To: Beverly Minor, Chairperson
Pennsylvania Milk Marketing Board

Date: October 15, 2001

Dear Ms Minor:

Myra and I are members of Dairy Farmers of America and manage a 90 cow dairy in neighboring Fayette County. I am writing in response to the proposal under consideration by PMMB to pool 45% of Over-Order Premium. Currently PMMB distribution of these premiums is grossly unfair as it does not distribute them to all PA dairy producers on an equitable basis. While your proposal to pool 45% is a start, it does not make PMMB's premium distribution any fairer. Only 100% pooling would make it fair.

These over-order premiums were started to help dairy farmers who are faced with economic stress and weather related hardships. All of us face these conditions yet all of us do not share the premiums. My neighbor 2 miles down the road receives $.60/cwt more for his milk than we do only because he gets far more of the premium than we do because he markets his milk elsewhere. That is not fair for a statewide agency.

Consumers fund the PMMB premiums thru a surcharge on milk purchased in PA stores and we are grateful to consumers for wanting to help farmers. Perhaps consumers would not be so helpful if they realized their help was being distributed unfairly.

We are in an extremely competitive industry and all farmers share the increasing costs of production. We feel we should also share equally in the PMMB's premiums. This can only be accomplished by 100% pooling. If unfairness continues in a state agency perhaps that agency has outlived it's usefulness. Dairy farmers are capable of bargaining for premiums on their own given a level playing field.

Sincerely,
John Piwowar
Myra Piwowar
127 Bitner Road
Uniontown, PA 15401

cc: The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chairperson
The Honorable James Shaner The Honorable Richard Kasunic

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE (717) 787-4374
FAX (717) 783-6492

October 2001

Dear Pennsylvania Producer:

Thank you for your recent comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. You expressed your support of 100% pooling rather than the 45% selected by the Board. As you know, the pooling issue was heavily debated by both those for a pool and those against one. Currently the proposed pooling regulations are before the Independent Regulatory Review Commission (IRRC) and the House and Senate Agriculture and Rural Affairs Committees for consideration and comments to the Board. Following their review, the Board will make any changes, if necessary, and submit the regulation in its final form to IRRC and the Committees. An agency has two years to submit the final form regulations. When the final form regulations are prepared, you may receive a copy by providing a written request to the Board or access the final form regulations on the Board's website at http://www.sites.state.pa.us/PA_Exec/Milk/.

Thank you again for your interest in a marketwide pool of the mandated over-order premium.

Very truly yours,

Lynda Bowman　　Sharon L. Grottola

Through: Lynda L. Bowman　　Sharon L. Grottola
Secretary　　Chief Counsel

cc: Beverly R. Minor, Chairwoman
Luke F. Brubaker, Member
Barbara A. Grumbine, Consumer Member

Dear Friend,

Recently, the Attorney General's Office approved the Pennsylvania Milk Marketing Board's (PMMB) regulation to pool 45% Over Order Premium among all Pennsylvania Producers. I understand there is mixed support for the proposal. I wish we'd go or stay with 100% pooling of the PMMB Premium.

There are several reasons:

1. This is and issue of fairness. It costs each farmer the same approximate amount to produce milk in Pennsylvania. No one farmer should benefit more than his neighbor simply because his milk goes to a different location. Currently, a farmer could produce the same amount of milk with the same quality and see his neighbor receive as much as $3500 more than he does. This is an inequity in the system that needs to be corrected.

2. Pooling has no effect on the Consumer. The Premium is govenment mandated and is funded through an 11.5 cent per gallon surcharge on all fluid milk sold in Pennsylvania. Pooling this premium does not increase or decrease the amount that is charged to the Consumer. Consumers have voiced their support for programs that help farmers produce quality products.

(Continue to next page 2)

They have been adament that any help be distributed equally. Currenty this premium is not distributed equally instead ~~it~~ goes to a select few.

3. Impact on the individual Farmer.

The program was started as a way to make pennsylvania farms ecomomically competitive with neighboring states, preserve a large economic sector of the state's ecomomy and to continue preserving open space. When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority. If a farmer is lucky enough to ship milk to a certain plant, he gains an economic advantage not intended by the legislature.

Please let's go with pooling 100% of the PMMB PREMIUM.

From a farmer,
Christ S. Miller
253 E. White Oak Rd.
Paradise PA 17562

Christ S. Miller

Original: 2218

OCT 29 AM 9:07

REVIEW COMMISSION

KING'S AGRISEEDS

BARENBRUG "Forages For Profit"
96 Paradise Lane
Ronks, Pennsylvania 17572
717-687-6224

Dear Beverly Miner

Please be advised, that I am 100% in favor of pooling 100% of the PMMB premium.

No farmer should benefit more than his neighbor simply because his milk goes to a different location.

When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority.

Thank you for your attention to this matter

Sincerely,
John Lapp

John S. Lapp
RR1 Box 814
Paxinos, PA. 17860
570-648-3516

50 cow dairy farm

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE (717) 787-4374
FAX (717) 783-6492

October 2001

Dear Pennsylvania Producer:

Thank you for your recent comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. You expressed your support of 100% pooling rather than the 45% selected by the Board. As you know, the pooling issue was heavily debated by both those for a pool and those against one. Currently the proposed pooling regulations are before the Independent Regulatory Review Commission (IRRC) and the House and Senate Agriculture and Rural Affairs Committees for consideration and comments to the Board. Following their review, the Board will make any changes, if necessary, and submit the regulation in its final form to IRRC and the Committees. An agency has two years to submit the final form regulations. When the final form regulations are prepared, you may receive a copy by providing a written request to the Board or access the final form regulations on the Board's website at http://www.sites.state.pa.us/PA_Exec/Milk/.

Thank you again for your interest in a marketwide pool of the mandated over-order premium.

Very truly yours,

Lynda Bowman | Sharon L. Grottola

Through: Lynda L. Bowman
Secretary

Sharon L. Grottola
Chief Counsel

cc: Beverly R. Minor, Chairwoman
Luke F. Brubaker, Member
Barbara A. Grumbine, Consumer Member

Beverly Minor
PA Milk Marketing Board

Ammon L. Esh
270 Coon Trail Ln.
Gratz, PA 17030

10-15-01

As a dairy farmer in Lykens township, Dauphin Co. I am writing you to add my support for 100% pooling of the PMMB premiums. Please consider the matter carefully

Sincerely
Ammon Esh

Original: 2218

TO: Mr. John R. McGinley, Jr., Chair
Independent Regulatory Commission
14th Floor Harristown 2; 333 Market St.
Harrisburg, PA. 17101

Date: 10/25/2001

From: Mr. Alvin Stoltzfus
2871-1 Jacksonville Rd
Bellefonte PA. 16823

Subject: Pennsylvania Milk Marketing Board's Regulation on Pooling

I am writing this letter on the above mention subject.

1.) **This is an issue of fairness.** It costs each farmer the same approximate amount to produce milk in Pennsylvania. No farmer should benefit more than his neighbor simply because his milk goes to a different location. Currently, a farmer could produce the same amount of milk with the same quality and see his neighbor receive as much as $3500 more than he does. This is an inequity in the system that needs to be corrected.
2.) **Pooling has no effect on the consumer.** The premium is government-mandated and is funded through an 11.5-cent per gallon surcharge on all fluid milk sold in Pennsylvania. Pooling this premium does not increase or decrease the amount that is charged to the consumer. Consumers have voiced their support for programs that help farmers produce quality products. They have been adamant that any help be distributed equally. Currently this premium is not distributed equally; instead it goes to a select few.
3.) **Impact on the individual farmer.** The program was started as a way to make Pennsylvania farms economically competitive with neighboring states, preserve a large economic sector of the state's economy and to continue preserving open space. When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority. If you are lucky enough to ship milk into a certain plant, you gain an economic advantage not intended by the legislature.
4.) **The PMMB has the authority to pool the premium and has picked an arbitrary number.** They chose this number as a compromise between those who want pooling and those who do not. They did not look at any intent of the legislation nor the issues surrounding the situation. They chose the easy way out. The Commissioner of Agriculture can direct the PMMB to set the percentages higher.
5.) **The Federal Milk Marketing Order has long recognized the need to distribute such monies to all producers.** In fact, your producer price differential is based on this same princibal.

Thank you for taking the time to read this letter. The farmers of Pennsylvania are counting on your support and fair treatment of this matter.

Respectfully,

Alvin Stoltzus

Alvin Stoltzus

Original: 2218

Address:
49 Jameson Road
Canton, New York 13617

Phone: 315-386-8116
315-386-8117

Fax: 315-379-0213

John R. McGinley, Jr., Chairperson
Independent Regulatory Commission
14th Floor Harristown 2, 333 Market Street
Harrisburg, PA 17101

Dear Chairperson McGinley,

Allied Federated Cooperatives, Inc. would like to comment on the proposed pooling of the Over-order premium. We represent over 800 producers in Pennsylvania.

We are in favor of pooling 100% of the over-order premium. The reasons are very simple and as follows:

1.) **This is an issue of fairness**. It costs each farmer the same approximate amount to produce milk in Pennsylvania. No one farmer should benefit more than his neighbor simply because his milk goes to a different location. Currently, a farmer could produce the same amount of milk with the same quality and see his neighbor receive as much as $3500 more than he does. This is an inequity in the system that needs to be corrected.

