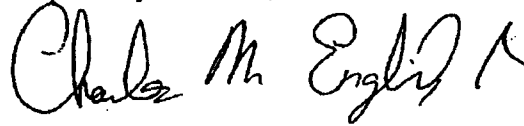
Before the Board considers adopting another \$1.65 Over Order Premium for yet another six months (the burden of which has not been carried by proponents), it should more closely inspect this Trojan Horse that is being offered to it. We respectfully urge



Ms. Lynda Bowman  
November 27, 2002  
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the Board, not to treat Dean Foods as Cassandra was treated by Troy. We respectfully urge the Board not to ignore the gathering storm.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles M. English, Jr." The signature is written in black ink and is positioned above the printed name.

Charles M. English, Jr.

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February 4, 2003

**VIA E-MAIL  
VIA FACSIMILE AND U.S. MAIL**

Ms. Lynda Bowman  
Secretary  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Room 110  
Harrisburg, PA 17110

**Re: Rebuttal - January 27, 2003 Reconsideration of November 6, 2002 Over  
Order Premium Hearing**

Dear Ms. Bowman:

Dean Foods submits this letter brief in rebuttal regarding the January 27, 2003 reconsideration of the November 6, 2002 Over Order Premium Hearing.

Dean Foods reiterates its position taken at the hearing that the burden of proof rules that applied in July 2002 to Dean Foods must now apply equally to proponents today. Moreover, Dean repeats its objection made at the hearing to consideration of testimony that does not constitute changed market conditions. The testimony of changed over-order premiums charged by cooperatives in Ohio is indeed relevant changed circumstances, but the testimony about hauling was not.

Regardless the testimony about hauling costs was theoretical and incomplete. It did not consider the potential or possibility of backhauls reducing the cost of any haul. It did not consider whether the hauling cost may be otherwise reduced by other economic factors used by distribution facilities such as convenience, combined trucking expenses for shipping multiple goods, scheduling of product delivery or indeed strategic placement of the distribution facility so as to greatly shorten the distances that must be undertaken for the haul. Finally, the testimony did not consider the relevance of two distinct milk supplies an equal distance from a plant, one in Pennsylvania and one in Ohio. There would be no higher hauling costs in choosing between the two supplies of milk simply because one supply is in Ohio and one is in Pennsylvania.

DC #136691 v1

Dean Foods is especially troubled by the Board's decision to overrule its objection to the hauling testimony, but then grant the Farm Bureau's objection to footnote 10 of DMS' testimony. Footnote 10 is essential to the Board's consideration in the future of what the proper level of the PMMB premium should be in light of the proposed adoption of pooling 45% of the over-order premium. To accept the testimony about hauling without the footnote would ignore half the story. The weather may have been sunny and warm in the morning, so let's ignore the tornado in the afternoon. Indeed, as noted at the Hearing, there appears to be a head in the sand approach to that coming storm based upon a refusal to air the issues in an on-the-record hearing subject to rulemaking procedures. The PMMB really is treating "pooling" as the crazy aunt in the attic whom it can just ignore, even though she is poised to leave the attic and wreak havoc throughout the house if not the entire state of Pennsylvania. Due process demands more, much more.

Dean Foods acknowledges the relevance of the testimony that the Ohio cooperative premium in February is poised to be set at a net close to \$1.50. However, there was no testimony as to the level of premium that will actually be paid by Dean's competitors to independent producers in Ohio. Nor was there any effort to revise Mr. Herbein's study that showed a disparity in pricing. Finally, there is no evidence that the entities about which Dean testified that are looking at alternatives to Pennsylvania milk have altered course in light of the newly announced Ohio premiums. Finally, Dean notes the incongruity that the PMMB's actions in December allegedly put downward pressure on pricing to the south and east, but simultaneously put upward pressure on the premium to the west.

Dean Foods strongly objects to the Farm Bureau request to increase the premium to \$1.65 for March through June, 2003. No testimony supported this request. Had there been testimony submitted to the Board in advance of the hearing supporting \$1.65 as opposed to \$1.50, parties such as the other milk dealers, the retailers and Dean Foods could have determined how, if at all, to oppose that testimony in rebuttal. But none was forthcoming. To spring into action at the time of the Brief filing without supporting testimony further deprives the parties of a meaningful opportunity to participate and respond.

The dealer testimony in November was hardly "anecdotal" as asserted by counsel for DMS. Subject to obvious market confidentiality issues, it was specific, hard-hitting and ought to remain of significant and visible concern to this Board. Unlike the merely "theoretical" testimony of DMS, the dealer testimony informed the Board of what is really happening in the real world as the result of real decisions made by real business persons responding to real events resulting from the real differences in real premiums.

Dean Foods is nonetheless mindful of the serious economic conditions facing Pennsylvania dairy farmers today. Dean Foods desires a long-term local supply of milk in Pennsylvania and to that end, the level of the over-order premium, if paid to the producers

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**Inelen Reid & Priest LLP**

actually engaged in serving the fluid milk market, is a crucial element. The PMMB continues to face a difficult choice regarding the proper premium level because Pennsylvania does not exist in a vacuum.

Respectfully submitted,



Charles M. English, Jr.

CME/

cc: Interested Parties (See Distribution List Attached)

DC #136691 v1

**CERTIFICATE OF SERVICE**

On this 4th day of February, 2003, I, Samira Fredericks, a secretary in the law office of Thelen Reid & Priest, LLP, hereby certify that I have served this day true and correct copies of the foregoing Rebuttal for Dean Foods Company by e-mail and/or by fax, in Washington, D.C., to those persons and addresses indicated below:

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**3. Pennsylvania Food Merchants Assn.**

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Harrisburg, PA 17101-1604  
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John J. Liptock, Jr., C.P.A.  
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**4. Pennsylvania Assn. Of Milk Dealers**

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**5. Pennsylvania State Grange**

Brenda J. Shambaugh  
Fax: 717-234-7654

**6. DMS, Dairylea, Northeast Council of DFA, and  
Northeast Milk Marketing Agency**

Marvin Beshore  
Milspaw & Beshore  
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Harrisburg, PA 17108-0946

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**7. Land O'Lakes**

J. Jackson Eaton, III, Esquire

February 4, 2003  
Page 6 of 7

**Inelen Reid & Priest LLP**

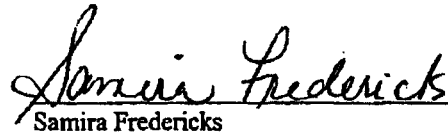
**INTERESTED PARTIES**

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Samira Fredericks

Original: 2218



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PENNSYLVANIA MILK MARKETING BOARD  
REVIEW COMMISSION

DONN L. SNYDER  
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dsnyder@saul.com  
www.saul.com

February 12, 2003

Douglas Eberly, Esquire  
Chief Counsel  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

Re: **PFMA - Proposed Pooling Regulation**

Dear Mr. Eberly:

This letter concerning the above matter is written on behalf of Monroe County Milk Producers Cooperative Corporation, d/b/a Pocono Mountain Dairies.

In prior correspondence in the file of Ms. Grottola, as well as discussions with you and other staff, and other correspondence concerning this matter has elicited the following factual situation in which my client finds itself. Pocono Mountain is a non-federally regulated operation. It purchases no milk and sells milk only at retail. The milk is processed by a non-federally regulated plant at which no title passes. The Pennsylvania Milk Marketing Board does not regulate the prices paid to the cooperatives' members.

