Capital Associates, Inc.

October 22, 2001

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

Dear Chairperson Minor:

I am writing in response to the proposed regulations promulgated by the Board on September 20, 2001 for the establishment of an over-order premium pool (PA Bulletin, vol. 131, No. 38). This is intended to provide, for the record, a response and correction to misconceptions now being spread by opponents of the Board's action concerning your decision.

Statewide pooling of over-order premiums is not a new issue. The state's co-operatives have been asking the board to move to such a system for nearly a decade. Section 801 of the law (31 P. S. § 700j-801) states that the Board shall ascertain and maintain prices paid to producers "as will be most beneficial to the public interest, best protect the milk industry of this Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of this Commonwealth." The Board has recognized that pooling the Class I over-order premium will insure that function is properly maintained.

The primary reason for instituting the Pennsylvania over-order premium in September 1988 was to alleviate the financial drain all Pennsylvania dairy farmers were experiencing equally based upon the price received for their milk verses the cost of production for that milk. Under the handler pooling system for that much needed relief, the amount of emergency over-order relief a farmer receives depends not on the health of the Pennsylvania Milk Industry in general but, rather, on the caprice of the Class I utilization rate of the handler to whom a farmer may be fortunate (or unfortunate) enough to market her milk. While co-operatives in Pennsylvania have taken many steps to even out the payments farmer/producers receive, their efforts alone simply cannot level a playing field so inherently uneven to begin with.

Three years ago, the General Assembly passed and the Governor Ridge signed legislation to have Pennsylvania join the Northeast Dairy Compact. The justification for joining the compact was that it established a mechanism to have market wide pooling of premiums for all farmers, not just a select segment of the dairy industry.

Land O'Lakes, Dairy Farmers of America Mideast, Allied Milk Producers Co-operative and Maryland Virginia Co-operative, which combined represent approximately 4,800 dairy farmers in Pennsylvania support pooling at 90 to 100% as a matter of fairness and equity.

CA

Opponents of the PMMB regulation have made many assertions in recent weeks that do not bear up under examination. Among these assertions:

1. Quality: Opponents of pooling have asserted that the over order premium helps farmers maintain high quality standards. **This argument is insulting to all dairy farmers. In reality, virtually all milk produced in Pennsylvania – 98% according to the PMMB testimony to the House Agriculture and Rural Affairs Committee, is "Grade A" milk, regardless of its final destination. Similarly, claims by opponents of pooling that the over order premium is required because their quality milk costs more to produce has no basis in fact.**

2. Loss of Business: Some milk dealers have claimed that pooling the over order premium would have an adverse or detrimental effect on their business, claiming that it would be difficult to remain competitive while paying a diluted premium and a plant specific incentive. **In reality, the state mandated minimum wholesale price assures that dealer's costs are covered, plus 2.5 %. All premiums are considered part of their costs when PMMB determines the minimum wholesale price.**

3. Source of the over order premium: Some milk dealers have asserted that it is wrong to "...pool this money that our producer's quality and our company's marketing have created." **This is nonsense. The Board "created the premium in response to statewide conditions which were damaging farmers. Smart milk dealers have utilized the premium to create their own niches and market shares, and to entice dairy farmers to ship to them, but the quality (see above) and marketing do not have any bearing on the over order premium.**

4. If it ain't broke, don't fix it: Dealers have argued that they system is not broken. **The problem is that the system has created obvious advantages for milk dealers and independent dairy farmers. With the current over order premium, the difference in milk checks between neighbors producing the same amounts of the same quality milk can be as much at $7-8000.00 annually.**

5. Milk prices will rise: Some dealers have asserted that pooling will automatically increase the price of milk. These same dealers have claimed that *CLASS I farmers need more money to produce the same milk.* **This is simply not true. Pooling the over order premium, which is less than ten percent of the farmers milk check, will not affect the price of milk. On the other hand, consumers, who currently pay an extra 11.5 cents per gallon on milk to underwrite the costs of this premium, are doing so with the expectation that their payment is helping all dairy farmers across the state maintain their farms.**

6. Attracting Milk: Dealers have asserted, "If the premium is pooled, our plant would have more difficulty attracting raw milk." **The premium is designed to help the dairy farmer. While a dealer may have to pay a little more to maintain the extremely high premium generated by this state program to keep their contracted producers, it's the program that has created this market distortion today. And that same dealer's cost is protected by the minimum wholesale price.**

7. Milk Supplies: Dealers have asserted that with pooling, "Class I milk supplies for consumers may not be sufficient to meet demand." **This is nothing but a scare tactic. If there is a demand, the market will fill it. No dealer has ever gone to the Milk Marketing Board because of an inability to secure supplies of raw milk. Only the farmer will benefit from increased demand for milk for any use whatsoever. If dealers are afraid a higher Class II price might pull milk away from Class I, then that pushes up the price of Class I and the farmer will still benefit.**

8. Profits: Some milk dealers have equated pooling the over order premium with asking "the co-operatives to share their profits," asserting "our producers should not have to share their profits with co-operative members." **The over order premium is not "profits" either earned or granted. The premium is a state mandated system originated to help dairy farmers meet their costs of production. Co-operatives' "profits," which are returned to members in equity, do not compare with dealer or farmer profits. Dealers are not asked nor expected to share their profits with their independent shippers.**

9. Our producers…THEIR premium: Dealers have asserted that this is the independent farmers premium. **This is a state ordered premium under the authority of the Milk Marketing board, which can determine the size and distribution of that premium. It does not belong to the producers, or the dealers, but is paid by all consumers in their fluid milk purchases.**

10. Lowered premiums: Milk dealers have asserted that "the amount of premium paid to the farmer would be reduced and this would have a less positive effect for PA farmers." **This is absolutely not so. The total amount of premium mandated by the Milk Marketing Board would remain the same, allowing for normal seasonal variations, and costs of production. The proposal would simply distribute this premium among farmers in a different manner. In fact, with pooling of the over order premium, about 2/3 of Pennsylvania's dairy farmers will receive more of the premium dollar, distributing the total in a much more equitable manner.**

11. Guarantee it stays with Pennsylvania farmers: Dealers have asserted, "If the premium is paid to a large national co-operative there is no guarantee it would go to PA farmers." **In reality, the Milk Marketing Board audits the milk records and enforces its policies. This would not change from the situation, as it exists today. Land O'Lakes, for example, maintains a line on each member's milk check showing the amount of the check that is due to the state's over order premium, and has issued a written guarantee that the premium would follow to the Pennsylvania farmer. On the other hand, today, dealers get paid the premium for milk from out of state farmers that they process as fluid milk. Do we know that this money goes to Pennsylvania farmers, or does this premium leave the state and go to out of state farmers to the detriment of PA producers.**