2.) **Pooling has no effect on the consumer.** The premium is government- mandated and is funded through an 11.5- cent per gallon surcharge on all fluid milk sold in Pennsylvania. Pooling this premium does not increase or decrease the amount that is charged to the consumer. Consumers have voiced their support for programs that help farmers produce quality products. They have been adamant that any help be distributed equally. Currently this premium is not distributed equally instead ti goes to a select few.

3.) **Impact on the Individual Farmer.** The program was started as a way to make Pennsylvania farms economically competitive with neighboring states, preserve a large economic sector of the state's economy and to continue preserving open space. When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority. If you are lucky enough to ship milk into a certain plant, you gain an economic advantage not intended by the legislature.

4.) **The PMMB has the authority to pool the premium and has picked an arbitrary number.** They chose this number as a compromise between those who want pooling and those who don't. The Board needs to re-visit the reason for the over-order premium and be sure they are meeting the intent of the legislation. If the Board does this, it should easily justify pooling 100% to benefit all Pennsylvania producers.

5.) **The Federal Milk Marketing Order has long recognized the need to distribute such monies to all producers.** In fact, your producer price differential is based on this same principal.

Please consider these reasons as you provide guidance to the board.

Sincerely,

Judith A Aldrich

Judith A. Aldrich, Director of Information

2001 OCT 24 AM 9:22
REVIEW COMMISSION

Original: 2218

TO: Beverly Minor, Chairperson
PA Milk Marketing Board
2301 North Cameron St.
Harrisburg, PA. 17110

Date: 10/25/2001

From: Mr. Alvin Stoltzfus
2871-1 Jacksonville Rd
Bellefonte PA. 16823

Subject: Pennsylvania Milk Marketing Board's
Regulation on Pooling

I am writing this letter on the above mention subject.

1.) **This is an issue of fairness.** It costs each farmer the same approximate amount to produce milk in Pennsylvania. No farmer should benefit more than his neighbor simply because his milk goes to a different location. Currently, a farmer could produce the same amount of milk with the same quality and see his neighbor receive as much as $3500 more than he does. This is an inequity in the system that needs to be corrected.
2.) **Pooling has no effect on the consumer.** The premium is government-mandated and is funded through an 11.5-cent per gallon surcharge on all fluid milk sold in Pennsylvania. Pooling this premium does not increase or decrease the amount that is charged to the consumer. Consumers have voiced their support for programs that help farmers produce quality products. They have been adamant that any help be distributed equally. Currently this premium is not distributed equally; instead it goes to a select few.
3.) **Impact on the individual farmer.** The program was started as a way to make Pennsylvania farms economically competitive with neighboring states, preserve a large economic sector of the state's economy and to continue preserving open space. When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority. If you are lucky enough to ship milk into a certain plant, you gain an economic advantage not intended by the legislature.
4.) **The PMMB has the authority to pool the premium and has picked an arbitrary number.** They chose this number as a compromise between those who want pooling and those who do not. They did not look at any intent of the legislation nor the issues surrounding the situation. They chose the easy way out. The Commissioner of Agriculture can direct the PMMB to set the percentages higher.
5.) **The Federal Milk Marketing Order has long recognized the need to distribute such monies to all producers.** In fact, your producer price differential is based on this same principal.

Thank you for taking the time to read this letter. The farmers of Pennsylvania are counting on your support and fair treatment of this matter.

Respectfully,

Alvin Stoltzus

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

DATE: October 24, 2001

SUBJECT: Letters Received Regarding 7 Pa. Code Section 148
PA Over-Order Premium Pool Regulation, D.D. No. 47-9

TO: Senate Agriculture and Rural Affairs Committee
House Agriculture and Rural Affairs Committee
Independent Regulatory Review Commission

FROM: Sharon L. Grottola Sharon L Grottola
Chief Counsel

Enclosed is a listing of Pennsylvania producers to whom our form letter was sent notifying them of how they can obtain a copy of the final form regulation. Also enclosed is a letter to Craig Weaver, Field Supervisor for the Mideast Area Council of Dairy Farmers of America. Mr. Weaver brought in a stack of form letters, none of which had addresses so responses were not possible. Mr. Weaver was advised in this letter to inform those producers as to the manner in which they could receive the final form regulation. Also enclosed are individual responses to letters clarifying statements within them. The clarifications should assist your office when you consider the proposed regulation. In the next few days you will be receiving the last of the responses since the agency comment period ended on October 22, 2001.

Again, if you have any questions concerning these letters, please contact me.

Enclosures

RECEIVED
2001 OCT 29 AM 9:05
REVIEW COMMISSION

Levi & Jacob Kauffman
2225 Bald Eagle Road
Drumore, PA 17518

Dan Stoltzfus
253 Stover Road
Loganton, PA 17747

Earl Hendershot
2529 Pigeon Cove Road
Warfordsburg, PA 17267-8910

Henry Stoltzfus
446 Coopers Drive
Kirkwood, PA 17536-9715

Donald Russell
Maple Farms
RD 1 Box 123
Rome, PA 18837

Richard Hess
HCR1 Box 4
Broad Top, PA 16621

Rodrick Hinish
RR 2 Box 245
Williamsburg, PA 16693

Ridge Star Farm The Millers
259 Ridge Road
Spring City, PA 19475

Joseph Staltzfus
1835 Georgetown Road
Christiana, PA 17509-9621

Harvey Horning
RR 4 Box 150
Mifflinburg, PA 17844-9750

Ray Hinish
347 Manspeaker Road
Saxton, PA 16678

Stephen Stoltzfus
901 Peter Road
New Holland, PA 17557

Frank Hummel
160 Cove Road
Duncannon, PA 17020

Christ Stultzfus
4775 Homeville Road
Cochranville, PA 19330-1611

Jeffrey Heindel
PO Box 7
Brogue, PA 17309-0007

Stanley Brubaker
315R49
Williamsport, PA 16950

Paul Deal
427 Wilhelm Road
Salisbury, PA 15558

mailed 10-16-01

Fred Isbell
RR 1, Box 206A
Towanda, PA 18848

Terry Stauffer
Maple-Hall Dairy Farm
332 Rossfording Road
Cochranville, PA 19330-1762

Rob & Kathie Bailor
RR 1 Box 606
Honey Grove, PA 17035

Dianna Harris
270 Woodland Road
Rockwood, PA 15557

John Sankey
Sanview Farm
RD 2 Box 121
Clearfield, PA 16830

Dale & Barbara Zimmerman
Zimhaven Farm
1445 Main Street
East Earl, PA 17519

Timothy Stoner
Stoner's Hijos Hill, Inc.
7678 Oellig Road
Mercersburg, PA 17236

Sterling Miller
Sterling Miller & Sons
815 Sterling Road
Stroudsburg, PA 18360

Garry & Vanira Wilkins
Maple Springs Farm
10538 Hyndman Road
Manns Choice, PA 15550

Walter Adams
249 Monument Road
Hamburg, PA 19526-8350

Denise Sanner
14 Pink Valley Road
Kutztown, PA 19530-9134

Robert Baumgardner, Jr.
75 Deardorff Road
Dillsburg, PA 17019

Calvin Hostetter
186 Brocht Road
Rockwood, PA 15557-6101

Timothy Kurtz
Kurtland Farms
4350 Main Street
Elverson, PA 19520

Clair Hooper
157 Swamp Road
Morgantown, PA 19543

Kenneth Harris
RR 3 Box 198
Towanda, PA 18848-9014

10-11-01-ch
mailed p.m.

Ned Deitrich
Nittany Springs Farm
340 Heritage Lane
Bellefonte, PA 16823

Samuel King
1902 Pioneer Road
Lancaster, PA 17602

Wagner Dairy
3968 Rte 403S
Homer City, PA 15748

Daniel Glick
5565 Jacksonville Road
Howard, PA 16841-3821

Kay Taylor
118 Goram Road
Brogue, PA 17309-9315

Ken Mummert
6353 Rouse Run Road
Chambersburg, PA 17201

Benjamin Stoltzfus
2595 Jacksonville Road
Bellefonte, PA 16823

John & Marshall Trimble
1583 River Road
PO Box 4
Drumore, PA 17518

John Hess
JoBo Holstein Farm LLC
200 Tall Oaks Road
Gettysburg, PA 17325

mailed 10/17/01 - jam/ld

2001 OCT 29 AM 9:17

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE (717) 787-4374
FAX (717) 783-6492

October 16, 2001

Mr. Craig Weaver
Field Supervisor
Dairy Farmers of America
5349 William Flynn Highway
Gibsonia, PA 15044

Re: Marketwide Pooling Regulation

Dear Mr. Weaver:

Thank you for the fifty-eight form letters you delivered to our office regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. All of these letters expressed support of 90% pooling rather than the 45% selected by the Board. Currently the proposed pooling regulation is before the Independent Regulatory Review Commission (IRRC) and the Senate and House Agriculture and Rural Affairs Committees for consideration and comments to the Board. Following their review, the Board will make any changes, if necessary, and submit the regulation in its final form to IRRC and the Committees. An agency has two years to submit the final form regulation. When the final form regulation is prepared, you may receive a copy by providing a written request to the Board or access the final form regulation on the Board's website at http://www.sites.state.pa.us/PA_Exec/Milk/. You indicated that you would advise the fifty-eight writers of the form letters of this procedure to acquire a copy of the final rule regulation.

Thank you again for your interest in a marketwide pool of the mandated over-order premium.