As you know, the over-order premium comprises only a constituent part of the producer price buildup, along with all other factors as distant from the ultimate PMMB announced price as the cost of feed. There is no separate "eligibility" criteria for Pennsylvania producers to participate in the benefit of any of the particular constituent calculations which go to making up the producer price.

The effect of the proposed pooling regulation is to extrapolate from the announced producer price which Pocono Mountain producers receive a theoretical figure which has no relationship to the actual prices received by its members.

2 North Second Street, 7<sup>th</sup> Floor • Harrisburg, PA 17101-1604 • Phone: (717) 257-7500 • Fax: (717) 238-4622

95418.1 2/12/03 BALTIMORE CHESTERBROOK HARRISBURG NEW YORK PHILADELPHIA PRINCETON WILMINGTON

A DELAWARE LIMITED LIABILITY PARTNERSHIP



Douglas Eberly, Esquire  
February 12, 2003  
Page 2

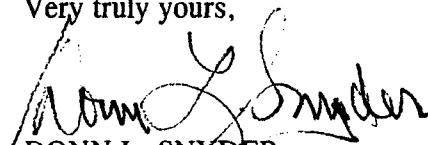
It is our position, therefore, that a requirement to pay into a type of market-wide pool is an abstraction of money based upon assumption rather than fact. The regulation imputes to the cooperative members receipt of an over-order premium which is no more logical than to impute an assumption that such a premium is in fact not received by them. Thus, in this factual setting, there is -- in truth -- no legal standard upon which a specific allocation of funds to the pool can be predicated.

In summary, therefore, we do not believe that imposing the effect of this regulation upon my client is legal, because the Board is not given the authority to impose what is really a pricing mechanism on this cooperative. We believe that the powers of the Board under the Milk Marketing Law is very specifically limited, and therefore cannot put its pricing arms, even part way around a supply of milk over which by law it has no jurisdiction.

We believe this is a solid legal position and solicit the Board's agreement that this exemption should be spelled out in the proposed regulation.

Thank you for your consideration and cooperation.

Very truly yours,



DONN L. SNYDER

DLS/clj

c: Ms. Lynda J. Bowman for appropriate Board and Staff distribution

Original: 2218

**IRRC**

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**From:** Gallagher, Ed - Regulatory Policy [Ed.Gallagher@dairyalea.com]  
**Sent:** Wednesday, February 12, 2003 4:07 PM  
**To:** IRRC  
**Subject:** PMMB Pooling Comments



Document.pdf

Please forward these comments to the appropriate person. They are the comments filed today with the Milk Marketing Board relative to their pooling issue. Thank you.

Ed Gallagher  
Vice President  
Planning and Regulatory Policy  
Dairyalea Cooperative Inc.  
800-654-8838

-----Original Message-----

From: GALLAGHER, ED [mailto:ed.gallagher@dairyalea.com]  
Sent: Wednesday, February 12, 2003 3:33 PM  
To: GALLAGHER, ED  
Subject:

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This document was sent to you using an HP Digital Sender.

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Document type: B/W Document  
Number of pages: 10  
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Attachment File Format: Adobe PDF

To view this document you need to use the Adobe Acrobat Reader.  
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February 12, 2003

Ms. Lynda Bowman  
Pennsylvania Milk Marketing Board  
2301 N. Cameron Street  
Harrisburg, PA 17110

Dear Ms. Bowman:

These comments pertain to the Pennsylvania Milk Marketing Board's Class I over-order pooling proposal. They are filed pursuant to the Board's February 5, 2003 request to the industry. These comments are filed on behalf of Dairylea Cooperative Inc. (Dairylea), Dairy Farmers of America (DFA) and Dairy Marketing Services (DMS), the joint membership and marketing venture between Dairylea and DFA (collectively referred to as "we").

Dairy Farmers of America and Dairylea Cooperative have a single statewide position on the Pennsylvania Milk Marketing Board's pooling proposal that is in common with a number of other dairy stakeholders. DFA, Dairylea and others, believe the pooling process needs to be more deliberative to allow for further thought and analysis into matters impacting the Board's regulation.

DFA and Dairylea urge you to work more closely with the industry to better understand the implications of pooling, before putting the regulation in final form. Although other stakeholders may outright oppose pooling, the DFA and Dairylea position is, at the very least, in line with that of the Grange, the Pennsylvania Milk Dealers Association, Dean Foods and other individual dairy farmers.

The Milk Marketing Board's pooling proposal will have significant implications on a number of farms and other dairy businesses. If pooling is to go into effect, these changes on the Commonwealth's dairy industry and its overall economy should be understood ahead of time. At this point it is not clear whether pooling will have a positive or negative impact on Pennsylvania's dairy industry.

**Dairylea and DFA are Major Stakeholders**

Together, Dairylea and DFA contribute nearly half a billion dollars to Pennsylvania's dairy industry and overall economy. Nearly 20 percent of Pennsylvania's dairy farmers market their milk through Dairylea, DFA or DMS – receiving more than \$300 million in milk payments. In Pennsylvania, DFA operates four manufacturing plants and is jointly invested in five other plants – three of which are fluid plants and two that are manufacturing plants. Through these plants, DFA contributes more than \$90 million in employee payroll, investments and capital improvements. Dairylea and DFA also offer a plethora of value added business services to dairy farmers, milk haulers and to a limited extent, our milk dealer customers. These services include health insurance, workers compensation insurance, input buying programs, cattle leases, loan programs and milk price risk management programs. These programs help dairy farmers, milk haulers and our customers to be more competitive and profitable.

**PO Box 4844  
Syracuse, NY 13221-4844**

Dairylea is also a joint venture partner in Dairy One – the leading on-farm record management service in the Northeast.

### **Board Needs to Step Back and Be More Deliberative**

We believe that the Dairylea and DFA partnership constitutes the largest milk business in Pennsylvania. We know it is the most diverse. This makes us the largest stakeholder in Pennsylvania's dairy industry and places us in an important leadership role within the Commonwealth. As leaders of an industry, we take a "world view" that goes beyond the financial health of the farms the ship to us or the businesses we operate. It is a necessity to do so. All aspects of the dairy industry need to be healthy in order to create the environment that allows us to maximize the profitability of the farms that ship their milk to us. **We believe that a rising tide lifts all boats.**

It should speak volumes that Pennsylvania's largest and most diverse dairy stakeholder can not place its full weight and support behind the Board's pooling proposal. We have very valid concerns that the pooling proposal will not lift all boats. More importantly, we are concerned that the pooling proposal will lower the level of the water in the ocean. Our concerns are not new. We have been raising them continuously throughout the Board's deliberation. Nonetheless, the Board has yet to address the issues that we have raised and shown us that they have done the appropriate study and analysis to abate our concerns. Their lack of response does not give us confidence in the process. **The Board needs to step back, reach out and work with the industry on analyzing the implications of pooling, and be more deliberative in the process.**

We have been accused of raising these questions as a ploy to make the process take longer. That is unfortunate and the criticism is misplaced. We want what is right for Pennsylvania's dairy industry. We do not know if pooling is the right thing. We do believe that if the appropriate thought, analysis and dialogue on the implications of pooling were to occur, the path of pooling would be plainly clear and all stakeholders – not just the stakeholders who stand to have their boats lifted - would have confidence in the direction that the Board would take.