12. Other Premiums: Dealers have said that pooling is unnecessary, because co-operatives like "Land o' Lakes is selling milk in the south for a $3-4.00 premium and not sharing it." A $3-4.00 premium does not exist. **Much of the milk sold to southern states out of the Mt. Holly Springs plant is pooled in Federal Order One, which means that all the dairy farmers get the benefits of that Federal Order's pooled premium. When those premiums are returned to PA producers, they are roughly equal to the state mandated premium levels.**

13. Co-operative benefits: Some opponents claim that farmers shipping to co-ops get benefits that are not available to producers getting Class I premiums. **Farmers who belong to co-operatives are owner-investors, and share in the profits and losses of the co-operative as in any other business. This has nothing to do with the over order premium or the reasons for its existence. A similar counter argument would be that while transportation costs are a primary driver of the over order premium, those receiving its benefits normally have the shortest distance to transport milk and relatively lower costs, but still get the benefit of the full premium.**

14. Competition: Opponents have argued that with pooling, milk buyers for all uses will no longer have to be competitive and meet the over order price. **In fact, the argument is just the opposite. With pooling dealers will have to be more competitive, and will most certainly have to meet the over order price, or lose their producers to other dealers.**

15. <u>Losses to Independent Dairy Farmers:</u> Opponents have asserted that pooling would "cost our producers approximately 20 cents per cwt. at 45% and more than 40 cents are 90%." **These same producers, which represent only 34 percent of the dairy farmers in the state, have received 85 percent of the premium – approximately $205 million of the $242 million distributed since September 1988. The counter argument is that the other 66 percent of all farmers have been losing money to these same independent producers for 13 years because of a state mandated system created to help all dairy farmers. Even at 100 percent pooling, independent dairy farmers would still be getting more of the premium than co-operative members.**

At 45 percent, 34 percent of the dairy farmers in the state will retain between 67 and 78 percent of all consumer dollars. Chairperson Minor, I thank you for the opportunity to provide these comments to the proposed regulation and urge the Board to continue to pursue pooling of the premium at a higher percentage.

Sincerely,

John A. Nikoloff

Cc: John R. McGinley, Jr.
Hon. Michael L. Waugh
Hon. Michael A. O'Pake
Hon. Raymond J. Bunt, Jr.
Hon. Peter J. Daley II

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408
TELEPHONE (717) 787-4374
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October 24, 2001

Original: 2218

Mr. John A. Nikoloff
Capital Associates, Inc.
200 North Third Street, Suite 1402
P. O. Box 1085
Harrisburg, Pennsylvania 17108-1085

Re: Regulation for Marketwide Pooling of the PMMB Over-Order Premium

Dear Mr. Nikoloff:

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 a 90% to 100% pool rather than the 45% selected by the Board. As you are well aware, the pooling issue was and continues to be heavily debated by those who support a marketwide pool and those who oppose one. As you know, the proposed pooling regulation is currently 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. When the final form regulation is prepared, you may receive a copy by providing a written request to the Board or access the regulation 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,

Sharon L. Grottola

Sharon L. Grottola
Chief Counsel

Through: Lynda

Lynda J. Bowman
Secretary

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

Maryland & Virginia
Milk Producers Cooperative Association, Inc.

Original: 2218

October 19, 2001

Independent Regulatory Commission
Subject: PMMB Pooling Regulation
14th Floor; 33 Market Street
Harrisburg, PA 17101

Dear Sir or Madam:

I want to follow up Robert Shore's letter dated September 27 concerning the important issue of Pennsylvania Milk Marketing Board funds being distributed evenly to Pennsylvania dairy farmers. Producers, like ours, who bear the cost of balancing the seasonal production swings in the market should share in these premiums equally.

Consumers fund the Board through an 11.5-cent surcharge on every gallon of fluid milk sold in Pennsylvania. Currently, and even under 45-percent pooling, the majority of the proceeds still go to a small minority of farms.

I strongly urge you to approve regulation to pool 90-percent of the Pennsylvania Over Order Premium. A 90-percent pool will ensure that this consumer-funded program will benefit all Pennsylvania dairy farmers equally.

Sincerely,

Jim Howie

Jim Howie, Manager
Member Services

2001 OCT 24 AM 9:23
REVIEW COMMISSION

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Original: 2218

Land O'Lakes, Inc.

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

Land O'Lakes Dairy Foods

October 19, 2001

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

Dear Mr. McGinley:

This letter is in response to the public notice of the regulation promulgated by the Pennsylvania Milk Marketing Board for the establishment of an over-order premium pool (PA Bulletin, vol. 131). Land O'Lakes is a dairy cooperative with 2,150 Pennsylvania dairy farmer members. Land O'Lakes fully supports the concept of pooling and recognizes the Board's legal authority to distribute the premium it establishes. Statewide pooling is the only way to accomplish the goal of the original over-order premium, which is to help all of the state's dairy farmers recover extraordinary costs of production.

Nevertheless, we take issue with the Board's use of 45% pooling percentage, and encourage you to recommend that the Board increase the pooled percentage to more adequately level the payment system and ensure equity in the marketplace.

Background

The state's dairy cooperatives have been asking the PMMB to consider pooling the over-order premium for ten years. In December 2000 the PMMB announced its decision to pool the premium by way of three-page statement (Exhibit 1) given by Chairperson Beverly Minor at the PMMB December Sunshine Meeting. This statement was the culmination of a year's meetings between the Board and all interested parties. The Board concluded from those meetings that while the evidence given at hearings to establish the level of the Class I over-order premium came from the conditions faced by all Pennsylvania dairy farmers, and while all of the state's 12 million consumers are paying the costs of the premium, the proceeds of the premium are inequitably distributed. Further, the Board, in its justification to the Attorney General's office, stated that pooling the higher value of Class I (bottled, fluid milk) was not a novel concept, but that it reflected the system for milk pooled on the Federal order system (Exhibit 2).

The Board stopped short of endorsing the pooling of 100 percent of the over-order premium. The reason given by the Board was:

> We do feel that to adopt 100% pooling of the Class I premium, there would be a great loss of incentive to the dairy farmers and dealers to supply Class I milk to the Pennsylvania consumer. (Exhibit 1)

The Board made this statement in the absence of any evidence that there has ever been a deficit of bottled milk for Pennsylvania dealers or consumers. In fact, at the last over-order premium hearing Earl Fink, Executive Secretary of the Pennsylvania Milk Dealers' Association testified that his members experienced no such shortage.