Very truly yours,

Sharon L. Grottola

Sharon L. Grottola
Chief Counsel

Through: Lynda Bowman
Lynda J. Bowman
Secretary

Cc: Beverly R. Minor, Chairwoman
Luke F. Brubaker, Member
Barbara A. Grumbine, Consumer Member

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Lynn Fauborgh (NAME)

DFA member dairy producer who milks 95 cows in Cambria County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

JOSEPH T MARHEFKA (NAME)

DFA member dairy producer who milks 35 cows in CAMBRIA County, PA.

October 8, 2001

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Thomas Marhefka (NAME)

DFA dairy producer who milks 35 cows in Cambria County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Charles L Dodendorfer (NAME)

DFA member dairy producer who milks 32 cows in Indiana County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Scott E Behm (NAME)

DFA member dairy producer who milks 60 cows in Indiana County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Crooked Brook Farm (NAME)

DFA member dairy producer who milks 45 cows in Indiana County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Daniel B George (NAME)

DFA member dairy producer who milks 70 cows in Indiana County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

R. Glen Burkhart (NAME)

DFA member dairy producer who milks 31 cows in INDIANA County, PA.

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

October 8, 2001

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

John Kring (NAME)

DFA member dairy producer who milks 40 cows in Indiana County, PA.

October 8, 2001

c.c. The Honorable Michael Waugh
The Honorable Raymond Bunt, Jr.
John R. McGinley, Jr., IRC Chair

Dear Chairperson Beverly Minor;

Although I commend the Pennsylvania Milk Marketing Board on its decision to pool the Over-Order Premium, I support a regulation for 90% pooling. Pooling the premium is a regulatory issue and does not affect consumers at all. However, it does affect dairy producers.

Even at 45% pooling, one producer may be getting as much as $3,500 more from the premium than another. Both produce the same quality milk and have the same production costs. It is unfair that one producer should receive a greater benefit than the other does. 90% is the only way to create a fair and equitably distributed premium system in Pennsylvania.

If pooling is the right thing to do, then it shouldn't be half done. Please change the proposed regulation so that 90% pooling of the premium is pooled among all dairy producers.

Sincerely yours,

Rodger George (NAME)

DFA dairy producer who milks 20 cows in Indiana County, PA.

Original: 2218

Dear Friend,

Recently, the Attorney General's Office approved the Pennsylvania Milk Marketing Board's (PMMB) regulation to pool 45% Over Order Premium among all Pennsylvania Producers. I understand there is mixed support for the proposal. I wish we'd go or stay with 100% pooling of the PMMB Premium.

There are several reasons:

1. This is and issue of fairness. It costs each farmer the same approximate amount to produce milk in Pennsylvania. No one farmer should benefit more than his neighbor simply because his milk goes to a different location. Currently, a farmer could produce the same amout of milk with the same quality and see his neighbor receive as much as $3500 more than he does. This is an inequity in the system that needs to be corrected.

2. Pooling has no effect on the Consumer. The Premium is govenment mandated and is funded through an 11.5 cent per gallon surcharge on all fluid milk sold in Pennsylvania. Pooling this premium does not increase or decrease the amount that is charged to the Consumer. Consumers have voiced their support for programs that help farmers produce quality products.

Continue to next page 2

They have been adament that any help be distributed equally. Currenty this premium is not distributed equally instead ~~it~~ goes to a select few.

3. Impact on the individual Farmer.

The program was started as a way to make pennsylvania farms ecomomically competitive with neighboring states, preserve a large economic sector of the state's ecomomy and to continue preserving open space. When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority. If a farmer is lucky enoogh to ship milk to a certain plant, he gains an economic advantage not intended by the legislature.

Please let's go with pooling 100% of the PMMB PREMIUM.

From a farmer,

Christ S. Miller
253 E. White Oak Rd.
Paradise PA 17562

Christ S. Miller

KING'S AGRISEEDS

BARENBRUG "Forages For Profit"
96 Paradise Lane
Original; 2218 Ronks, Pennsylvania 17572
717-687-6224

Dear John R. McGinley, Jr.

Please be advised that I am in favor of pooling 100% of the P.M.M.B. premium.

No farmer should benefit more than his neighbor simply because his milk goes to a different location

When the money goes to a few instead of everyone, it preserves a select few while ignoring the majority.

Sincerely
John Lapp

John & Amanda Lapp
RR1 Box 814
Paxinos, PA 17860

50 cow dairy farmer

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE (717) 787-4374
FAX (717) 783-6492

October 22, 2001

2001 OCT 29 AM 9:06

Mr. Charles H. Turner, Jr.
Vice President, Turner Dairy Farm
1049 Jefferson Road
Penn Hills, Pennsylvania 15235

Re: Marketwide Pooling of the PMMB Mandated Over-Order Premium

Dear Mr. Turner:

Thank you for your recent comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. You expressed your opposition to any pooling of the premium. You listed several reasons for your opposition that I addressed below.

The pooling of the over-order premium hurts the 62 family farms supplying Turner Dairy Farm.

Since these 62 producers currently receive the over-order premium, it is true they will receive less. However, a state mandated premium should be equitably distributed. The producers who have not been receiving the premium are the ones who continue to hurt.

The pooling of the over-order premium impairs our ability to recruit the best quality milk available.

If this were to happen, the Board would be interested in knowing this. However, if the higher premium is needed to attract milk, that additional amount is included in the over-price premium calculation built into the minimum resale pricing.

The pooling of the over-order premium directly or indirectly reduces the mailbox price of every Pennsylvania dairy farmer.

Class I processors have the ability then, as now, to pay their producers voluntary premiums that are recognized in the over-price premium calculations included in the minimum wholesale/retail prices. These voluntary premiums will not be calculated into the marketwide pool.

Mr. Charles H. Turner, Jr.
Page Two
October 22, 2001

Currently, the proposed pooling regulation is before the Independent Regulatory Review Commission (IRRC) and the Senate and House Agriculture and Rural Affairs Committees for consideration and comments to the Board. Following their review, the Board will make any changes, if necessary, and submit the regulation in its final form to IRRC and the Committees. An agency has two years to submit the final form regulation. When the final form regulation is prepared, you may receive a copy by providing a written request to the Board or access the final form regulation on the Board's website at http://www.sites.state.pa.us/PA_Exec/Milk/.

Thank you again for your interest in the regulation establishing a marketwide pool of the mandated over-order premium.

Very truly yours,

Lynda J. Bowman

Sharon L. Grottola

Through: Lynda J. Bowman
Secretary

Sharon L. Grottola
Chief Counsel

cc: Beverly R. Minor, Chairwoman
Luke F. Brubaker, Member
Barbara A. Grumbine, Consumer Member

Turner's

Farm Fresh Milk
and Dairy Foods

RECEIVED
'01 OCT 17 PM
HARRISBURG PA.

October 15, 2001

Senator Mike Waugh, Chair
Senate Post Office
Main Capitol Building
Harrisburg, PA 17120

Dear Senator Waugh,

I am a third generation owner/manager at Turner Dairy Farms, and am writing to encourage you to **oppose the Pennsylvania Milk Marketing Board's proposed regulation to mandate "pooling"** of the Class I premiums we pay to the dairy farms who supply milk to us. Our family business has processed, packaged and delivered milk from our plant in Penn Hills, Pennsylvania since 1930. We currently employ 140 people and purchase milk from 62 family dairy farms located in Armstrong, Cambria, Indiana, Somerset and Westmoreland counties.

Turner Dairy Farms continues to fully support the Pennsylvania Milk Marketing Board and believe that it has done an outstanding job of serving the needs of milk producers, processors, retailers and consumers. The PMMB is a key reason why Pennsylvania's dairy industry is growing stronger while it is suffering in surrounding states. Having said that, we believe that the proposed pooling regulations, if implemented, will be detrimental to our 62 milk producers and to all milk producers in the Commonwealth.

The term "pooling," when used to describe producer milk pricing, means taking money from producers serving the Class I (or bottled milk) market and giving it to producers serving the Class II, III and IV (or manufactured product) markets. Our producers already participate in a large pool, Federal Order 33, which "pools" milk prices among producers in several states. Questionable pooling practices by a few firms, including Land-O-Lakes, have recently cost our 62 milk producers hundreds of thousands of dollars. These practices will be the subject of a hearing, called by the USDA, on October 23rd.

All of this pooling of prices makes it more difficult for Turner Dairy Farms to recruit the best dairy farmers who can produce milk that meets the high standards required by us and our customers. For example, Grade A standards require bacteria counts of 300,000 or less. We require bacteria counts of 20,000 or less and regularly receive milk with counts well below 10,000. We believe that milk meeting our higher standard is worth more and have been paying quality premiums in conjunction with the PMMB over-order premium in order to procure it.

A HIGHER STANDARD

Turner Dairy Farms 1049 Jefferson Road Penn Hills, PA 15235
Toll Free 1-800-892-1039 **Phone** 412-372-2211 **Fax** 412-372-0651

For more than a decade, the PMMB over-order premium has set the standard for mailbox milk prices for all classes of milk in Pennsylvania and surrounding states. I have heard Richard T. McGuire, New York's former Commissioner of Agriculture and Markets, state publicly that the PMMB over-order premium was positively influencing producer prices in the entire Northeast region of the United States. If the premium is "pooled," the standard will be lowered and all milk producers will receive less money for their milk.

In summary, pooling the PMMB over-order premium:

1. hurts the 62 family farms supplying milk to us,
2. impairs our ability to recruit the best quality milk available and
3. directly or indirectly reduces the mailbox price of every Pennsylvania dairy farmer.