These comments are divided into two parts. The first part will identify a number of issues that have not been addressed by the Board and have far reaching implications on Pennsylvania's dairy industry if pooling is implemented. We again ask that more deliberation is taken to address these issues prior to presenting the Board's proposal for the final form process. We again state that the result of this deliberation will provide a clear path to follow relative to this contentious issue.

The second part of these comments will address some problems with the pooling provisions themselves that need to be addressed prior to resubmission. We firmly believe that if pooling is going to occur that the pooling provisions should be absolutely precise and appropriate to achieve the intended purpose without creating undue marketing, reporting or payment problems that could give rise to legal action.

Unfortunately, the short time frame that you set for providing comments to the most recent changes to your pooling proposal has not allowed for the appropriate time to scrutinize these provisions.

Although vitally important to us, the Board's business is not the only important and weighty issues before us that requires our time and effort. We ask that you continue to allow us to review the pooling provisions and suggest modifications, as appropriate.

## **Issues Unaddressed by the Board**

### **Class I Premium Pooling Deviates from National Custom**

The Board's decision to pool a portion of the Class I over-order premium will force the dairy industry to deviate from the custom, practice and logical economic structure that has always existed in Pennsylvania as well as in every other State in the Union. Presently Class I over-order premiums are paid to the businesses, be they cooperatives or dairy farmers, delivering the milk to the Class I plant. By Board edict, this custom will be changed in Pennsylvania, and only in Pennsylvania. Upon implementation of the pooling regulation, cooperatives and dairy farmers delivering to Pennsylvania's Class I plants will no longer receive 100 percent of the over-order premium associated with their deliveries – as they do everywhere else within the U.S.<sup>1</sup> This will impact Pennsylvania's dairy markets.

The current process of paying 100 percent of the Class I over-order premium on the loads of milk that are delivered to Pennsylvania Class I plants, processed in such plants, and sold as Class I in Pennsylvania, has worked well for the Commonwealth. Class I plants have been adequately supplied and the fluid milk demands of Pennsylvania's consumers have been met. Reducing this payment to something less than 100 percent and paying the residual value to dairy farmers supplying manufacturing plants will change the landscape of Pennsylvania's dairy industry and its milk marketing logistics.

Dairyalea and DFA have reported before that there exists fierce competition to obtain dairy farmer milk supplies to meet supply needs at both Class I and manufacturing plants. Although producers change their milk market from time to time, there has been no major shift in producers due to manufacturing plants being uncompetitive with Class I plants or vice-versa. Both plant groups pay premiums. There is not much if any difference between the net pay prices of one group or the other. Using an economic term, the market is in equilibrium.

Reducing the premium payments to producers or cooperatives supplying Class I plants, and paying it out to producers delivering to manufacturing plants, will change the equilibrium in Pennsylvania. Anecdotally, we have heard that field representatives of a particular cooperative, primarily involved in supplying manufacturing plants, have been visiting the farms of Dairyalea and DFA producers, and targeting other Class I milk supplies as well. These field representatives are encouraging our members to switch cooperatives because pooling is imminent. The representatives of the cooperative supplying the manufacturing plants are claiming that they will be able to pay higher premiums to farmers than Dairyalea, DFA or other Class I businesses.<sup>2</sup> Success by this cooperative in using the pooled premium to procure new members from businesses supplying Pennsylvania's Class I markets could mean that Pennsylvania's market for Class I milk will have changed in a way that could

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<sup>1</sup> In some parts of the U.S., dairy cooperatives may have agreed to get together to share premium revenues from the Class I markets. However, these are real world business entities that have acknowledged a derived value to their businesses from sharing the premium revenues and have voluntarily entered into these agreements.

<sup>2</sup> Information provided by the Milk Marketing Board suggests that this particular cooperative stands to garner substantial increased revenue due to pooling. This additional revenue would be pure margin since it doesn't have to change how they operate their business (i.e., they do not incur any additional costs) to receive the additional revenue.

likely lead to less milk available to its Class I plants and more milk available to its manufacturing plants.<sup>3</sup> The implications of this have not been addressed by the Board in an adequate fashion.

### **Cost of Supplying Class I Markets Ignored**

Cooperatives that supply Class I plants do so on a residual basis. This means that instead of delivering the same amount of milk to these plants every day of the year, cooperatives supply the amount of milk that the plants need, when they need it. These needs change by day of the week and season of the year. For instance, during a week, a Class I plant's milk needs tend to be the highest on a Thursday – right before the weekend, and lowest on the weekends. Typically on one weekend day the plant is not processing any milk. Seasonally, the plants demand more milk when schools are in session than they do in the summer time during school recess. This fluctuating demand, and the attendant supply by dairy cooperatives, carries a large cost. These costs are commonly referred to as balancing costs. These costs are so excessive in fact that Land O'Lakes, Maryland and Virginia Cooperative, Dairylea and DFA were part of a Northeastern U.S. cooperative coalition to convince the United States Department of Agriculture to include provisions in the Northeast Federal Milk Marketing Order to allow some of these balancing costs to be reimbursed from pool revenues.

The balancing costs are equally excessive for the Pennsylvania Class I plants as they are for the non-Pennsylvania Class I plants. Since cooperatives have these balancing costs, they have to use revenue from the Class I over-order premiums to offset these costs – prior to paying its members premiums. The present form of the pooling regulations does not address any of the cooperatives balancing costs (i.e., doesn't implement any provisions to help cooperatives mitigate these costs). Therefore, under the pooling regulation, dairy cooperatives will maintain 100 percent of the cost of serving the Class I market, but will not retain 100 percent of the revenue (i.e., the Class I over-order premium). The fact that those balancing the market will lose revenue will change how milk is marketed in Pennsylvania. This change and the corresponding impact to Pennsylvania's dairy industry have not been analyzed or reported by the Board.

Early in the deliberation, Dairy Marketing Services, Dairylea Cooperative and Dairy Farmers of America asked that the premium be distributed to those producers and cooperatives that "perform" for the Class I market sometime during the year. To perform would mean to assist the cooperatives in supplying the Class I market when it is short of milk and handling the Class I market's surplus when milk is long. The level of performance by a producer or cooperative would be tied to the amount of premium to be shared with them. In other words, those that perform for the market by balancing the market would share in a pooled premium. However, such suggestion has been apparently rejected by the Milk Marketing Board.<sup>4</sup>

### **State-wide Data Appropriate for Adjusting Class I Premiums**

The Board has stated that the over-order premium is meant to "...create a partial pool...of the over-order premium...providing a more equitable distribution of the over-order premium, which is

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<sup>3</sup> Dairy Marketing Services, the joint marketing and membership venture between Dairylea and DFA, supplies more milk to Pennsylvania's Class I plants than any other business.

<sup>4</sup> It is assumed that this has been rejected although the Milk Marketing Board has never responded to the DMS, Dairylea DFA proposal, made on June 14, 2000 that would pool a portion of the premium to those that "perform" for the Class I market.

established based on conditions common to all milk producers in Pennsylvania.”<sup>5</sup> It indicates that the decision to pool the premium is based on a premise that adjustments of the Class I over-order premium are based on conditions applicable to all dairy farmers in Pennsylvania. Therefore, the value derived from such adjustment should flow back to all dairy farmers.