Within Chairperson Minor's pooling statement, she stated that the Board had not determined the percentage level of pooling and set up a meeting between interested parties and the Board's Executive Secretary and Council. While Land O'Lakes offered a compromise at 90 percent pooling; opponents refused to offer any counterproposal. Left with no industry consensus, the Board eventually reached an acknowledged compromise - the arbitrary decision to pool only 45 percent of the premium.

It is Land O'Lakes' position that we have already offered a compromise and while there is no evidence that pooling at 100 percent will impede the flow of Pennsylvania milk to Class I usage, there is, nevertheless, adequate incentives for Class I milk at the 90 percent pooling level.

Analysis

The current method of distributing the over-order premium is through a handler pool mechanism. This method provides the greatest financial rewards to dairy farmers selling their milk to dealers with the greatest percentage of their sales as Class I within Pennsylvania. For example, if the Class I premium level is $1.65 per cwt and a dairy farmer ships his milk to a dealer with a 90 percent Class I Pennsylvania utilization, that farmer would receive a $1.485 per cwt (90% * $1.65) over order- premium. Likewise a farmer shipping to a market with only a 40 percent utilization would receive a $0.66 over-order premium.

The Board proposes a pooling methodology where 45 percent of the monies collected through Class I premiums would be equally distributed to farmers delivering milk to Pennsylvania dairy plants. The residual 55 percent of the monies would continue to be distributed through the handler pool system. Because a farmer would collect his aggregate over-order premium from two sources, a blended premium on 45 percent and handler pooled payments the 55 percent portion, it is exceedingly difficult to ascertain the financial affects to different groups of dairy farmers.

The PMMB provided a spreadsheet analysis (Exhibit 3) which allows the user to ascertain the effects to groups of dairy farmers at different levels of premium and differing percentages of pooling. The spreadsheet is set at the current $1.65 Class I over-order premium level. To provide a "blind analysis" the Board divided the Commonwealth's dairy producers into eight groups based on their sales to Pennsylvania dairy plants and their relative size. For example, the dairy farmers in Group A produced 77.1 million pounds or about 10 percent of the Commonwealth's milk production during February 2000. Under the current handler pool methodology (Percentage of Class I pooled: 0; Class I exclusive: 100%), this group, on average, enjoyed a $0.7811 per cwt over-order premium payment. I say "on average", because the PMMB aggregated groups of dairy farmers.

Gleaned from the PMMB Spreadsheet, the Analysis of Pooling Alternatives (Exhibit 4) provides a convenient way to compare alternatives of pooling percentages. Please note the following:

1. Dairy farmers in Groups A, C and H decrease in premium payment through the pooling alternatives. Collectively these groups represent only 34 percent of the Commonwealth's milk production, yet they currently collect 84 percent of the over-order premium. Under the Land O'Lakes proposal, at 90 percent pooling, these three groups collectively will receive 50 percent of the premium dollars.
2. Dairy farmers in Groups B, D and F, representing 45 percent of the State's milk production will have their premium rate increase through the Land O'Lakes proposal. Dairy farmers and Group E will experience a small decrease and those in Group G (those shipping to markets outside the state) will so no increase from the PMMB. Therefore, collectively, under Land O'Lakes' proposal, 66 percent of the Commonwealth's dairy farmers will see an increase in premium or no loss.
3. Pooling the premium at 90 percent will not make the disparity between the highest paid group and the lowest zero. Relative premium payments at the 90 percent level will continue to depend on sales to Class I markets with sales in Pennsylvania. Using the Board's analysis, an independent farmer shipping to a Pennsylvania dealer with high Class I utilization, will continue to receive significantly more from the over-order premium payments.
4. The Regulation requires the PMMB to announce the Blended Pool Price each month. As the percentage of milk pooled increases, the level of the Announced Pooled Price increases. Land O'Lakes has argued that the Announced Pool Price will serve as a benchmark for Pennsylvania dairy farmers. That is to say, if a dairy farmer is not receiving at least the level of the Announced Pool Price, that farmer will find a buyer that will pay him at least that price. Note that even at the 90 percent level, only two groups will draw enough monies from the PMMB to pay the Announced price. The reason for this is that the other groups sell a larger percentage of their milk to out-of-state buyers and do not receive the PMMB premium on that milk. The other six groups will have to charge out-of-state buyers premiums adequate to pay their Pennsylvania producers the Announced Pooled Price.
5. Pooling at the 90 percent level provides adequate incentives to deliver milk to Class I accounts. At the 90 percent level, moving one hundredweight from a Pennsylvania manufacturing plant to Pennsylvania Class I will result in a $0.165 per cwt (10 percent handler pool payment * $1.65) premium payment. Diverting one hundredweight of Pennsylvania produced milk from an out-of-state dairy plant to Pennsylvania Class I will result in a $0.5686 [(10 percent handler pool payment * $1.65) + (Announced Pool Price)] premium payment.

Conclusions

1. The PMMB has the legislative authority to price milk and to distribute the value of milk to the State's dairy farmers.
2. The PMMB has promulgated a Regulation to establish an over-order premium pooled. However, the Board has erred by arbitrarily choosing to pool only 45 percent of the premium.
3. Without providing evidence that there is currently is a shortage of bottled milk for Pennsylvania consumers or that there would be under a methodology which pooled a higher percentage of the premium, the Board chose to pool an inadequate percentage of the premium.
4. Currently dairy farmers representing one-third of the states milk production receive 84 percent of the premium proceeds. The Board's proposed regulation has that upper one third receiving 67 percent of the proceeds of the regulation. Land O'Lakes' proposal would still have that upper third receive more than one-half of the premiums.
5. The greater the pooling percentage, the higher the Announced Pooled Price. At 90 percent pooling the current $1.65 Class I over-order premium would yield a Pooled Price above $0.40 per cwt. This value will benefit Pennsylvania dairy farmers shipping to out-of-state markets.
6. Pooling at the 90 percent level will provide as much as $0.57 per cwt incentive for a handler to move Pennsylvania milk from an out-of-state markets to a Pennsylvania Class I dealer.

Land O'Lakes requests that you return the Proposed Regulation to the PMMB with the recommendation that the Board amend it to provide for 90 percent pooling.

Sincerely yours,

LAND O' LAKES, INC.

Dennis Schad

Dennis Schad,
Director of Marketing and Regulatory Affairs

DS

CC: Beverly Minor, Pennsylvania Milk Marketing Board
Raymond Bunt, Chair of House Agriculture and Rural Affairs Committee
Peter Daley, Minority-Chair of House Agriculture and Rural Affairs Committee
Michael L. Waugh, Chair Senate Agriculture and Rural Affairs Committee
Michael A. O'Pake, Minority Chair Senate Agriculture and Rural Affairs Committee

The Milk Marketing Board has rarely been faced with such a devisive issue as market-wide pooling.