Thank you for your consideration in opposing the pooling regulations proposed by the Pennsylvania Milk Marketing Board.

Sincerely,

Charles H. Turner, Jr.

Charles H. Turner, Jr.
Vice President

Cc: Sharon Grottola, Esq.
Chief Counsel, Pennsylvania Milk Marketing Board

Turner Dairy Products.
The Highest Quality You Can Buy.

The Higher Standard symbol is the exclusive property of Turner Dairy Farms and represents Turner's achievement of setting the highest standards in the dairy industry.

Turner Dairy Farms has set the highest standards for the quality of dairy products in Western Pennsylvania. For you, Turner's "Higher Standard" means you can count on the very highest quality of milk products available today.

When Turner's says, "We set the standard," here are the standards we're referring to:

Ordinary Dairy Standards **GRADE A**	Turner Dairy Farm's **"Higher Standard"**
• milk products tested monthly	• milk products tested daily
• allowable raw milk bacteria count of 100,000	• allowable raw bacteria count of 20,000 (5 times stricter)
• allowable pasteurized milk bacteria count of 20,000	• allowable pasteurized milk bacteria count of 300
• allowable pasteurized milk coli count of 10	• allowable pasteurized milk coli count zero
• costs the same as Turner's "Higher Standard"	• costs the same as Grade A

Additionally, Turner Dairy Farm's consistently exceeds its own "Higher Standard." Every tank truck is tested for bacteria and antibiotics before being received and loaded. If a truck's supply has either a high bacteria count or any antibiotic count whatsoever, it is rejected.

As you can see, Turner's "Higher Standard" rises well above the ordinary. It is an achievement that allows us to say, with pride, that we provide the best milk products around.

PAMD
PAMD
PAMD
PAMD
PAMD

Pennsylvania Association of Milk Dealers
P.O. Box 11843 • Harrisburg, PA 17108
240 N. 3rd Street • Suite 406 • Harrisburg, PA 17101
(717) 238-1738 FAX: (717) 238-1593

Earl Fink • Executive Vice-President

Original: 2218

October 22, 2001

2001 OCT 31 AM 9:43

Sharon L. Grottola, Chief Counsel
PA Milk Marketing Board
2301 N. Cameron Street
Harrisburg, PA 17110

Dear Sharon:

The Pennsylvania Association of Milk Dealers (PAMD) is a trade association of milk processors whose primary business is the processing and delivery of Class I milk. Our 32 member companies handle the vast majority of Class I milk which is produced, processed and sold in the Commonwealth, thereby causing our members to pay nearly all of the premium which this board has mandated on Class I milk since September 1988.

We have generally supported the premium since its inception, although at times we have disagreed with the premium level. As we have testified on many occasions we want to buy high quality, locally produced milk. We are willing to pay more for high quality milk located a reasonable distance from our plants.

We strongly object to the proposed regulations [7 Pa.Code Ch. 148], which would pool a percentage of the premium on a market-wide basis. The pooling proposal would defeat, as we see it, the purpose for which the premium was established.

Under the pooling proposal, it is quite probable some of the premium proceeds will go to non-Pennsylvania producers. It most certainly will go to some producers not producing the highest quality product.

The Pennsylvania Milk Marketing Board (PMMB) Class I premium was initiated in response to weather conditions. The premium has worked well and has positively affected all producers in the state.

It has since become a premium of "what will the market allow" based on milk production, premiums in surrounding states, etc.

Market conditions in Pennsylvania force all buyers of milk to pay higher prices. Testimony at price hearings has indicated the PMMB premium has even elevated prices in surrounding states.

Proponents of pooling are unhappy because they have to pay more for milk than they want to. Under pooling, <u>all producers will receive less</u>.

The premium has been of great benefit to the Pennsylvania dairy industry returning some $242 million to Pennsylvania farmers, plus an untold amount of voluntary competitive premiums.

The program has worked in large part because of dealer support. In most markets dealers resist mandated or negotiated premiums.

If the premium is diluted by pooling and used to subsidize manufacturing plants which are already subsidized under the federal order system dealer support will erode.

<u>FAIRNESS ISSUE</u>

Proponents of pooling argue producers should share equally because they face the same weather conditions, operating costs, etc.

Under the current federal and state pricing system, all producers receive different prices. They may ship to a different state or federal order, their milk may contain more protein or solids not fat, they may have lower hauling rates if they ship larger volumes or they may receive higher quality premiums. In the best case their milk may be marketed and priced in the southeastern United States at premiums of three to four dollars per hundredweight.

In no way can this board, through pooling or some other mechanism, guarantee that dairy farm neighbors will receive the same price. There are too many variables in the pricing system.

Land O'Lakes Cooperative, the primary proponent of pooling, is a large well-run business with a great market brand and sales of

$5.8 billion in the year 2000. In the same year, Land O'Lakes enjoyed profits of $102.9 million most of which were shared with their members. These profits were not shared with other farmers.

Land O'Lakes made a business decision to invest in a huge butter-powder plant near Carlisle, PA. Under your pooling proposal, independent and cooperative shippers who supply the Class I market would have to subsidize the Carlisle plant. But profits from this plant are not shared with Class I shippers.

Ten years ago Land O'Lakes' predecessor - Atlantic Dairy Cooperative - supplied most of the milk to Class I plants in eastern Pennsylvania. At that time they were opposed to pooling the PMMB premium. For some reason they moved away from the Class I market, and focused on their manufacturing operations. They now want to pool the premium, which they previously opposed.

In the past couple of years milk supplies in the eastern United States have been tight. Land O'Lakes and other cooperatives have been able to market milk in the southeastern United States at extremely high prices, three to four dollars above the federal minimum price. This is good for Pennsylvania's farmers who ship to that market, but profits on these sales are not shared with other farmers.

<u>ALL GRADE A MILK IS NOT THE SAME</u>

In the present Class I milk marketing world, products are traveling greater distances and milk sell-by codes are being lengthened. It is not uncommon for fresh fluid milk to move 200+ miles.

In order be competitive in today's market, Class I plants must seek the highest quality milk available.

We think the standards for Grade A milk are too low. For example, the minimum bacteria standard for raw milk (standard plate count) is 100,000 per milliliter. Many well-run farms can achieve a count of 2,500 or less.

Producers who achieve the highest quality are sought by Class I plants so they can compete in today's market.

POOLING BENEFITS MANUFACTURING PLANTS

On several occasions Milk Marketing Board members have suggested a premium on Class II, III and IV milk to provide relief to the states' dairy farmers. A 10 cent premium on these classes would equate to a 30-40 cent increase in Class I prices because nearly three fourths of the states' milk production is used for manufacturing.

The owners of the manufacturing plants - some of which are cooperatives - object on the notion that their products are marketed nationally and a state mandated premium would put them at a competitive disadvantage.

The effect of pooling the Class I premium will be to give these plants a competitive advantage over their out of state competitors. Their farmers will receive a premium at no cost to them; it will be paid by Class I plants. In times of milk shortages, as we have seen this fall, this is a substantial advantage. Voluntary premiums, which these plants must pay to attract milk, will be reduced in Pennsylvania but not in other states.

This situation is unfair to Class I plants for two reasons. First of all, the manufacturing plants other than Land O'Lakes have not requested this advantage. Second, these same plants can, and at times do, purchase surplus milk from Class I plants at less than the minimum Class II, III or IV price while the Class I operator must pay his farmers the established minimum prices for this milk.

For the reasons stated above, we urge you to withdraw your proposed pooling regulation. Thank you.

Very truly yours,

Earl

Earl Fink

EF/sea

Dairylea
Cooperative Inc.
(800) 654-8838

Original: 2218

DFA
DAIRY FARMERS of AMERICA, INC.
· Northeast Area Council
(800) 926-2667

October 22, 2001

2001 OCT 31 AM 9:42

Ms. Sharon L. Grottola
Chief Counsel
Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

Dear Ms. Grottola:

I am writing to you on behalf of Dairylea Cooperative, Dairy Farmers of America's Northeast Council and Dairy Marketing Services (DMS), the joint marketing venture between Dairylea and DFA. These comments and questions are filed in response to the Pennsylvania Milk Marketing Board's proposal to pool 45% of their Class I over order premium.

DMS is the largest supplier of milk to Pennsylvania's Class I plants. Based on the Milk Marketing Board's information, DMS markets about one-third of the Class I milk that is priced under the PMMB regulation. This is significantly more than any other individual marketing group. Due to this, the members of Dairylea and DFA's Northeast Council have the most at stake relative to revenue changes that would be brought about by implementing the pooling proposal.

Although DMS is the largest marketer of Class I milk in the State, its Class I percentage of that milk is lower than any single Class I dealer that has its own producer supply. As a result, these Class I dealers can pay their producers higher premiums generated by the Milk Marketing Board's Class I over order premium, than Dairylea and DFA's Northeast Council are able to do. Nonetheless, the regulatory pricing actions undertaken by the Milk Marketing Board have supported industry efforts to raise premiums throughout the State that have benefited all dairy farmers. Our members are better off from these concerted public/private actions even though some dairy farmers may receive higher premiums than others. We believe the Milk Marketing Board's current regulatory process supports a system that maximizes revenue to Pennsylvania's dairy farmers. Regulatory changes brought about by any type of Milk Marketing Board pooling provisions would undermine this system and likely result in reduced premium payments, in total, to Pennsylvania's dairy farmers.