Without a doubt, the Board’s decisions to adjust the premiums are based on the conditions affecting all dairy farmers. This is done because it is inherently impossible to determine the costs and conditions impacting those farmers that supply the Class I market, only. This is impossible because many farmers supply both the Class I and manufacturing markets during the same month and some farms that supply it in one month may not do so the following month. Also, the farms that supply the Class I market are interspersed among farms that do not supply the Class I market at all. Thus, if you drive down a country road, you would pass by some farms that supply the Class I market and some that do not. Finally, there aren’t statistics available that are segregated by deliveries to a particular type of plant. That said, costs and conditions impacting farms supplying the Class I market are no different than those supplying manufacturing markets. We believe this is generally accepted by all parties.

Since these costs are the same, it is unnecessary (and impractical) to analyze the conditions of a subset of the group (i.e., just the farms supplying the Class I market) to justify a premium increase for the subset - because the results would be the same as analyzing the impact on all farms. The analysis of the costs and conditions on all farms is then much more rational and cost effective and leads to the same conclusions as analyzing such information for just the subset of farms that deliver to the Class I market. It is for this reason that the Class I over-order hearings delve into the costs and conditions on all farms. It is used as a proxy for those factors impacting the farms that deliver to a Class I market.

Just because factors affecting all farms are analyzed, and the premium is adjusted based on this analysis, that in and of itself isn’t justification for all farms to share in the proceeds of the Class I over-order premium. On the contrary, the information scrutinized by the Board in its deliberation to change the premium level is the same information scrutinized by dairy cooperatives and Class I plants when negotiating changes to voluntary premiums – set by the marketplace. These premiums are not pooled among all producers.

#### **Board Sets a Market-based Class I Premium**

On a number of occasions the Board has remarked that a lower Milk Marketing Board over-order premium is better than no premium. This infers that Class I premiums would not exist in Pennsylvania if the Board did not set them. Such assertion is simply not correct.

We have used the Board’s hearing process as a means of price discovery for premiums on Class I milk. The issues impacting costs and conditions to Pennsylvania farmers, which include cost and conditions impacting the inter-dealer competitiveness of Class I sales are very relevant in determining the Class I premium, not only for Pennsylvania, but in markets surrounding the Commonwealth. **The Milk Marketing Board’s hearing process provides an excellent public forum to investigate such factors and develop an industry consensus relative to applicable premium levels.**

As the November 2002 and January 2003 premium hearings have shown, Class I premiums in Pennsylvania can not exceed those established, via negotiation between businesses, in other states

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<sup>5</sup> Milk Marketing Board’s explanation of why implementing pooling, pg 2.

surrounding Pennsylvania. To establish premiums at a level higher than surrounding states, and taking into consideration marketing costs, would place Pennsylvania's Class I dealers in an uncompetitive situation relative to non-Pennsylvania dealers, and put such Pennsylvania businesses at risk. The Board's process is to identify what the free-market's Class I premium level is and set their premium accordingly. Since this is what it does, the over-order premium it administers would exist even in the absence of their involvement. The tremendous value that the Board brings to the industry is the forum it hosts that allows this price discovery to occur.

From time to time, we are at odds with the Milk Marketing Board relative to the price level it chooses. For instance, their present \$1.40 premium is at least \$.10 under the market. Unfortunately, another aspect of the Board's regulation, that which determines how soon voluntary Class I premiums paid by Pennsylvania dealers can be recovered by them via the minimum wholesale pricing mechanism, prevents cooperatives from making up this difference by passing along higher voluntary premiums. The Board needs to change this process so that dealers can achieve their cost recovery in the month following that which it is charged to them by the cooperatives. Failure of the Board to take this administrative action limits the cooperatives' abilities to correct for those instances when the Milk Marketing Board under prices the market.

#### **Pooling Does Not Treat All Farmers Equally**

The proponents of pooling have used a simple message. Pooling is fair. It treats all farmers equally. Unfortunately, this message is a gross over simplification of a very weighty and complex issue. This message should be discounted.

Pooling the over-order premium has been compared to the pooling process under the Federal Milk Marketing Order system and the Northeast Dairy Compact. Although the actual accounting process is very similar, the implications are far different.

Federal order pooling and classified pricing are tied together and can't be separated in any type of discussion. Without these two aspects there would not be Federal Orders. Farmers and, for the most part the entire dairy industry, have supported Federal Orders because the process of pooling and classified pricing creates a rising tide that lifts all boats and increases the amount of water in the ocean. Without these aspects, farmers would end up competing against each other and lowering their milk price to the lowest common denominator – either the Class III or IV price level. Instead, Federal Order pooling and classified pricing allow dairy farmers to receive the blend price – a price much higher than they could easily achieve without Federal Orders. Thus, the pooling process under Federal Orders, where Class I minimum prices (not Class I over-order premiums) are shared among all farmers in the pool, results in benefits to all farmers – even those shipping to Class I plants. Since the benefits derive to all farmers under the pool via higher prices, farmers have strongly supported Federal Orders.

Although the Northeast Dairy Compact is no longer in operation, it utilized a pooling and pricing mechanism that provided the opportunity for all farmers to receive higher prices than they otherwise would, as well. In fact, the Dairy Compact generated revenue for farmers in excess of that which they could otherwise attain, during many months. In some of the months that the Compact did not provide the price enhancement benefit, the general blend price level under Federal orders was sufficiently high enough to make dairy farmers indifferent. Similar to Federal Orders, the Dairy Compact's pooling and



pricing mechanism generally resulted in higher prices for all dairy farmers, relative to what they could achieve in the absence of the Dairy Compact. Here, again, as with Federal Orders, all farmers received the benefit of a rising tide lifting all boats.

A large measure of our concern about the implications of pooling the Board's over-order premium is that we aren't sure it will create increased revenue and it will not derive benefits to all dairy farmers in Pennsylvania. It may also create the unfortunate environment that results in lower over all revenues to the Commonwealth's dairy farmers (e.g. some farmers may receive higher revenue while other receive lower revenue, but the net of the two is overall lower revenue). The implications of this on Pennsylvania's dairy industry has not been appropriately addressed nor has the question as to whether or not the current process of paying the Class I over-order premium maximizes revenue to Pennsylvania dairy farmers.

### **Interstate Commerce Issues**

Interstate Commerce law severely limits that ability of a state to impose its regulations on businesses in other states. The dairy industry is not immune to the Interstate Commerce Clause of the United States Constitution. It is widely held that individual state-based milk pricing programs are not applicable to business transactions taking place in other states. Unfortunately, this severely limits the ability of an individual state to aggressively price its state's milk differently from prices existing in neighboring states.

The major population areas, and hence the major Class I dealers are located along, or close to, the state borders of Pennsylvania. This creates the added complication of maintaining prices and systems so that a dealer isn't given the incentive to set up their sales transactions so it occurs in another state – even though the final distribution of their milk is in Pennsylvania. As evidenced by recent hearing testimony, Pennsylvania dealers have threatened to do this if premium differences between in-state milk supplies and out-of-state milk supplies are too excessive.

The milk dealers will look towards out-of-state warehousing opportunities to avoid reducing their revenue paying ability to the cooperatives or producers supplying their plants. They would do this out of the recognition that a pooled premium would be paid to cooperatives focused on filling up their manufacturing plants they operate or supply. The Class I dealers recognize that the pooled premium could have competitive issues not only on the amount of milk available to their plants, but also on the amount of additional voluntary premiums they might have to pay to their suppliers in order to retain their current milk supplies. Anecdotally, we know that some dealers are considering such strategies. The implications of such tactics, which are very real, have not yet been considered by the Board during their deliberative process.