It seems there is no right or wrong answer. Some oppose pooling vehemently and others feel there is no equity among Pennsylvania dairy farmers without pooling. The Board has looked at numerous options: No pooling, 100% pooling, partial pooling, and even supplemental pooling.

In arriving at the direction we are taking today – we have considered many facts, including some of the following.

No state-wide pooling distribution system would ever create a level playing field and producer's milk checks will **never** be equal. There are just too many variants involved such as quality bonuses, volume premiums, transportation charges, and many other charges or bonuses relative to milk transactions between producers and dealers or co-ops.

We do know that the mandated over-order premium has a direct effect on Class I milk that is produced, processed, and sold in Pennsylvania. It also has a very important indirect effect on Class I milk purchased in surrounding states. So a Pennsylvania producer shipping out-of-state who receives no direct over-order premium may still benefit indirectly.

Cooperatives and independent processors each have their own advantages. The Board recognizes the value of each and what they contribute to making Pennsylvania such a strong dairy state. In dealing with these entities our goal under Section 801 of the Milk Marketing Law is to insure a sufficient quantity of pure wholesome milk to the inhabitants of Pennsylvania. Therefore, any action we take is with this primary goal in mind.

After considering all of the issues, the Milk Marketing Board has decided to proceed forward in developing a regulation through the Independent Regulatory Review Commission that would provide for partial pooling of the over-order premium. We do feel that to adopt 100% pooling of the Class I premium, there would be a great loss of incentive to the dairy farmers and the dealers to supply Class I milk to the Pennsylvania consumer. Recognizing that the partial pooling approach is a compromise of the various positions within the industry, the Board has **NOT** determined what percentage of the over-order premium should be pooled. The Board is requesting all interested parties to come together toward reaching a percentage level that all parties can accept.

It has been a long tedious period of time since our first pooling meeting in March, 1999. At that time we asked for and received your active participation and now we ask for even more from each and every stakeholder.

There will be a meeting scheduled for interested parties to work with Board staff in arriving at a percentage level. The date is set for 9:00 a.m. on December 20, 2000 in Room A-1 of the Farm Show Building. It is the Board's hope that compromise can be made during this time. If there is no agreement between parties, the Board will set the percentage level. To assist parties in developing proposals an outline of the proposed regulation will be sent to you by the end of the week.

We have spent many hours discussing the issues so rather than continue in that vein, we now ask you to move forward with more discussion at that meeting.

Keep in mind that the regulatory process could take as long as nine months to a year. This was the process we all agreed upon, so let us proceed. The meeting will be facilitated by Lynda Bowman and Sharon Grottola as you work with the rest of Board staff to accomplish the goal set before us.

For those of you not involved in this process we do want you to know that the Board is proposing that the pool of Class I over-order premiums be distributed to the Pennsylvania dairy farmer whose milk is produced and processed in Pennsylvania. This can be done through the Pennsylvania Milk Marketing Board office and the Department of Treasury Department. We are also proposing line items on all milk checks to identify the over-order premium to maintain accountability to the Pennsylvania producers. The amount of premium pooled per hundredweight will be published monthly in all Pennsylvania agriculture related news media. To those parties participating in this meeting -- please review the outline that will be sent to you this week and be prepared to actively contribute and participate in the discussions. It is imperative that you make a resolve to be honest and open as you represent your segment of the industry.

Thank you for your patience in this matter. It is the Board's hope that this issue can be decided in a manner that will be acceptable to all of the dairy industry. We have a very unique industry in Pennsylvania with many producers and processors as well. Despite the fact that farm numbers are decreasing, the supply of milk continues to increase. We, the Pennsylvania Milk Marketing Board members and staff, have been given the unique opportunity to help insure that continued growth of the entire industry while providing for the consumer as well. We will not do anything to jeopardize what we have. We will continue to do whatever is necessary to keep the Pennsylvania dairy industry healthy and viable.

EXHIBIT II

2001 OCT 24 AM 9:16

REVIEW COMMISSION

Commonwealth OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
June 18, 2001

RECEIVED
COMMONWEALTH OF PA.
'01 JUN 20 AM 9 1?
MILK MARKETING BOARD
HARRISBURG PA.

SUBJECT: Pennsylvania Milk Marketing Board Regulation #47-9

TO: Sharon L. Grottola
Chief Counsel
Pennsylvania Milk Marketing Board

FROM: David J. DeVries,
Chief Deputy Attorney General
Review and Advice Section

Our review of the above regulation has raised the following comments and questions.

1. How was the over-order premium process originally established? Was it by order of the Board? Was there a legal challenge to this premium when it was first established?

2. It appears that the re-distribution of the over-order premium will be a zero-sum exercise. Those dairy farmers who currently receive the premium will receive less and the others will receive more, but the amount of the total premium will not change. What has happened to give rise to the Board's decision to make this change?

3. Can a dairy farmer who is receiving payment under the current program use the formulae set forth in the regulation to determine what he will receive under the new program?

4. The Regulatory Analysis Form states that one of the reasons for establishing the over-order premium was to offer an incentive to dairy farmers to supply the Class I fluid plants. If dairy farmers who supply the Class I fluid market now have to share some of the premium with other producers under this pooling proposal, won't that act as a disincentive to those farmers now supplying the Class I market and, therefore, have the opposite effect from what is intended?

This memo will serve to toll the thirty-day statutory review period. Upon receipt of the clarification requested here, we will resume our review of the regulation.

DJD:mlm
CRA020438

Question 1.

How was the over-order premium process originally established? Was it by order of the Board? Was there a legal challenge to this premium when it was first established?

Answer:

The Milk Marketing Board (Board) established the over-order premium process in September 1988 through Official General Order No. A-856. The original over-order premium order was designated a "drought relief order." There was no legal challenge to this premium when it was first established. This mandated over-order premium has continued since 1988; however, at varying premium amounts and different marketing conditions. (See attachment detailing the history of the mandated over-order premium.)

The Board determined that the most appropriate manner in which to establish a marketwide pooling process was not through an official general order but rather through the regulatory process. Section 307 of the Milk Marketing Law, 31 P.S. § 700j-307, provides that the Board has the power to adopt regulations that are "necessary or appropriate to carry out the provisions of this act." Based on the determination by the Board that it has the authority to establish a marketwide pool, Section 307 grants the Board the right to promulgate these regulations to carry out the pooling process.

An additional reason that the Board determined that the regulatory route was most appropriate is the fact that the actions of several other state agencies are necessary in administering the pooling process; in particular, the Comptroller's Office and the State Treasurer's Office. It was imperative that these agencies have input into the development of the pooling regulations especially with regard to the distribution portion of the regulations. Regulations are a more practical way to establish marketingwide pooling in order to ensure the creation of an effective and efficient system to administer and enforce the pooling process.