Due to this, Dairylea, DFA's Northeast Council and DMS support the Milk Marketing Board in maintaining the current regulatory construction, that excludes pooling, and supports their continued efforts to work with the industry to support consistently higher Class I premiums throughout the State.

Dairylea and Dairy Farmers of America's Northeast Council do not support the Pennsylvania Milk Marketing Board's proposal that pools the Class I over order premium. The current proposal will reduce the premiums and income for our Pennsylvania members without them receiving any compensating benefits.

PO Box 4844
Syracuse, NY 13221-4844

Implementation of the proposed pooling provisions would penalize the farmers and cooperatives that supply the Class I plants in Pennsylvania. These farmers and cooperatives earn the premium by arranging the collection and delivery of the milk to these plants, carrying the costs of assuring that the milk meets stringent health standards and is of the highest quality, servicing the needs of the Class I buyer and taking care of the fluctuating daily, weekly and seasonal demands of the Class I plants. These are significant expenses that are tremendously higher than those incurred when servicing manufacturing plants. Pooling the Class I over order premium would take money away from those farmers and cooperatives that earn it by doing the marketing and balancing, and would reduce their income – but still leave them with 100% of the costs of servicing the Class I market.

Additionally, the inability of Pennsylvania to regulate and price milk in interstate commerce prevents the Milk Marketing Board from setting a Class I over-order premium that exceeds the actual market's voluntary Class I premiums by any significant amount. The mere change of pooling the premium will not allow the Milk Marketing Board to set Class I premiums at a higher level than they currently do. Thus, pooling in and of itself will not allow the Milk Marketing Board's Class I premium to significantly exceed voluntary Class I premiums. If this could occur via the pooling proposal, then all Pennsylvania farmers could enjoy increased premiums via a pool.

We support a statewide payment to all dairy farmers. However, without the implementation of a Dairy Compact or other interstate cooperative efforts, marketing board or order action cannot, fairly, achieve a statewide premium. Due to this, we feel it is the legislatures' responsibility to pass an appropriation that provides additional income to dairy farmers in times of low profitability. The Milk Marketing Board has no place in doing this for the legislature.

By their proposed pooling action, the Milk Marketing Board is asking private businesses – farmers and cooperatives – to do the job of the State government and the legislature. The Milk Marketing Board wants to mandate that Dairylea and Dairy Farmers of America, their members and other producers supplying Class I plants, provide this appropriation to the State so it can be distributed, in the name of the State, to Pennsylvania's dairy farmers. The device the Milk Marketing Board proposed to use to do this results in a taxation of those serving Class I - and those who earn the premium by doing the work. On top of this, they are reducing the income of the dairy farmers that ship to the Class I plants and distributing that income to dairy farmers that ship to manufacturing plants -- who do nothing to earn the money. Also, they would distribute this money to farmers that ship to manufacturing plants who already get paid significantly high market premiums and earn end of the year bonus checks generated from the profits made during the year at the manufacturing plant.

In addition to this fairness issue, the pooling proposal seems to violate the rights offered by both the Pennsylvania and United States Constitution for due process under law. Also, the opportunity to be heard on this subject has been inadequate. There needs to be more time for arguments to be heard and analysis to be done so a better understanding of the implications that this change will bring will be better known. The following are a number of implications and concerns that have not been thoroughly discussed.

Competitive Dynamics Equalize Pay Prices

Premiums will differ from producer to producer dependent on the quality of their milk, the component levels in their milk, the quantity of milk farmers ship on a daily basis, and other factors.

Like it or not, competitive economics dictate these types of premium differences. Certainly, though, any one producer or milk dealer that has gained some type of competitive advantage, will, at any time, be able to pay a higher premium than others. We too are faced with this challenge. However, we recognize that this is a market place reality that is going to exist no matter what type of regulation is in effect. The implications of this are so insignificant that it doesn't warrant changing a regulatory structure in an effort to try and correct for it.

Farmers' pay prices can be highly dependent on the producer price differential they are paid and the hauling rate they are charged. Since the implementation of Federal Order Reform in January 2000, the analytical factors farmers review to determine how their milk check stacks up against their neighbor's has changed. What used to be a fairly simple comparison of premiums and hauling rates has been complicated by the addition of the producer price differential[1]. Now a farmer has to add the producer price differential to their premium and subtract out the cost of their milk hauling charge in order to evaluate how they stack up against their neighbor. As indicated in footnote 1, payment strategies can be utilized that allow marketers to pay higher premiums in an area by lowering the producer price differential. Also, marketers may offer free hauling or very low hauling charges to producers in lieu of a premium or in addition to a very low premium. Due to these factors and others, a farmer has to evaluate all 3-payment parameters, simultaneously, in order to determine their pay price competitiveness.

In a geographic area, the dynamics created by various cooperatives and milk dealers competing for a milk supply results in a competitive environment whereby the net price from the three aforementioned parameters[2] being relatively the same for all producers. If this were not the case, producers would be switching from one cooperative or milk dealer to another – based on who was out paying everyone else. This is not happening and has not been happening unless inattention and neglect has been paid to a marketer's milk supply. In short, the current system of Federal Order and Pennsylvania Milk Marketing Board regulation and the competitive interactions of milk marketers has resulted in the market creating a competitive equilibrium among neighboring dairy farmers and across geographic regions.

[1] The producer price differential is a dollar per hundredweight payment that all Federal Order producers receive from their cooperative or milk dealer. It represents the Class price utilization value of milk in excess of the Class III price – basically it represents the value of the Federal Order to producers. For Order 1 producers in Pennsylvania, the producer price differential has ranged from $1.00 per hundredweight to $4.54 per hundredweight. It is a different value each month. Its level is also dependent on the plant or zone for which a farmer is paid. Generally, plants or zones closer to Philadelphia pay producer price differentials that are higher than plants or zones in Northern Pennsylvania. Also, it is not uncommon for cooperatives and milk dealers to pay producer price differentials based on the zone that the farm is located as opposed to the plant the milk is delivered to. The extra money that a marketer generates from selling the milk in a higher priced zone than they pay the farmer – is used to offset the extra hauling cost of delivering the milk to the more distant market. This type of a payment strategy results in farmers having less money deducted from their milk check for hauling than the actual cost of hauling the milk to the more distant plant. This is called paying the local price and charging the local haul. The net impact of either of these payment strategies returns the same amount of money to dairy farmers. Some marketers take this latter strategy one step further by paying a producer price differential that is somewhat lower than the local price and using the extra money they have to pay the farmer a higher premium. Since the producer price differential changes every month and is a pricing factor that many in the industry, not just farmers, don't understand very well, many farmers whose payment is based on this type of strategy may not be aware that their premium is being subsidized by lowering their producer price differential.

[2] The three parameters would be the producer price differential plus the premium minus the hauling charge.

The Marketing Board's proposed changes, that would pool the Class I over-order premium, will upset and displace the market determined competitive equilibrium whereby all producers are paid relatively the same price. This will occur because money generated by cooperatives and milk dealers that supply Class I plants will be distributed to marketers for payment to producers who supply manufacturing plants. Since those supplying Class I operations will have less money and those supplying manufacturing operations will have more money – the competitive equilibrium generated by the market place will be displaced.

Right now, Dairylea's and DFA's Northeast Council's Pennsylvania members are receiving competitive premiums, relative to other producers shipping to other dealers. Pooling will decrease the revenue that our cooperatives will be paid from our Class I customers and will decrease the amount we can pay our members in premiums. This will lower our members' milk prices and result in our members receiving lower premiums than producers shipping to manufacturing plants. Additionally, all dairy farmers in Pennsylvania are likely receiving voluntary premiums now. Almost all of them receive premiums greater than those that could be generated by any Milk Marketing Board pooling proposal – regardless of the pooling percentage. If there are farmers that don't receive a premium, options exist for those farmers to easily switch to another Pennsylvania dealer who can pay them a voluntary premium.

Why do you choose to implement a regulation that will lower the pay prices to our members?

Why is there a need to generate a regulated, pooled premium that will disrupt markets, marketing patterns and competitive equilibrium, when all Pennsylvania producers are now receiving premiums, or have the ability to change to a marketer that can pay them a premium?

Why do you want to, through your regulation, upset the competitive dynamics and the producer pay price equilibrium that the market has handled appropriately on its own under the current regulatory format?

Why do you feel the need to put at risk the current system that works and results in all Pennsylvania producers receiving a premium?

Is it your intent that all Pennsylvania producers receive a state mandated premium or that all producers receive a premium regardless of name or source? Does your proposal achieve your intent? Please comment.

Have you done any analysis to show how much different cooperative and producer groups gain or lose by this regulated redistribution of dairy farmer income?

Has the Milk Marketing Board analyzed producer pay price equity within the State by reviewing the 3 payment factors? If so what have you found?

Please comment on your feelings of the need of this type of analysis in providing the legislature a better understanding of pay price equity throughout the state.

Pooling Regulation Treats Class I Shippers Unfairly

Cooperatives that supply Class I dealers have additional and higher costs than cooperatives that supply manufacturing plants. These costs occur because Class I plants produce a perishable product – packaged beverage milk. Beverage milk can only be inventoried for a day or two – if it is inventoried at all. Otherwise the packaged beverage milk runs the risk of spoiling before consumers can buy and use it.[3] Manufacturing plants, on the other hand, can make butter, cheese or milk powder that they can inventory for months without spoilage. As a result, Class I plants only will take the milk they need for their sales the next day, as opposed to manufacturing plants that will take all the milk they can get, all the time, until they reach their plant's maximum production capacity. Since a Class I plant can't rely on its inventory for covering a sudden surge in orders, like a manufacturing plant can, the cooperative supplying the Class I plant has to have milk available for their customer, as it is needed. Maintaining a milk supply for Class I plants, that is sometimes needed by them and sometimes isn't needed, carries higher costs than maintaining a milk supply for a manufacturing plant – which generally receives the same producers' milk each day of the year.