### **Cloverland-Greenspring Case**

An out of state milk dealer, Cloverland-Greenspring Dairy, has filed a lawsuit against the Board complaining that the Commerce Clause prohibits the Board from imposing minimum wholesale pricing regulations on their sales into Pennsylvania. This lawsuit is pending in Federal District Court. Based on a Federal Appeals Court decision, favorable to Cloverland-Greenspring, there is likelihood that it may achieve some success in the case. Whether or not the Board ultimately prevails in this lawsuit, however, the probability of a change to the Board's regulation dealing with wholesale minimum pricing is very

real. Such a change could have serious implications to the Board's ability to set milk prices in Pennsylvania – especially if it has implemented its pooling proposal. Nonetheless, the Board has yet to consider whether there could be ramifications due to this case. It also hasn't explained, if there is an adverse decision to them, whether forcing pooling into the mix now will have negative implications to the Board's regulation and the dairy industry in a post Cloverland-Greenspring lawsuit world.

## **Issues Specific to the Pooling Provisions**

### **Pool Allotment Payments**

The Board's payment of the pooled premium (i.e., pool allotment) should be paid to the milk dealer responsible for paying the dairy farmer. The present construction of the pooling provisions has the payment going to the milk plant that received the milk. The plant then is the responsible party for making the payment to the cooperatives or dairy farmers that delivered the milk. This process would result in proprietary manufacturing plants being responsible for paying the pooled premium to their cooperative supplier. This is an unnecessary step that will likely result in delayed payments to the cooperatives, create an unnecessary risk as to whether the manufacturing plant pays the money out at all, and create the possibility that the manufacturer could use the Class I pool allotment to negotiate reduced handling charges for Class III milk. We strongly urge that this procedure be changed. Instead, the Milk Marketing Board should pay the pooled premium to either the Class I plant or the cooperative.

For instance, if the milk plant operator pays the dairy farmer the blend price, then such plant operator should receive the pooled payment. If it is a cooperative that pays the blend price to their member, a non cooperative producer or another cooperative, the cooperative that pays the blend price should be the entity that receives the pool allotment payment from the Board – instead of the milk plant receiving the milk.

Changing this procedure will reduce and likely save the state some money from reduced check writing and reduced audit procedures.

### **Pricing Milk in Interstate Commerce**

The regulation is unclear as to whether or not milk brought into Pennsylvania and sold as Class I would become part of the pool. We would ask you to review the provisions to determine if this in deed would occur. If it is the intent of the Board to price such milk, this would be an entirely different direction than we understood the Board was headed. If in deed such milk would be priced by this regulation, the Board must immediately stop the process and reach out to the industry to get their input on what this means to the legality of the regulation and the implications it may have on the stakeholders.

### **Timing of Pool Payments**

We strongly object to the delay in payments to cooperatives and dairy farmers that will arise due to the timing of the pooled payments. Presently, 100 percent of the Class I dealers' payments, including 100 percent of the premiums, are paid out in the month following the receipt of the milk. This is not only the practice in Pennsylvania, but throughout the United States.

The Board's plan is to delay the payment of the pooled premium for a month. This will have serious financial consequences to cooperatives and dairy farmers. It needs to be changed so that the pooled payment is received by cooperatives and producers in the month after the milk was delivered.

Federal Milk Marketing Orders operate in a manner that payments are paid into the pool operator (the Market Administrator) on one day and paid out the following day. Both of these transactions occur in the month following the delivery of the milk to the plants. The Milk Marketing Board must follow a similar payment process. The regulations and the administrative process need to be changed to accommodate this.

#### **Pool Money is Dairy Farmer Money**

The premium money paid into the pool belongs to dairy farmers. Any money paid into the pool must be paid out of the pool to dairy farmers or their cooperatives. Additionally, the pool payment must reflect the appropriate interest that is earned for any length of time that the State holds the pool revenue. Again, the pool's revenue is dairy farmer money and any interest that is earned by holding it belongs to dairy farmers as well.

#### **Implementation Timing**

Upon the Milk Marketing Board receiving final approval to implement the over-order premium pooling regulations, a time period of at least 30 days should be given the industry. It is customary in dairy regulations that an adequate period of time be given to impacted businesses so they can prepare for the changes. Changes to the pooling regulation require some re-programming, reporting and training. Additionally, the Board's pooling regulation will change the milk marketing landscape in and around Pennsylvania. This will result in milk being marketed differently than presently. Although there has been advance warning that the pooling provision may occur, the timing of its occurrence, if at all, is not certain. Since this is the case, the stakeholders' final arrangements to adjust internal practices and to change marketing strategies, will not be made until it is known that the new regulation will go into effect. Therefore, it is appropriate to provide the industry advance notice of its implementation, of at least 30 days.

The implementation of the pooling regulation should only occur on the first day of a month. Although the paper reporting aspects of this regulation would not be impacted by implementation during some point other than the first of the month, the practical aspects of milk marketing would be affected. Again, this regulation will change how the industry markets milk. If the regulation were to be effective, say, in the middle of the month, the milk marketing strategy relative to the "non" pooling regulation would be employed during the first part of the month and the milk marketing strategy for the pooling regulation would be employed the second half of the month. However, the entire month's milk could theoretically be included in the pool – thus negatively impacting the milk marketing strategies employed during the first part of the month.

The implementation of pooling will in itself create chaotic marketing conditions in and around Pennsylvania. We don't believe that the Board should intentionally add to this chaos by leaving any specter of doubt that the regulation may be implemented at any time, and on a date other than the first day of the month.

The implementation time should also recognize that the industry may choose to have more of the Class I premium generated from sales to Pennsylvania Class I dealers to come from voluntary premiums as opposed to the Board's actions. Due to this, The Board should plan accordingly to allow enough time for such a hearing to occur and any decision stemming from such hearing to be implemented.

**Closing Comments**

Dairylea and DFA are major stakeholders in Pennsylvania's dairy industry. As such we urge the Board to step back and be more deliberative in their consideration of pooling a portion of the over-order premium. We believe that a rising tide lifts all boats. However the pooling process does not lift all boats and in fact may lower the water level. The Board needs to take more time to determine whether or not pooling ultimately benefits Pennsylvania's dairy industry or it causes harm. Additionally, we are concerned that pooling the premium is a constitutional taking under the U.S. Constitution. We believe a more in depth analysis of the issues highlighted in these comments, as well as others submitted in earlier communications to you, will lead to clear answers to our concerns and make clear to the entire industry the appropriate path to follow with this contentious issue.

Sincerely,



Edward W. Gallagher  
Vice President, Planning and  
Regulatory Policy  
Dairylea Cooperative Inc.

cc: Honorable Beverly R. Minor, Chairwoman  
Honorable Luke Brubaker, Board Member  
Honorable Barbara Grumbine, Board Member  
Honorable Raymond Bunt, Jr, Majority Chairman, House Agriculture and Rural  
Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural  
Affairs Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural  
Affairs Committee  
Honorable Dennis Wolff, Secretary of Agriculture  
Mr. Steve Crawford, Office of the Governor, Commonwealth of Pennsylvania  
Senate Agriculture Committee  
House Agriculture Committee  
Independent Regulatory Review Commission

Original: 2218

# KLETT ROONEY LIEBER & SCHORLING

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

240 N. THIRD STREET, SUITE 600  
HARRISBURG, PENNSYLVANIA 17101-1503  
Telephone (717) 231-7700

Allen C. Warshaw  
G (717) 231-7718

FACSIMILE (717) 231-7712  
E-MAIL: acwarshaw@klettrooney.com

February 12, 2003

VIA FACSIMILE 783-6492  
AND FIRST CLASS MAIL.