The Board was also quite conscious of an unpublished opinion issued by the Commonwealth Court in Fleming Companies, Inc. v. Pennsylvania Milk Marketing Board, 1241 C.D.1998, that held that an order issued by the Board regarding license classifications should have been promulgated into regulations rather than through an order of the Board. In that case, based on section 411 of the Law, 31 P.S. § 700j-411, the Board was granted the authority to classify milk dealer licenses. The Court in Fleming concluded that the Board was not permitted by the Law to create a license classification system by an order because section 411 did not expressly authorize the Board to fix by order the licensing classifications of milk dealers. It was the desire of the Board to avoid any overturning of an official general order relative to marketwide pooling by Commonwealth Court.

Question 2.

It appears that the re-distribution of the over-order premium will be a zero-sum exercise. Those dairy farmers who currently receive the premium will receive less and the others will receive more, but the amount of the total premium will not change. What has happened to give rise to the Board's decision to make this change?

Answer:

Support for the Milk Marketing Board to institute marketwide pooling of its mandated over-order premium has been present since 1992 when Milk Marketing, Inc. (MMI), a cooperative that operated in Milk Marketing Areas 5 and 6 (the western and central portions of the state) petitioned the Board to create a marketwide pool in Milk Marketing Areas 5 and 6. A hearing was held on that petition and, on March 2, 1993, the Board issued Official General Order No. A-874 declining to establish a marketwide pool of the over-order premium in Milk Marketing Areas 5 and 6. MMI appealed the order and on December 28, 1993, Commonwealth Court issued an order holding the Board did not abuse its discretion by refusing to establish marketwide pooling system. 635 A.2d 1110 (Pa.Comm. 1993) Within the past several years, the Board has received numerous petitions from various industry groups to reconsider the pooling issue. The support for pooling by several groups increased with the passage of the Northeast Dairy Compact. The Northeast Dairy Compact was formed in 1996 and consists of the six New England states. The Northeast Dairy Compact boosts milk prices above federal minimums on milk to all producers and has a floor price of $16.94 per hundredweight for the producers in the Compact area. Many farm groups support Pennsylvania joining this Compact because it helps all producers. Last year, the Pennsylvania legislature passed a bill allowing Pennsylvania to join the Compact. Currently, a state may only join the Compact if it is contiguous to a member of the Compact. New York has also passed legislation to join the Compact; however, the U.S. Congress must grant approval for additional states to participate in the Compact. To date, no other states have received this approval. Some groups of producers that support pooling of Pennsylvania's over-order premium also support admission into the Compact and other groups support admission to the Compact but oppose the pooling issue.

The Board, when reaching its decision to institute pooling of its mandated over-order premium, took many factors into consideration; not the least being that, according to evidence presented and testimony received at every over-order premium hearing held before the Board, all dairy farmers faced the same situation that precipitated the setting of the over-order premium --- poor weather, poor crops, low milk prices, and high production costs. The Board, as a state agency, felt that to limit the direct benefit of its mandated over-order premium to only those producers who provide Class I milk would be an injustice to the other Pennsylvania producers supplying all other classes of milk.

Also, the exercise of redistribution of a pool is not a novel idea and is widely accepted in the dairy industry. An important part of the job function of the USDA's Agricultural

Marketing Service, Dairy Division, is marketwide pooling. Essentially all the federal milk marketing orders operate market wide pools for determining producer prices. In a milk marketing order, producers do not receive the Class prices directly. Instead, all producers who supply milk to a federal order receive the same uniform or "blend" price for their milk. The blend price is a weighted average price derived from pooling all milk proceeds received from all milk used in the various classes in a market area. The blend price assures that all producers share equally in the higher valued fluid market. The blend price also ensures that all producers share equally in the lower prices that are received for milk diverted to manufacturing uses. Therefore, no producer captures only the higher, fluid-use price, but no producer has to bear only the lower, manufacturing price for milk. Cooperatives may combine the proceeds of its members from all markets and pay a reblended price to their members, which may be higher or lower than the price in a particular Federal order market.

Question 3.

Can a dairy farmer who is receiving payment under the current program use the formulae set forth in the regulation to determine what he will receive under the new program?

Answer

No. The formula is based on information that is compiled through milk dealers' monthly reports submitted to the Milk Marketing Board. Pursuant to the Milk Marketing Law, information on these reports is to be considered confidential. The Board staff will be the individuals who determine the amount the producer will receive and will forward this information to the milk dealers so that they may make the payments directly to the producers. The formula used in the current calculation of the over-order premium is also gathered through data on reports submitted on a monthly basis.

The Board, in its proposed pooling regulation and its current over-order premium order, requires a line item on the producer's check that identifies it as a PMMB mandated over-order premium. The Board further plans to announce the monthly over-order premium on the agency's website as well as in industry newspapers such as Lancaster Farming.

Question 4.

The Regulatory Analysis Form states that one of the reasons for establishing the over-order premium was to offer an incentive to dairy farmers to supply the Class I fluid plants. If dairy farmers who supply the Class I fluid market now have to share some of the premium with other producers under this pooling proposal, won't that act as a disincentive to those farmers now supplying the Class I market and, therefore, have the opposite effect from what is intended?

Answer:

It is correct that one of the reasons for establishing the PMMB mandated over-order premium was to maintain an adequate supply of Class I fluid milk. Even with the pooling of the over-order premium with other producers, there still remains an incentive to the producer to supply the Class I market. The proposed regulation develops a method whereby 45% of the over-order premium would be pooled. This pool would be shared with all Pennsylvania dairy farmers whose milk is produced and sold in Pennsylvania. The Class I producers would participate in this pool. The remaining 55% of the over-order premium would be distributed to only the Class I producers. The Class I producers continue to receive greater benefits from the over-order premium than the non-Class I producers; therefore, an incentive would still be present to encourage producers to supply the Class I market.