Class I plants do not sell the same amount of packaged beverage milk each day of the week, or season of the year. As a result, the milk deliveries to these plants have to be tailored to their changing demands. For example, most Class I plants have one weekday which they require more milk deliveries from cooperatives – than any other day. This is usually a day or two ahead of a weekend. On weekends, Class I plants operate at reduced processing levels, or, typically on one weekend day the plant doesn't process at all. This results in significantly reduced or no cooperative milk deliveries on weekends. Also, in the summer time, when schools are not in session, significantly less milk is delivered to Class I plants than during the months when schools are in session. The process of assuring Class I plants get all the milk they need when they need it is called balancing. In order to balance a Class I plant or system of plants, a cooperative has to maintain a milk supply for them that can meet their peak daily and seasonal milk demands. When this milk isn't needed at Class I plants, it is delivered to manufacturing plants. This jockeying of milk between Class I plants and manufacturing plants carries considerable extra costs as compared to delivering the same group of dairy farmers to a manufacturing plant every single day. Thus, those that have a greater proportion of sales to Class I plants, have considerably more costs than those that supply little or no milk to Class I plants.

Due to these higher costs, some cooperatives in Pennsylvania have chosen to retract from serving Pennsylvania's Class I market and become focused on delivering their members' milk to their own plants.

The Milk Marketing Board's pooling proposal would reduce the income of dairy farmers and cooperatives that service Class I customers, however, it would still leave these farmers and cooperatives with 100% of the extra costs in serving Class I.

Why is it appropriate to reduce the Class I premium revenue to those supplying Class I and still leave them with all the costs involved in delivering the milk to Class I?

[3] Beverage milk, packaged under conventional means, generally needs to be consumed within 14 days from the time it comes out of the dairy cow. Most of the milk consumed in Pennsylvania and surrounding states is packaged under conventional means.

Is the Milk Marketing Board sending the right economic signal to producers and cooperatives by taking Class I premium revenue away from farmers and cooperatives that earned it by delivering the milk and instead, giving it to those delivering to manufacturing plants? Please comment.

Is the Milk Marketing Board setting up a regulatory pricing structure that would discourage farmers and cooperatives from delivering milk to Class I plants?
Does the proposed pooling regulation harm the ability of Pennsylvania Class I plants to procure a milk supply and could this lead to more milk from out-of-state processors being sold in Pennsylvania?

Will the proposed pooling regulation result in more out-of-state producer milk being delivered to Pennsylvania Class I plants?

Will the proposed pooling regulation create a disincentive for Pennsylvania produced milk to be delivered to Pennsylvania Class I plants? If so, do you think this could result in Pennsylvania producers paying higher hauling costs, that aren't recoverable from the market place, in order to deliver their milk to other plants? Please comment.

Pooling Regulation Leaves Out Performance Requirements

Every marketing order that includes regulations to pool Class I proceeds to all dairy farmers contains provisions that are called performance requirements. Basically, this means that if a farmer or cooperative is going to share in the Class I proceeds, they have to do something to earn the pooled payments. The most common performance requirement is that a producer or cooperative has to deliver a minimum amount of milk to Class I plants, on a monthly basis, in order to be eligible to receive the pooled payment. This type of a provision forces all that benefit from the pooled payment to share in the extra costs of supplying the Class I market, as well as it provides a return benefit to those giving up the extra Class I proceeds – namely, assistance in meeting the markets Class I needs.

The Milk Marketing Board's proposed pooling regulation does not contain any such performance criteria. In essence, producers and cooperatives supplying manufacturing plants will receive a free ride on the benefits of the Class I premium without ever being required to provide some return benefit to those that will be forced to give up some of the Class I revenue.

Why were performance provisions, basic and common provisions in marketing order pooling regulations, left out of the Milk Marketing Board's pooling proposal?

Shouldn't the farmers and cooperatives that would have their premium reduced by this proposal, get something in return for it?

What are the performance requirements used in other pooling regulations? Could any of these be utilized in this regulation?

PMMB's Class I Premium Set at Level of Voluntary Class I Premiums

Some have questioned why Dairylea and DFA's Northeast Council support pooling under the Compact but not via the PMMB regulation. The answer lies in the ability for the Compact to generated extra revenue for all dairy producers – instead of increasing premiums for some and decreasing premiums for those shipping to Class I plants.

The Milk Marketing Board can only regulate commerce within Pennsylvania. Its ability to price milk is limited to that produced, processed and sold in Pennsylvania. As such, on its best day, it prices about 17% of the milk produced in Pennsylvania and has to be very careful not to price the in-state Class I dealers out of a market by setting the over-order premium too high. This latter point is important since Pennsylvania can't enforce its premium on milk produced or packaged in other states. Because of the limited regulatory reach of the Milk Marketing Board, its ability to command higher, above the market Class I premiums, is very limited. For instance, the current $1.65 over order premium, though at one of its highest levels, is set close to the generally prevailing Class I premium in surrounding states. This price level is generating little, if any, extra revenue for Pennsylvania's farmers beyond that which the market would generate on its own. Said another way, if the Milk Marketing Board did not set an over-order premium, Pennsylvania's milk dealers would still be paying the $1.65 level, at this time. If the Milk Marketing Board implemented a premium of $3.00, instead of $1.65, then about $1.35 of the $3.00 would be the market enhancing premium portion attainable, at this time, through the Board's regulatory involvement. From our standpoint, if pooling the premium would allow the Milk Marketing Board to implement $3.00 over order premiums, we could support some type of pooling of the $1.35 price enhancing value. By doing this, the Milk Marketing Board would be creating a rising tide the lifts all boats – including increasing premiums to the producers that ship to Dairylea and DFA's Northeast Council. However, the Board has not set a premium at this level out of credible concerns that such action could likely result in out-of-state milk dealers, who can't be required to pay the $3.00 state mandated premium, under pricing Pennsylvania dealers and taking away sales accounts.

A multi-state cooperative action like the Dairy Compact is quite different than a single state pricing action. The Dairy Compact had federal authority to regulate interstate commerce and therefore could price any Class I milk that was sold in the Compact region – no matter where the milk was produced or where the packaging plant was located. Due to this regulatory structure, the Compact was able to impose its Class I price on about 45% of the milk produced by those farms that qualified for its benefits. At the same time, the Compact could set significantly higher Class I premiums, than the Marketing Board, because the regulatory construction enforced the same Class I price whether the Class I dealer was in the Compact region or outside of it. It created a level playing field for all. For example, in 22 out of the 51 months the Dairy Compact operated, it set Class I premiums in excess of $1.65. And for year 2000, the producer premium averaged $0.91 per hundred pounds – a value that created a rising tide that lifted all boats.

Since the Milk Marketing Board has been setting Class I premiums, how often and by how much has their premium exceeded, or under priced, the voluntary Class I premiums that existed in the market place, either in Pennsylvania or in surrounding states?

How will your pooling proposal generate a meaningful premium that results in increased revenue to all Pennsylvania dairy farmers when the State doesn't have the authority to price milk in interstate commerce and can only regulate about one-third of the Class I milk than can be regulated via cooperative interstate action?

Aside from your proposal, or do you know of any other means that can be used to generate additional revenue to all dairy farmers? Please comment.

Pooled Premium Could Lower Voluntary Premium

An unfortunate but livable side effect of the Compact was that the pooled producer premium replaced almost all voluntary premiums milk companies paid prior to the implementation of the Compact. Recent history thus has shown that pooled premiums achieved by government regulation can end up cannibalizing previous voluntary premiums. This same thing could occur if the Milk Marketing Board goes through with their pooling proposal. For instance, if the Milk Marketing Board generated a $.22 pooled premium, and a producer delivering to a manufacturing plant had been receiving a $.50 voluntary premium, would the producer get both premiums for a total of $.72, or still get a total of $.50 because the pooled premium cannibalized $.22 of the voluntary premium? If the latter case occurs, the Milk Marketing Board's pooling proposal would result in reduced total revenue to Pennsylvania's farmers. This would occur because the Class I shippers will have reduced premiums and the manufacturing shippers would not end up getting paid anything extra.

How do you know that the pooled premium won't cannibalize existing premiums? Are you concerned that your actions may not have any positive impact on Pennsylvania producers? Please comment.

Dairylea and DFA's Northeast Council will continue to work with the Milk Marketing Board and Pennsylvania's dairy industry to improve dairy farmer profitability. Unfortunately, the proposed pooling regulation will reduce premiums to our members, likely reduce gross premiums paid to Pennsylvania's dairy farmers, in total, and changes the economic marketing landscape of Pennsylvania produced milk in a way that could impinge on the ability to adequately supply the State's Class I plants. Due to this, we cannot support the pooling proposal. We ask that you change the pooling percentage to 0. Additionally, the pooling of the premium appears to be a constitutional taking and the opportunity to be heard, and the thoroughness of the analysis of this change, has been inadequate.

Please feel free to contact me if you have any questions about this matter. I look forward to our continued interactions in our missions to improve dairy farmer profitability in Pennsylvania.