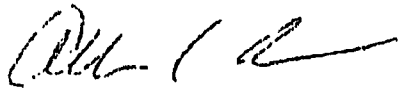
Ms. Lynda Bowman  
Milk Marketing Board  
2301 North Cameron Street  
Agriculture Building, Room 110  
Harrisburg, PA 17110

Re: Milk Marketing Board's Revised Pooling Regulations

Dear Lynda:

Attached please find the Pennsylvania Association of Milk Dealers' February 2003 Comments Regarding The Milk Marketing Board's Revised (as of February 2003) Pooling Regulations.

Very truly yours,



Allen C. Warshaw  
For KLETT ROONEY LIEBER & SCHORLING  
A Professional Corporation

ACW:gkd  
Attachment

RECEIVED  
MILK MARKETING BOARD  
FEB 12 2003

Pennsylvania Association of Milk Dealers' February 2003 Comments Regarding  
The Milk Marketing Board's Revised (as of February 2003) Pooling Regulations

The Pennsylvania Association of Milk Dealers ("PAMD") has long stated its opposition to pooling in any form. It continues that opposition. However, it will not repeat its arguments here. Instead, it will save them for other forums.

With regard to the Proposed Pooling Regulations which have been circulated for comment, PAMD fully joins the arguments and comments made by Dean Foods. The regulations continue to be confusing and flawed in each of the ways noted by Dean Foods. Before taking action which will have such a dramatic effect upon the industry, the Board should make sure that it and everyone affected knows exactly what that effect will be. That is not the case under the Proposed Regulations.

More specifically, PAMD joins in Dean Foods' concern that the Proposed Regulations expand the amount of milk on which an over-order premium will be paid by including milk either produced or processed outside the Commonwealth in the amount of milk on which a premium must be paid. Dean's makes reference to the definitions of "Pennsylvania Production" and "Qualified Milk." PAMD believes that the correct term to use in the definition of "Pennsylvania Production" is "processed by" rather than "sold to." As Dean noted, as drafted, the Proposed Regulation ignores the fact that milk "sold" to a Pennsylvania plant might well be diverted to and processed by an out-of-state plant. There is no reason that diverted milk should be included in the calculation of the amount of milk on which an over-order premium is to be paid.

PAMD also agrees with Dean Foods that the absence of examples presents two problems. First, it is difficult to interpret and evaluate the regulations in the absence of examples given their complexity and the lack of certainty in some of the definitions. Second, the absence of regulations suggests the Board is uncertain as to how the regulations will be applied. The fact that the prior examples contained errors heightens PAMD's concerns in both these areas.

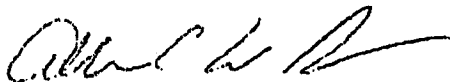
PAMD also has one further technical comment with regard to the definition of Pennsylvania Production. Part 2 of the definition should make it clear that only milk produced in Pennsylvania is included in the definition: "Grade A cooperative Pennsylvania member milk produced on a farm located in Pennsylvania and processed or used . . ."

Again, the members of PAMD unanimously oppose pooling. They believe that the Board lacks the power to pool the over-order premium. They believe that pooling is bad policy. But if, notwithstanding these issues, the Board is going to enact pooling regulations, it needs to know and explain exactly what those regulations will do. The current regulations do not meet that test.

Respectfully submitted,

KLETT ROONEY LIEBER & SCHORLING  
A Professional Corporation

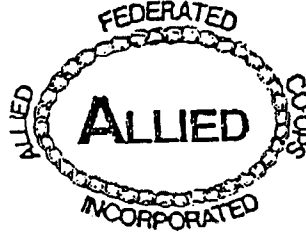
BY:



Allen C. Warshaw, Esquire  
240 North Third Street, Suite 600  
Harrisburg, PA 17101-1503  
(717) 231-7718  
Counsel for PAMD

Original: 2218

Address:  
49 Jameson Road  
Canton, New York 13617



Phone: 315-386-8116  
Fax: 315-379-0213  
www.alliedcoop.com

February 3, 2003

Hon. Beverly Minor, Chair  
Pennsylvania Milk Marketing Board  
2301 N. Cameron Street  
Harrisburg, PA 17110

Dear Chairperson Minor:

I write today to thank and applaud you for your efforts to come to grips with pooling, a very difficult issue for many in the dairy industry. The Board was first requested to convene a hearing to discuss pooling in 1997 and that request was tabled. In March 2000, the Board first invited interested parties from every segment of the dairy industry, including those involved in production, processing, and retailing to discuss the equitable sharing of the over-order premium among the greatest number of the state's dairy farmers. In the meantime Pennsylvania dealt with the issues surrounding the Commonwealth's admission into the Northeast Dairy Compact.

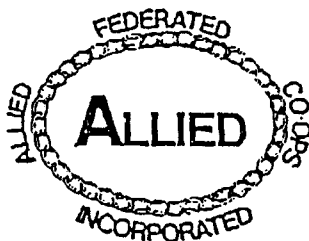
Allied Federated Coops supports Final Form Regulation, as distributed through Ms. Bowman's letter of January 30. Lanco, a marketing division of Allied, has over 700 members who are mostly Amish. On behalf of the 700 dairy farmer members of Lanco, residing and producing in Pennsylvania, I request that the Board move the Regulation to Legislature in an expedited fashion.

The Board has dealt with this admittedly contentious issue in a measured and deliberate way. The Board has given all interested parties ample opportunity to work with staff to advance their ideas, and the Board has made its decisions in an open and transparent process. Twice, the Board has requested that the dairy industry make suggestions for technical corrections of the Regulation.

There are some who have traded their strategy of outright opposition of pooling for the tactics of delay. They confuse the effects of the Board's pricing decisions with its regulation for equitable distribution of the premium. The Board has written a tight pooling regulation which distributes the over-order premium to Pennsylvania dairy farmers, who deliver their milk to the Commonwealth's dairy plants.

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FEBRUARY 14 PM 2:01  
COMMUNICATIONS SECTION

Address:  
49 Jameson Road  
Canton, New York 13617



Phone: 315-386-8116  
Fax: 315-379-0213  
www.alliedcoop.com

At the last full over-order hearing, the Board heard testimony from Dairy/ea, Dairy Farmers of America, Dairy Management Services, the Grange, Land O'Lakes, Maryland and Virginia Milk Producers Association, the Northeast Milk Marketing Agency and the Pennsylvania Farm Bureau. Every organization presented testimony concerning the severe economic conditions faced by the state's dairy farmers. In its Findings of Fact, the Board wrote, "The Board took careful note of the testimony of Messrs. Zug, Rotz, Schad and Gallagher, and find their testimony creditable." In conclusion, the Board stated that "The Board is aware of the financial stress on the state's farmers. The Board is very concerned about this situation."

There is no money in the state's treasury this year for programs such as drought relief for the Commonwealth's dairy farmers, but the Board, by the expedited consideration of the Final Form Regulation, can quickly deliver the proceeds of the over-order premium to more of the state's dairy farmers. Allied thanks the Board for its consideration.