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$2,519,417.21
Receipts by Class I Dealers	277,412,999			pool value	$0.00
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	0%	Class I exclusive	100%		

Premium (per cwt) to Class 1 Producers by proces	$0.9082
Premium (per cwt) to Non Class 1 Producers (PA P	$0.0000

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$602,470.87	$0.7811	13.83%	$0.00	$0.0000	$602,470.87	$0.7811
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$90,332.45	$0.1669	7.85%	$0.00	$0.0000	$90,332.45	$0.1669
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$225,150.20	$0.5481	5.41%	$0.00	$0.0000	$225,150.20	$0.5481
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$218,642.72	$0.1065	29.03%	$0.00	$0.0000	$218,642.72	$0.1065
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$83,268.28	$0.1190	2.79%	$0.00	$0.0000	$83,268.28	$0.1190
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$7,911.24	$0.0082	14.08%	$0.00	$0.0000	$7,911.24	$0.0082
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,155	2,726,776	$1,291,641.44	$0.8419	27.02%	$0.00	$0.0000	$1,291,641.44	$0.8419
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$2,519,417.21	$0.3176	100.00%	$0.00	$0.0000	$2,519,417.21	$0.3176
*Producer/Dealer pounds not included.		557,736,005				***************current*****************			*************processing**************		**********pooled value************	

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$1,385,679.46
Receipts by Class I Dealers	277,412,999			pool value	$1,133,737.74
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	45%	Class I exclusive	55%		

Premium (per cwt) to Class 1 Producers by proces	$0.7013
Premium (per cwt) to Non Class 1 Producers (PA P	$0.2018

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$331,358.98	$0.4296	13.83%	$156,787.44	$0.2033	$488,146.42	$0.6329
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$49,682.85	$0.0918	7.85%	$88,973.86	$0.1644	$138,656.71	$0.2562
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$123,832.61	$0.3015	5.41%	$61,289.12	$0.1492	$185,121.73	$0.4507
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$120,253.50	$0.0586	29.03%	$329,102.88	$0.1603	$449,356.37	$0.2188
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$45,797.55	$0.0654	2.79%	$31,625.36	$0.0452	$77,422.91	$0.1106
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$4,351.18	$0.0045	14.08%	$159,627.48	$0.1649	$163,978.66	$0.1694
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,155	2,726,776	$710,402.79	$0.4630	27.02%	$306,331.61	$0.1997	$1,016,734.40	$0.6627
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$1,385,679.46	$0.1747	100.00%	$1,133,737.74	$2.0949	$2,519,417.21	$0.3176
*Producer/Dealer pounds not included.		557,736,005				***************current*****************			*************processing**************		*********pooled value************	

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$251,941.72
Receipts by Class I Dealers	277,412,999			pool value	$2,267,475.49
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	90%	Class I exclusive	10%		

Premium (per cwt) to Class 1 Producers by proces	$0.4945
Premium (per cwt) to Non Class 1 Producers (PA P	$0.4036

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$60,247.09	$0.0781	13.83%	$313,574.88	$0.4065	$373,821.97	$0.4847
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$9,033.25	$0.0167	7.85%	$177,947.72	$0.3288	$186,980.97	$0.3455
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$22,515.02	$0.0548	5.41%	$122,578.24	$0.2984	$145,093.26	$0.3532
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$21,864.27	$0.0106	29.03%	$658,205.75	$0.3206	$680,070.02	$0.3312
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$8,326.83	$0.0119	2.79%	$63,250.71	$0.0904	$71,577.54	$0.1023
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$791.12	$0.0008	14.08%	$319,254.96	$0.3297	$320,046.08	$0.3306
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,155	2,726,778	$129,164.14	$0.0842	27.02%	$612,663.22	$0.3993	$741,827.37	$0.4835
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$251,941.72	$0.0318	100.00%	$2,267,475.49	$4.1899	$2,519,417.21	$0.3176
*Producer/Dealer pounds not included.		557,736,005				***************current******************			**************processing**************		**********pooled value************	

ANALYSIS OF PMMB POOLING ALTERNATIVES

	PA Production	PA Processed	Handler 100% Pooled 0%	Handler 55% Pooled 45%	Handler 10% Pooled 90%
Producer Group A	10%	14%	$0.7811	$0.6329	$0.4847
Producer Group B	7%	8%	$0.1669	$0.2562	$0.3466
Producer Group C	5%	5%	$0.5481	$0.4507	$0.3532
Producer Group D	26%	29%	$0.1065	$0.2188	$0.3312
Producer Group E	9%	3%	$0.1190	$0.1106	$0.1023
Producer Group F	12%	14%	$0.0082	$0.1694	$0.3306
Producer Group G	12%	0%	$0.0000	$0.0000	$0.0000
Producer Group H	19%	27%	$0.8419	$0.6627	$0.4835
Percent of Premium Dollars to Groups A, C and H (34% of PA Production)			84%	67%	50%
Percent increased		Groups B, D and F		45%	
Percent decreased		Groups A, C and H		34%	
Percent Indifferent		Groups E and G		21%	
Disparity between highest and lowest			$0.8337	$0.5521	$0.3824
Disparity between highest and announced pool price				$0.4609	$0.0799
Announced Pooled Price			$0.0000	$0.2018	$0.4036
Incentive to deliver Class I (PA Processsed)			$ 1.6500	$ 0.9075	$ 0.1650
Incentive to deliver Class I (NonPA Processed)			$ 1.6500	$ 1.1093	$ 0.5686

Maryland & Virginia
Milk Producers Cooperative Association, Inc.

October 19, 2001

Beverly Minor, Chairperson
PA Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

Dear Ms. Minor:

I want to follow up Robert Shore's letter dated September 27 concerning the important issue of Pennsylvania Milk Marketing Board funds being distributed evenly to Pennsylvania dairy farmers. Producers, like ours, who bear the cost of balancing the seasonal production swings in the market should share in these premiums equally.

Consumers fund the Board through an 11.5-cent surcharge on every gallon of fluid milk sold in Pennsylvania. Currently, and even under 45-percent pooling, the majority of the proceeds still go to a small minority of farms.

I strongly urge you to approve regulation to pool 90-percent of the Pennsylvania Over Order Premium. A 90-percent pool will ensure that this consumer-funded program will benefit all Pennsylvania dairy farmers equally.

Sincerely,

Jim Howie

Jim Howie, Manager
Member Services lbp

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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 24, 2001

Original: 2218

Jim Howie, Manager
Member Services
Maryland & Virginia Milk Producers
Cooperative Association, Inc.
1985 Isaac Newton Square West
Reston, Virginia 20190-5094

Re: Regulation of a Marketwide Pool of the PMMB Over-Order Premium

Dear Mr. Howie:

Thank you for your 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 90% pooling rather than the 45% selected by the Board. As you know, the pooling issue was heavily debated by those in support of a marketwide pool and those opposed to one. The proposed regulation is now 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 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 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

Land O'Lakes, Inc.

Land O'Lakes Dairy Foods

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

October 19, 2001

Original: 2218

Beverly Minor, Chairperson
PA Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110

Dear Ms. Minor:

This letter is in response to the public notice of the regulation promulgated by the Pennsylvania Milk Marketing Board for the establishment of an over-order premium pool (PA Bulletin, vol. 131). Land O'Lakes is a dairy cooperative with 2,150 Pennsylvania dairy farmer members. Land O'Lakes fully supports the concept of pooling and recognizes the Board's legal authority to distribute the premium it establishes. Statewide pooling is the only way to accomplish the goal of the original over-order premium, which is to help all of the state's dairy farmers recover extraordinary costs of production.