Sincerely,

Edward W. Gallagher

Edward W. Gallagher
Vice President, Planning and
Regulatory Policy

Dairylea Cooperative Inc.

TELECOPIER TRANSMITTAL SHEET

Please deliver the following page(s) to:

NAME: Sharon Grattola

FAX #: 717-783-6492

FROM: Ed Gallagher

DATE: 10/22/01

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 9

If all pages are not received, please call: (315) 433-0100.

Comments:

Dairylea Cooperative Inc. P.O. Box 4844 Syracuse, New York 13221-4844
Fax (315) 433-2345 Telephone (315) 433-0100

THELEN REID & PRIEST LLP

ATTORNEYS AT LAW

NEW YORK
SAN FRANCISCO
WASHINGTON, D.C.
LOS ANGELES
SILICON VALLEY
MORRISTOWN, N.J.

MARKET SQUARE, SUITE 800
701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2608
TEL (202) 508-4000 FAX (202) 508-4321
www.thelenreid.com

CHARLES M. ENGLISH, JR.
202-508-4159
cenglish@thelenreid.com

Original: 2218

October 22, 2001

VIA FACSIMILE AND FEDERAL EXPRESS

Sharon L. Grottola
General Counsel
Pennsylvania Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

Dear Ms. Grottola:

Enclosed for filing, please find Comments by Lehigh Valley Dairies in Opposition to the Pennsylvania Mandated Over-Order Premium. Thank you.

Very truly yours,

Charles M. English, Jr.

WMY/cls

**COMMENTS BY LEHIGH VALLEY DAIRIES
IN OPPOSITION TO THE POOLING OF THE
PENNSYLVANIA MANDATED OVER-ORDER PREMIUM**

I. Introduction

These comments are filed on behalf of Lehigh Valley Dairies ("Lehigh"), a class I processor serving Pennsylvania's fluid milk customers since 1934 from plants located in Lansdale and Schuylkill Haven. Lehigh employs approximately 570 plant and delivery people.

Relying on the Pennsylvania Association of Milk Dealers ("PAMD"), Lehigh was not itself directly involved in the work sessions held by the Pennsylvania Milk Marketing Board (the "Board") to discuss the merits of pooling the Pennsylvania-mandated over-order premium. However, now that the Board has published its proposal to pool the Pennsylvania-mandated over-order premium, Lehigh has identified significant policy and technical concerns. As a result, Lehigh requests the Board's consideration of the following comments in opposition to the Board's proposal to pool said premium. (the "Pooling Regulation").

As a member of the Pennsylvania Association of Milk Dealers, Lehigh believes that the Board does not have the authority to implement the proposed pooling regulation and therefore adopts and incorporates by reference the comments filed by the law firm of Duane, Morris & Heckscher, LLP on PAMD's behalf. In addition, Lehigh believes that pooling the over-order premium is bad policy that will create disorderly marketing conditions and destructive competition endangering the health and viability of the Pennsylvania dairy industry by, among other things, providing Class I processors from other states with a competitive advantage over Pennsylvania Class I processors.

II. The Proposed Pooling Regulation Will Create Destructive Competition From Outside Of The Commonwealth

Lehigh genuinely believes the Board has failed to anticipate the competitive disequilibrium that the Proposed Pooling Regulation will cause. The Proposed Pooling Regulation will place Lehigh Valley and other Pennsylvania Class I processors at a competitive disadvantage vis-à-vis out-of-state Class I processors in their ability to procure raw milk supplies as well as their ability to compete for retail customers within the Commonwealth. Given the Board's recognition in 1993 of the need to maintain competitive equilibrium among Class I processors within the Commonwealth and the applicability of that reasoning to the competitive situation among Pennsylvania and border state Class I processors, Lehigh believes that the following comments compel the Board to reconsider and ultimately reject the Proposed Pooling Regulation.[1]

Procurement Disadvantage

Pooling the over-order premium, at any level, will provide out-of-state Class I dealers with the ability to return to their dairy farmer patrons more money than Pennsylvania's Class I processors will be able to return to their dairy farmer patrons for the same out-of-pocket expense. The ability to return more money to dairy farmers will make out-of-state Class I processors a more attractive alternative for Pennsylvania dairy farmers, even after taking into account transportation costs.[2] Thus, in order to attract milk supplies, Pennsylvania's Class I processors

---

[1] On February 23, 1993, the Board adopted Official General Order A-874, which expressly rejected the pooling of the over-order premium in a portion of the Commonwealth. In the Order and in the face of legal challenges before the Commonwealth Court of Pennsylvania, the Board defended the decision arguing that it was concerned that processors that were not required to pool premiums (those with individual handler pools for premiums) would be able to return more to dairy farmers and would therefore have a procurement advantage compared to Class I processors that did not have to pool premiums. *See* Official General Order A-874; *see also Milk Marketing, Inc. v. Pennsylvania Milk Marketing Board*, 635 A.2d 1110, 1111 (Pa. Commw. Ct. 1993).

[2] In testimony before the Senate Agriculture Committee on October 16, 2001, the Board estimated that the Proposed Pooling Regulation would reduce the premium returned to Class I producers by approximately 30%. Lehigh believes that is a low estimate of the income reduction, but assuming a 30% reduction for purposes of this analysis,

will be forced to make up the difference lost to pooling or find themselves unable to expand or service existing customers. In either case, the profitability of Pennsylvania's Class I processors will be adversely impacted, rendering Pennsylvania an unattractive investment for existing and future Class I facilities.

An understanding of the present competitive situation is essential to understanding how the Proposed Pooling Regulation will create competitive disequilibrium by drawing Pennsylvania-produced milk out-of-state.[3] Presently, Pennsylvania's Class I processors face procurement costs that are comparable to the procurement costs facing out-of-state Class I dealers. Thus, when it comes to attracting raw milk supplies (*i.e.*, dairy farmer patrons), both groups are presently on a relatively equal footing (with Pennsylvania dealers having a slight location advantage with respect to Pennsylvania dairy farmers). Both groups pay the federal minimum price.[4] In addition, both groups pay premiums over and above the federal minimum price. According to the testimony of Chairwoman Minor before the Senate Agriculture Committee on October 16, 2001 as well as the testimony of industry participants during the October 3, 2001 over-order premium hearing, due to competitive circumstances, the premiums paid by Pennsylvania Class I processors generally track the premiums paid by out-of-state processors. Transcript of Over-Order Premium Hearing, Before the Pennsylvania Milk Marketing Board at 18-22 and 108-109 (Oct. 3, 2001) (hereafter Tr. at __). In Pennsylvania the

---

out-of-state processors will have a 40 to 50-cent advantage on a per hundredweight basis, which after covering transportation costs, will allow them to pay less than the Pennsylvania premium out-of-pocket, while nonetheless returning more to their dairy farmer patrons.

[3] Out-of-state processors are not required to pay the over-order premium on Pennsylvania produced milk. Thus, the exodus of Class I milk will not only hurt Pennsylvania's Class I processors, but will dilute the size of the over-order premium pool, thereby diminishing the purported benefits for non-Class I dairy farmers.

[4] While all Class I processors located in Pennsylvania pay the federal minimum price because the Pennsylvania Class I minimum price is based on the federal price, some are located in federally unregulated territories and thus enjoy individual handler pools as to the minimum Class I price as well. However, such plants are relatively few and for purposes of this analysis, we believe the comparison of the regulatory treatment of federally unregulated Pennsylvania processors is not critical.

premiums are comprised of the mandated over-order premium plus additional voluntary premiums, while outside of Pennsylvania the premiums are wholly voluntary but generally reflect the aggregate of the mandated and voluntary premiums paid by Pennsylvania Class I processors.

Presently, both groups pay these premiums on an "individual handler pool" basis. This allows both groups to return substantially similar amounts to their dairy farmers. Simply put, under individual handler pooling of premiums each processor directly pays its producers the premium based on the amount of Class I milk purchased. None of the premium is shared with non-Class I producers. Thus, the out-of-pocket payment made by the processor to its dairy farmer patrons is not diluted.

In contrast, under the marketwide pooling concept proposed by the Board, the Pennsylvania Class I processor will have the same out-of-pocket cost (*i.e.*, the premium) as the out-of-state Class I processor, but its producers will receive less than the full amount; the premiums paid will be aggregated and then divided among all eligible Pennsylvania farmers, even those not serving the Class I market. Under this scenario, and in a market where competition for milk supplies has been fierce (*see generally* Tr. at 99), there will be a substantial risk that dairy farmers will choose to ship to out-of-state processors with individual handler pools in order to obtain the full benefit of the Class I premium. In order to retain farmer patronage, therefore, Pennsylvania's Class I processors will have to make up the difference lost to pooling (less transportation costs associated with out-of-state shipments), which will cause Pennsylvania's Class I processors to pay more out-of-pocket than out-of-state Class I processors.

Accordingly, the proposed pooling regulation will give out-of-state Class I processors a procurement advantage over Pennsylvania's Class I processors.[5]

Indeed, it is difficult to imagine that Pennsylvania dairy farmers serving the Class I market will not demand to be made whole in the aftermath of pooling. Class I farmers that service the Class I market incur costs that are not incurred by other farmers. In particular, a portion of premiums paid compensate these farmers for costs associated with balancing functions, which are critical to maintaining an adequate supply of fresh healthful milk. Tr. at 74-76 and 78-80. Such costs simply do not disappear with pooling.