Sincerely,

Ronald W Smith  
General Manager

cc: Hon. Dennis Wolfe  
Hon. Michael L. Waugh  
Hon. Michael A. O'Pake  
Hon. Raymond J. Bunt, Jr  
Hon. Peter J. Daley  
Luke Brubaker  
Barbra Grumbine  
Lynda Bowman  
John Nikoloff





# Maryland & Virginia

## Milk Producers Cooperative Association, Inc.

February 4, 2003

Beverly Minor, Chair  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

Dear Honorable Minor:

On behalf of Maryland & Virginia Milk Producers Cooperative, which represents over 500 dairy farmers in Pennsylvania, I am writing to encourage you to finalize and implement the proposed regulation to pool Class I over-order premiums in Pennsylvania. We join Land O'Lakes, Pennsylvania Farm Bureau and Allied Federated Milk Producers, which represent a significant number of Pennsylvania's dairy farmers, in voicing our support to take the final step in this process. This issue has been evaluated for nearly 11 years, and it's time to do the right thing for dairy farmers.

Since 1988, PMMB's intent was to address marketing conditions for all Pennsylvania dairy farmers, not just those producing milk for Class I markets. As indicated by your action in September 2001, pooling will allow all dairy farmers to share equitably in the available dollars and in the cost of serving the market and will provide the industry with a stronger infrastructure to balance market swings in production and sales.

Above and beyond the practical issues, dairy farmers need this legislation now more than ever given current market conditions. Prices have never been this low for this long. I don't need to tell you that dairy farmers are struggling to survive and they need your help. Taking the steps to finalize and implement PMMB's pooling regulation is one way you can help the state's dairy farmers and to maintain a viable Pennsylvania dairy industry for the future. We need your immediate action on this regulation. Thank you for your support.

Sincerely,

Jay Bryant  
General Manager

cc: Luke Brubaker  
Barbara Grumbine

Headquarters and Marketing Division: 1985 Isaac Newton Square West • Reston, Virginia 20190-5094  
Serving Pennsylvania, Maryland, Delaware, Virginia, West Virginia, Tennessee, North Carolina, South Carolina, Georgia, and Alabama  
phone 703.742.6800 fax 703.742.7459 web [www.mdvamilk.com](http://www.mdvamilk.com)



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January 31, 2003 PM 1:55

REVIEW COMMISSION

Beverly R. Minor, Chair  
Pennsylvania Milk Marketing Board  
Room 110, Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

Dear Chairwoman Minor:

Pennsylvania Farm Bureau would urge you and other members of the Board to move immediately forward with the promulgation of final form regulations for partial pooling of the Board's mandated over-order premium.

We believe that you and the Board have made every reasonable effort to understand the issues surrounding pooling of the premium, and have provided all interested parties more than ample opportunity to provide meaningful comment, input and reaction on the overall merits of pooling and the practical aspects of its administration. No one can honestly and sensibly claim that any member of the Board has rushed to judgment on this issue. The fact that you continue to consider comments and suggestions for improvement so long after the legal period for public comment has ended strongly reflects the care and caution which you have taken.

We would remind the Board that your consideration of this issue did not just begin yesterday. The issue of pooling has been on the Board's table since 1997. The Board had initially postponed consideration of the issue in an effort to resolve or wait for resolution of novel issues which had arisen under federal price regulation. Once those issues were resolved, the Board conducted a series of meetings spanning more than a year in an effort to flush out the substantive and technical issues surrounding pooling. Once the Board decided to move forward in the promulgation of pooling regulations in November of 2000, another active and deliberative effort was made to seek and obtain input from interested parties before the formal step was taken in September 2001 to propose pooling regulations. Over 15 months have passed since these proposed regulations were formally offered, and during these months the Board has again worked diligently to consider and accommodate those comments formally offered by interested parties, many of which had been already presented to the Board in prior years.

We would also remind the Board of the substantive outcome of the years of considerations and deliberations you have undertaken. Your answer to the spectrum of opinions on pooling was a compromise plan to partially pool the premium and allow producers shipping to Class I plants to continue to receive the bulk of total premium dollars, continue to independently receive a major share of premium monies generated by their handlers, and also share in the pool of premium monies to be distributed to all Pennsylvania producers shipping milk to Pennsylvania plants.

Finally, we would remind the Board of why you chose to move forward with a premium pooling plan in the first place. It is essentially the same reason why the Board decided to mandate over-order premiums since 1988. The Board recognized that all Pennsylvania producers are not receiving an adequate average price for their products, and a mandated over-order premium is needed to help farmers economically sustain themselves. The Board wanted – and we believe continues to want – to help all producers receive additional monies through its mandated premium, but was not able to develop a practical mechanism through which this purpose could be achieved. Pooling, even partial pooling, of the over-order premium more equitably provides relief to the economic pains that all Pennsylvania producers have suffered and will continue to suffer, regardless of how their produced milk is ultimately marketed.

We do not believe that your efforts to establish a pooling mechanism in Pennsylvania should be delayed merely because any interested party did not fully participate in the process or fully inform the Board of concerns during this five-year-plus process. You have had ample time and everyone has had ample opportunity to look at the issue of pooling from all angles. It is now time for you to take that final step and immediately submit your January 30 draft proposal as final-form regulations.

Sincerely,



Guy F. Donaldson  
President

cc: Board Members  
Lynda Bowman  
Senator Mike Waugh  
Senator Mike O'Pake  
Representative Ray Bunt  
Representative Peter Daley

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Original: 2218



## Land O'Lakes, Inc.

405 Park Drive, Carlisle, PA 17013  
Telephone: (717) 486-7000  
Fax: (717) 486-3730

Land O'Lakes Dairy Foods

January 31, 2003

Hon. Beverly Minor, Chair  
Pennsylvania Milk Marketing Board  
2301 North Cameron Street  
Harrisburg, PA 17110

Dear Chairperson Minor:

I write today to thank and commend you again for your efforts to come to grips with a very difficult issue for many in the dairy industry – pooling.

It was in March 2000 when the Board first invited interested parties from every segment of the dairy industry, production, processing and retailing, to discuss the equitable sharing of the over-order premium among the greatest number of the state's dairy farmers. And it was in 1997, when the Board was first requested to convene a hearing to discuss pooling. The Board tabled that request while Pennsylvania dealt with the issues surrounding the Commonwealth's admission into the Northeast Dairy Compact.

Land O'Lakes is supportive of Final Form Regulation, as distributed through Ms. Bowman's letter of January 30. On behalf of the 2,000 dairy farmer members of Land O'Lakes, residing in Pennsylvania, I request that the Board move the Regulation to Legislature in an expedited fashion.

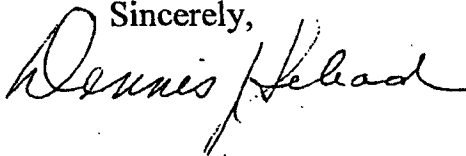
The Board has dealt with this admittedly contentious issue in a measured and deliberative way by giving ample opportunity for interested parties to work with staff to advance their ideas and making its decisions in an open and transparent fashion. Twice the Board has requested the dairy industry to make suggestions for technical corrections of the Regulation.

There are some who have traded their strategy of outright opposition to pooling for the tactics of delay. They confuse the effects of the Board's pricing decisions with its regulation to equitably distribute the premium. The Board has written a tight pooling regulation that distributes the over-order premium to Pennsylvania dairy farmers who deliver their milk to the Commonwealth's dairy plants.