Nevertheless, we take issue with the Board's use of 45% pooling percentage, and encourage you to recommend that the Board increase the pooled percentage to more adequately level the payment system and ensure equity in the marketplace.

Background

The state's dairy cooperatives have been asking the PMMB to consider pooling the over-order premium for ten years. In December 2000 the PMMB announced its decision to pool the premium by way of three-page statement (Exhibit 1) given by Chairperson Beverly Minor at the PMMB December Sunshine Meeting. This statement was the culmination of a year's meetings between the Board and all interested parties. The Board concluded from those meetings that while the evidence given at hearings to establish the level of the Class I over-order premium came from the conditions faced by all Pennsylvania dairy farmers, and while all of the state's 12 million consumers are paying the costs of the premium, the proceeds of the premium are inequitably distributed. Further, the Board, in its justification to the Attorney General's office, stated that pooling the higher value of Class I (bottled, fluid milk) was not a novel concept, but that it reflected the system for milk pooled on the Federal order system (Exhibit 2).

The Board stopped short of endorsing the pooling of 100 percent of the over-order premium. The reason given by the Board was:

> We do feel that to adopt 100% pooling of the Class I premium, there would be a great loss of incentive to the dairy farmers and dealers to supply Class I milk to the Pennsylvania consumer. (Exhibit 1)

The Board made this statement in the absence of any evidence that there has ever been a deficit of bottled milk for Pennsylvania dealers or consumers. In fact, at the last over-order premium hearing Earl Fink, Executive Secretary of the Pennsylvania Milk Dealers' Association testified that his members experienced no such shortage.

Within Chairperson Minor's pooling statement, she stated that the Board had not determined the percentage level of pooling and set up a meeting between interested parties and the Board's Executive Secretary and Council. While Land O'Lakes offered a compromise at 90 percent pooling; opponents refused to offer any counterproposal. Left with no industry consensus, the Board eventually reached an acknowledged compromise - the arbitrary decision to pool only 45 percent of the premium.

It is Land O'Lakes' position that we have already offered a compromise and while there is no evidence that pooling at 100 percent will impede the flow of Pennsylvania milk to Class I usage, there is, nevertheless, adequate incentives for Class I milk at the 90 percent pooling level.

Analysis

The current method of distributing the over-order premium is through a handler pool mechanism. This method provides the greatest financial rewards to dairy farmers selling their milk to dealers with the greatest percentage of their sales as Class I within Pennsylvania. For example, if the Class I premium level is $1.65 per cwt and a dairy farmer ships his milk to a dealer with a 90 percent Class I Pennsylvania utilization, that farmer would receive a $1.485 per cwt (90% * $1.65) over order- premium. Likewise a farmer shipping to a market with only a 40 percent utilization would receive a $0.66 over-order premium.

The Board proposes a pooling methodology where 45 percent of the monies collected through Class I premiums would be equally distributed to farmers delivering milk to Pennsylvania dairy plants. The residual 55 percent of the monies would continue to be distributed through the handler pool system. Because a farmer would collect his aggregate over-order premium from two sources, a blended premium on 45 percent and handler pooled payments the 55 percent portion, it is exceedingly difficult to ascertain the financial affects to different groups of dairy farmers.

The PMMB provided a spreadsheet analysis (Exhibit 3) which allows the user to ascertain the effects to groups of dairy farmers at different levels of premium and differing percentages of pooling. The spreadsheet is set at the current $1.65 Class I over-order premium level. To provide a "blind analysis" the Board divided the Commonwealth's dairy producers into eight groups based on their sales to Pennsylvania dairy plants and their relative size. For example, the dairy farmers in Group A produced 77.1 million pounds or about 10 percent of the Commonwealth's milk production during February 2000. Under the current handler pool methodology (Percentage of Class I pooled: 0; Class I exclusive: 100%), this group, on average, enjoyed a $0.7811 per cwt over-order premium payment. I say "on average", because the PMMB aggregated groups of dairy farmers.

Gleaned from the PMMB Spreadsheet, the Analysis of Pooling Alternatives (Exhibit 4) provides a convenient way to compare alternatives of pooling percentages. Please note the following:

1. Dairy farmers in Groups A, C and H decrease in premium payment through the pooling alternatives. Collectively these groups represent only 34 percent of the Commonwealth's milk production, yet they currently collect 84 percent of the over-order premium. Under the Land O'Lakes proposal, at 90 percent pooling, these three groups collectively will receive 50 percent of the premium dollars.
2. Dairy farmers in Groups B, D and F, representing 45 percent of the State's milk production will have their premium rate increase through the Land O'Lakes proposal. Dairy farmers and Group E will experience a small decrease and those in Group G (those shipping to markets outside the state) will so no increase from the PMMB. Therefore, collectively, under Land O'Lakes' proposal, 66 percent of the Commonwealth's dairy farmers will see an increase in premium or no loss.
3. Pooling the premium at 90 percent will not make the disparity between the highest paid group and the lowest zero. Relative premium payments at the 90 percent level will continue to depend on sales to Class I markets with sales in Pennsylvania. Using the Board's analysis, an independent farmer shipping to a Pennsylvania dealer with high Class I utilization, will continue to receive significantly more from the over-order premium payments.
4. The Regulation requires the PMMB to announce the Blended Pool Price each month. As the percentage of milk pooled increases, the level of the Announced Pooled Price increases. Land O'Lakes has argued that the Announced Pool Price will serve as a benchmark for Pennsylvania dairy farmers. That is to say, if a dairy farmer is not receiving at least the level of the Announced Pool Price, that farmer will find a buyer that will pay him at least that price. Note that even at the 90 percent level, only two groups will draw enough monies from the PMMB to pay the Announced price. The reason for this is that the other groups sell a larger percentage of their milk to out-of-state buyers and do not receive the PMMB premium on that milk. The other six groups will have to charge out-of-state buyers premiums adequate to pay their Pennsylvania producers the Announced Pooled Price.
5. Pooling at the 90 percent level provides adequate incentives to deliver milk to Class I accounts. At the 90 percent level, moving one hundredweight from a Pennsylvania manufacturing plant to Pennsylvania Class I will result in a \$0.165 per cwt (10 percent handler pool payment * \$1.65) premium payment. Diverting one hundredweight of Pennsylvania produced milk from an out-of-state dairy plant to Pennsylvania Class I will result in a \$0.5686 [(10 percent handler pool payment * \$1.65) + (Announced Pool Price)] premium payment.