Retail Customer Disadvantage

Making a bad situation worse, the procurement advantage that will accrue to out-of-state processors will result in competitive disequilibrium at the wholesale level and will necessarily erode the market share of Pennsylvania's Class I processors. Faced with lower procurement costs, out-of-state processors will be equipped to price packaged fluid milk below prices charged by Pennsylvania Class I processors.

Pennsylvania's minimum wholesale prices reflect processor costs in direct and indirect ways. Among other things, the wholesale price increases when the over-order premium increases, and less directly, it increases during the cost-replacement process that takes place on a semi-annual basis to reflect increases in voluntary premiums. Thus, to the extent Pennsylvania's Class I processors face increased procurement costs associated with the Proposed Pooling Regulation, the Pennsylvania wholesale minimum price will reflect that increase. Under Pennsylvania's existing regulations, out-of-state processors can sell packaged product below the

[5] Since the proposed regulation does not apply to raw milk procured outside of the Commonwealth, it will create an incentive for Pennsylvania Class I processors to procure milk from out-of-state in order to avoid the dilution effect. Encouraging milk to travel in these uneconomic ways is the epitome of disorderly marketing and certainly cannot satisfy the requirements of the Pennsylvania Milk Marketing Law.

wholesale minimum price so long as retailers take title outside of Pennsylvania. Thus, there will be virtually no limit on the ability of out-of-state processors to compete for increasing portions of the Pennsylvania fluid milk market.

The Proposed Pooling Regulation Is Not Like The Compact

Contrary to Chairwoman Minor's testimony before the Senate Agriculture Committee on October 16, 2001, the Proposed Pooling Regulation cannot be properly compared to the Northeast Interstate Dairy Compact ("the Compact"). Asserting a congressional exemption, that does not exist for Pennsylvania, from the proscriptions of the negative Commerce Clause in the U.S. Constitution, the Compact Commission adopted regulations that applied to out-of-compact processors. In so doing, the Commission, unlike the Board, was able to prevent out-of-compact processors from achieving the kind of competitive advantage discussed above.

Significant Detrimental Impact on Pennsylvania's Infrastructure

As demonstrated above, it is a grave mistake to ask Pennsylvania's Class I processors and dairy farmers serving the Class I market to subsidize the remainder of the Pennsylvania dairy industry in the face of destructive competition from Class I processors outside of the Commonwealth. To do so will mark the demise of the Class I infrastructure in Pennsylvania.

The Proposed Pooling Regulation will place Pennsylvania's Class I processors in a "Catch 22" vis-à-vis competition from out-of-state Class I processors. The choice for Class I processors will be reduced profitability and a compromised investment frontier, or market share erosion. Either scenario paints a bleak picture for a local Class I infrastructure.

In the absence of a local Class I infrastructure, operating manufacturing plants, financed as part of the balancing function for Class I plants, will become less desirable and dairy farmers will be forced to ship longer distances for manufacturing as well as Class I outlets.[6] Under these circumstances the Board will be hard-pressed, it seems, to accomplish the mandate of the milk marketing law, which has at its core the requirement of locally produced milk in order to assure an adequate supply of healthful fluid milk at reasonable prices.

III. The Proposed Pooling Regulation Will Place Pennsylvania Consumers In The Untenable Situation Of Subsidizing Out-Of-State Sales Of Class I Packaged Product By Pennsylvania Class I Processors

Sections 148.4 and 148.5 of the Proposed Pooling Regulation (with examples) expose the weakness and fallacy of the proposal to create a Pennsylvania Over-Order Premium Pool. Dairy C pays nothing into the Pool, but receives money from the Pool for purposes of compensating its dairy farmers. However, as discussed in the comments filed by the Pennsylvania Association of Milk Dealers, if Dairy C is a cheese plant selling most of its products out-of-state, consumers in Pennsylvania of fluid milk products end up subsidizing the cost of procuring raw milk at cheese plants for cheese sold out-of-state. Taking the example one level farther, if Dairy C is located near a major non-Pennsylvania metropolitan area and procures its milk from Pennsylvania farmers for sale outside the Commonwealth, Pennsylvania consumers will now be paying a portion of their higher milk price for the privilege of Dairy C selling milk outside the Commonwealth. Dairies A and B will be collecting consumer dollars to compensate them for the over-order premium, but those dollars will go to Dairy C for the purpose of permitting it to buy milk from its Pennsylvania farmers at a net lower cost to it then would otherwise be possible. This in turn puts pressure on Dairies A and B because they are both competing with Dairy C for a Pennsylvania milk supply and simultaneously paying a portion of Dairy C's

[6] Importantly, due to certain constraints dairy farmers shipping outside the Commonwealth will not only incur additional transportation costs, but also will be denied access to the over-order premium.

procurement costs. This result is patently unfair and unacceptable to Dairies A and B, and for this reason alone, should result in rejection of the Pooling proposal.

IV. The Proposed Pooling Regulation Will Substantially Increase Reporting Costs Thus Resulting In Higher Costs To Pennsylvania Consumers

There are substantial hidden transaction costs associated with the technical elements of the Proposed Pooling Regulation. Section 148.2 of the Proposed Pooling Regulation calls for the filing of forms, the exact nature of which is yet undisclosed, on the ninth of the month. In and of itself Lehigh finds it disturbing that the Proposed Regulation does not indicate what data will be required to be reported on the form discussed in section 148.2, and objects to having to guess about the nature of that reporting requirement for purposes of these comments.

Additionally, Lehigh is concerned that the form that is due on the ninth will require the reporting of data that is not presently compiled and reported to the Pennsylvania Pool Administrator until the twenty-fifth of the month. Lehigh's concern stems from the fact that section 148.6 calls for the Pool Administrator to compile data by the sixteenth of the month that is not presently made available to the Pennsylvania Pool Administrator until the twenty-fifth of the month. In order for the Pool Administrator to satisfy the section 148.6 requirement, it seems necessary therefore, that Pennsylvania Pool Plants will be asked to report that data prior to the sixteenth which suggests section 148.2 will require advanced reporting of such data on the ninth.

Much of the data listed in section 148.6 is not available until after the twelfth and is not compiled in reportable form until the twenty-fifth of the month when the Pennsylvania Form 62 is due.[7] Moreover, the reporting deadline of the ninth will present logistical difficulties for Pennsylvania facilities that are also federally regulated. The federal market administrator's report is already due on the ninth. Absent the hiring of additional personnel, Lehigh will be unable to file a federal and Pennsylvania report on the same day. The reports call for different data and differing levels of detail. Indeed, Pennsylvania requires greater geographic specificity in reporting.

Lehigh finds the prospect of earlier reporting requirements particularly objectionable since Lehigh just invested substantial sums of money in a new accounting system that is based on existing reporting deadlines. The added cost associated with these burdensome reporting requirements will be passed on to the Pennsylvania consumer through the cost replacement process. Thus, if the Board proposal is adopted without consideration of these hidden technical costs, the proposal will impose yet another cost on the Pennsylvania consumer.

V. Conclusion

For the above-mentioned reasons Lehigh Valley Dairies respectfully submit that the Board is compelled to reconsider and ultimately reject the Proposed Pooling Regulation.

Respectfully submitted,

Charles M. English, Jr.

Charles M. English, Jr.
Wendy M. Yoviene
Thelen Reid & Priest, LLP
701 Pennsylvania Ave, NW, Suite 800
Washington, DC 20004
(202) 508-4000

* Not admitted to practice law in the Commonwealth of Pennsylvania

[7] Pennsylvania Production is not available from our supplier until after the twelfth nor does Lehigh have the Class I utilization data until after the twelfth.

CERTIFICATE OF SERVICE

On this 22nd day of October, 2001, I Cherie L. Seibert, a secretary in the law office of Thelen, Reid & Priest, L.L.P., hereby certify that I have served this day true and correct copies of the foregoing Comments by Lehigh Valley Dairies In Opposition to the Pooling of the Pennsylvania Mandated Over-Order Premium in the above captioned matter, by facsimile and by depositing same in the United States First Class Mail, postage prepaid, in Washington, D.C., to those persons and addresses indicated below:

Sharon L. Grottola, General Counsel, *(via Federal Express)*
Pennsylvania Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

Doug Eberly, Esq.
Pennsylvania Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

John J. Bell, Esq.
Pennsylvania Farm Bureau
510 S. 31st Street
P.O. Box 8736
Camp Hill, PA 17001-8736

J. Jackson Eaton, III, Esq.
Gross, McGinley, La Barre & Eaton
33 South Seventh Street
P.O. Box 4060
Allentown, PA 18105-4060

Dennis J. Schad
Land O'Lakes, Inc.
405 Park Drive
Carlisle, PA 17013

Donn Snyder, Esq.
Penn. Food Merchants Association
2 North Second Street
Harrisburg, PA 17101-1604

Allen C. Warshaw, Esq.
Duane, Morris & Heckscher, L.L.P.
305 North Front Street, 5th Floor
P.O. Box 1003
Harrisburg, PA 17108-1003

Marvin Beshore, Esq.
Milspaw & Beshore
130 State Street
P.O. Box 946
Harrisburg, PA 17108-0946

Ed Gallagher
Dairylea Cooperative, Inc.
P.O. Box 4844
Syracuse, NY 13221-4844

Carl Herbein
Herbein & Company, Inc.
401 Oley Street
Reading, PA 19601-2596

Cherie L. Seibert

Cherie L. Seibert