At the last full over-order hearing the Board heard testimony from DairyLea, Dairy Farmers of America, Dairy Management Services, the Grange, Land O'Lakes, Maryland and Virginia Milk Producers Association, the Northeast Milk Marketing Agency and the Pennsylvania Farm Bureau. Every organization presented testimony concerning the severe economic conditions faced by the state's dairy farmers. In its Findings of Fact, the Board wrote: "The Board took careful note of the testimony of Messrs. Zug, Rotz, Schad and Gallagher, and find their testimony creditable." In conclusion, the Board said: "The Board is aware of the financial stress on the state's farmers. The Board is very concerned about this situation."

There is no money in the state treasury this year for drought relief for the Commonwealth's dairy farmers, but the Board, by the expedited consideration of the Final Form Regulation, can quickly deliver the proceeds of the over-order premium to more of the state's dairy farmers. Land O'Lakes thanks the Board for its consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dennis J. Schad". The signature is written in black ink and is positioned to the left of the typed name.

Dennis J Schad

Director of Middle Atlantic Marketing and Regulatory Affairs

cc: Hon. Dennis Wolfe  
Hon. Michael L. Waugh  
Hon. Michael A. O'Pake  
Hon. Raymond J. Bunt, Jr  
Hon. Peter J. Daley  
Luke Brubaker  
Barbra Grumbine  
Lynda Bowman ✓

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# **Dairylea**

Cooperative Inc. ☐

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JAN 22 2003

REVIEW COMMISSION



January 22, 2003

Hon.  
Main  
Harri

Dear

Dairy Farmers of America (DFA) and Dairylea Cooperative have a single statewide position on the Pennsylvania Milk Marketing Board's pooling proposal that is in common with many other dairy stakeholders. DFA, Dairylea and others, believe the pooling process is moving too fast and needs to be slowed down to allow further thought and analysis. For the reasons explained below, we are asking you, as a member of the Agriculture Committee, to vote to disapprove the Milk Marketing Board's final form regulation that would provide for pooling of 45% of Class I over-order premium.

The Milk Marketing Board is expected to shortly resubmit its final form regulation which would require pooling of 45 percent of its Class I over-order premium among all Pennsylvania dairy farmers delivering milk to Pennsylvania milk plants. The Senate and House Agriculture Committees will have the opportunity to act on this proposal in the next few weeks.

DFA and Dairylea are asking that you reject the current proposal and urge the Milk Marketing Board to work with the industry to better understand the implications of pooling, before putting the regulation in final form. Although other stakeholders may outright oppose pooling, the DFA and Dairylea position is, at the very least, in line with that of the Grange, the Pennsylvania Milk Dealers Association, and other individual dairy farmers.

The Milk Marketing Board's pooling proposal will have significant implications on a number of farms and other dairy businesses. If pooling is to go into effect, these changes on the Commonwealth's dairy industry and its overall economy should be understood ahead of time. At this point, it is not clear if pooling will have a positive or negative impact on Pennsylvania's dairy industry.

Other issues, like premium differences paid by in-state and out-of-state Class I dealers, use of out-of-state milk warehousing strategies to circumvent the Board's regulation, and the Cloverland-Greenspring's lawsuit are not well understood, relative to the implications they pose on the Milk Marketing Board's regulation. Forcing pooling into the mix without knowing how the aforementioned issues impact the Board's regulation, may be fraught with danger, since we don't know if the pooling regulation will work with changes that may come about because of some of these other issues.

Unfortunately the Milk Marketing Board has not allowed enough time for the appropriate thought and analysis of these changes. If pooling is to go into effect, these changes on the Commonwealth's dairy industry and its overall economy should be understood ahead of time.

The strength of the regulations is dependent on the provisions written to enforce it. A number of errors in the proposed provision have been pointed out causing the Board to make changes. Unfortunately, the Board did not allow the industry to review the latest changes to the provisions, prior to sending the regulation to the legislature. This concerns us as well.

Additionally, we have heard that Chairwoman Minor will be leaving the board. We believe it is prudent to allow the new board and its new chairperson a chance to review the regulation prior to legislative action.

In that same vein, we believe that the Rendell administration should be given a chance to review the proposal and if they choose have input. Unfortunately, the Board has chosen a path that severely limits the ability of Gov. Rendell and his team from effectively taking part in the process.

DFA and Dairylea are an important part of the Commonwealth's economy and one of the largest, if not the largest, part of its dairy economy. Collectively, we speak for 2,800 Pennsylvania dairy farmers and write payrolls for dairy farmers and milk haulers amounting to more than \$320 million annually. DFA has invested over \$75 million in five milk manufacturing plants it operates in Pennsylvania and writes an employee payroll of almost \$13 million annually. DFA has also invested in five other Pennsylvania milk plants, three operated by National Dairy Holdings and two operated by DairiConcepts. We are on the frontlines of the milk marketing environment in Pennsylvania. Due to this, we are concerned about the current due process afforded all of the stakeholders, regarding the pooling issue. Additionally, we are concerned about the impact the Board's proposal may have on the investments we and other companies have made in Pennsylvania.

Please reject the current proposal and ask the Milk Marketing Board to broaden its industry outreach to obtain a better understanding of the proposal's implications across the dairy industry, before it is put into final form.

Thank you for your time. If you have any questions, feel free to contact one of us or Edward Gallagher, Dairylea's Vice President of Planning and Regulatory Policy, at 1-800-654-8838, extension 5658.

Sincerely,

Clyde Rutherford  
President  
Dairylea Cooperative Inc.  
Otego, NY  
1-800-654-8838

Lewis Gardner  
Chairman  
Dairy Farmers of America  
Northeast Area Council  
Galeton, PA  
1-800-926-2667

Tom Croner  
Chairman  
Dairy Farmers of America  
Midcast Area Council  
Berlin, PA  
1-800-837-6776

Original: 2218

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-MILK MARKET BOARD -

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Jan. 21. 2003 2:59PM DEAN FOODS

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NO. 3119 P. 2

### DEAN DAIRY PRODUCTS CO.

*A Subsidiary of Dean Foods*  
1858 Oneida Lane  
Sharpville, PA 18160-0638  
Telephone (724) 982-7901



RECEIVED  
JAN 21 2003  
COMMUNICATIONS

January 21, 2003

Dear Representative:

I am General Manager of Dean Dairy Products Company, a fluid milk processor with our plant located in Sharpville, PA. Dean Dairy Products Company has been processing fluid milk for the Pennsylvania consumer since 1934 and today employs approximately 312 plant and delivery people.

Last November, I wrote to advise you of Dean Dairy Products Company's continued opposition to the pooling regulations being submitted by the Pennsylvania Milk Marketing Board. I also indicated that I would provide you with our specific problems with the technical aspects of the proposed regulations after a fuller review. In the intervening time, however, it has come to my attention that the Board plans to change the pooling regulations before resubmitting them in final form. In light of this development, we believe it would be fruitless to provide you with an analysis of the technical issues involved in the Board's regulations if the Board intends to withdraw and resubmit revised regulations. Accordingly, we propose to provide you with our analysis once the Board resubmits revised regulations.

We stand by our earlier request for the opportunity to participate in a public hearing before the end of the Agriculture Committees' 20-day review period once the pooling regulations are resubmitted. Finally, we oppose the regulations and urge rejection of them. Thank you for your continued attention to this matter.

Sincerely,

DEAN DAIRY PRODUCTS CO.

Frank Christina  
Vice President and General Manager

FC:rf