Conclusions

1. The PMMB has the legislative authority to price milk and to distribute the value of milk to the State's dairy farmers.
2. The PMMB has promulgated a Regulation to establish an over-order premium pooled. However, the Board has erred by arbitrarily choosing to pool only 45 percent of the premium.
3. Without providing evidence that there is currently is a shortage of bottled milk for Pennsylvania consumers or that there would be under a methodology which pooled a higher percentage of the premium, the Board chose to pool an inadequate percentage of the premium.
4. Currently dairy farmers representing one-third of the states milk production receive 84 percent of the premium proceeds. The Board's proposed regulation has that upper one third receiving 67 percent of the proceeds of the regulation. Land O'Lakes' proposal would still have that upper third receive more than one-half of the premiums.
5. The greater the pooling percentage, the higher the Announced Pooled Price. At 90 percent pooling the current $1.65 Class I over-order premium would yield a Pooled Price above $0.40 per cwt. This value will benefit Pennsylvania dairy farmers shipping to out-of-state markets.
6. Pooling at the 90 percent level will provide as much as $0.57 per cwt incentive for a handler to move Pennsylvania milk from an out-of-state markets to a Pennsylvania Class I dealer.

Land O'Lakes requests the Board amend its' proposed regulation to allow for 90 percent pooling.

Sincerely yours,

LAND O' LAKES, INC.

Dennis Schad

Dennis Schad,
Director of Marketing and Regulatory Affairs

DS

CC: John R. McGinley, Jr., Chair Independent Regulatory Review Commission
Raymond Bunt, Chair of House Agriculture and Rural Affairs Committee
Peter Daley, Minority-Chair of House Agriculture and Rural Affairs Committee
Michael L. Waugh, Chair Senate Agriculture and Rural Affairs Committee
Michael A. O'Pake, Minority Chair Senate Agriculture and Rural Affairs Committee

The Milk Marketing Board has rarely been faced with such a devisive issue as market-wide pooling.

It seems there is no right or wrong answer. Some oppose pooling vehemently and others feel there is no equity among Pennsylvania dairy farmers without pooling. The Board has looked at numerous options: No pooling, 100% pooling, partial pooling, and even supplemental pooling.

In arriving at the direction we are taking today – we have considered many facts, including some of the following.

No state-wide pooling distribution system would ever create a level playing field and producer's milk checks will never be equal. There are just too many variants involved such as quality bonuses, volume premiums, transportation charges, and many other charges or bonuses relative to milk transactions between producers and dealers or co-ops.

We do know that the mandated over-order premium has a direct effect on Class I milk that is produced, processed, and sold in Pennsylvania. It also has a very important indirect effect on Class I milk purchased in surrounding states. So a Pennsylvania producer shipping out-of-state who receives no direct over-order premium may still benefit indirectly.

Cooperatives and independent processors each have their own advantages. The Board recognizes the value of each and what they contribute to making Pennsylvania such a strong dairy state. In dealing with these entities our goal under Section 801 of the Milk Marketing Law is to insure a sufficient quantity of pure wholesome milk to the inhabitants of Pennsylvania. Therefore, any action we take is with this primary goal in mind.

After considering all of the issues, the Milk Marketing Board has decided to proceed forward in developing a regulation through the Independent Regulatory Review Commission that would provide for partial pooling of the over-order premium. We do feel that to adopt 100% pooling of the Class I premium, there would be a great loss of incentive to the dairy farmers and the dealers to supply Class I milk to the Pennsylvania consumer. Recognizing that the partial pooling approach is a compromise of the various positions within the industry, the Board has **NOT** determined what percentage of the over-order premium should be pooled. The Board is requesting all interested parties to come together toward reaching a percentage level that all parties can accept.

It has been a long tedious period of time since our first pooling meeting in March, 1999. At that time we asked for and received your active participation and now we ask for even more from each and every stakeholder.

There will be a meeting scheduled for interested parties to work with Board staff in arriving at a percentage level. The date is set for 9:00 a.m. on December 20, 2000 in Room A-1 of the Farm Show Building. It is the Board's hope that compromise can be made during this time. If there is no agreement between parties, the Board will set the percentage level. To assist parties in developing proposals an outline of the proposed regulation will be sent to you by the end of the week.

We have spent many hours discussing the issues so rather than continue in that vein, we now ask you to move forward with more discussion at that meeting.

Keep in mind that the regulatory process could take as long as nine months to a year. This was the process we all agreed upon, so let us proceed. The meeting will be facilitated by Lynda Bowman and Sharon Grottola as you work with the rest of Board staff to accomplish the goal set before us.

For those of you not involved in this process we do want you to know that the Board is proposing that the pool of Class I over-order premiums be distributed to the Pennsylvania dairy farmer whose milk is produced and processed in Pennsylvania. This can be done through the Pennsylvania Milk Marketing Board office and the Department of Treasury Department. We are also proposing line items on all milk checks to identify the over-order premium to maintain accountability to the Pennsylvania producers. The amount of premium pooled per hundredweight will be published monthly in all Pennsylvania agriculture related news media. To those parties participating in this meeting – please review the outline that will be sent to you this week and be prepared to actively contribute and participate in the discussions. It is imperative that you make a resolve to be honest and open as you represent your segment of the industry.

Thank you for your patience in this matter. It is the Board's hope that this issue can be decided in a manner that will be acceptable to all of the dairy industry. We have a very unique industry in Pennsylvania with many producers and processors as well. Despite the fact that farm numbers are decreasing, the supply of milk continues to increase. We, the Pennsylvania Milk Marketing Board members and staff, have been given the unique opportunity to help insure that continued growth of the entire industry while providing for the consumer as well. We will not do anything to jeopardize what we have. We will continue to do whatever is necessary to keep the Pennsylvania dairy industry healthy and viable.

EXHIBIT II

Commonwealth OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
June 18, 2001

SUBJECT: Pennsylvania Milk Marketing Board Regulation #47-9

TO: Sharon L. Gronola
Chief Counsel
Pennsylvania Milk Marketing Board

FROM: David J. DeVries
Chief Deputy Attorney General
Review and Advice Section

RECEIVED
COMMONWEALTH OF PA.
'01 JUN 20 AM 9 15
MILK MARKETING BOARD
HARRISBURG PA.

Our review of the above regulation has raised the following comments and questions.

1. How was the over-order premium process originally established? Was it by order of the Board? Was there a legal challenge to this premium when it was first established?

2. It appears that the re-distribution of the over-order premium will be a zero-sum exercise. Those dairy farmers who currently receive the premium will receive less and the others will receive more, but the amount of the total premium will not change. What has happened to give rise to the Board's decision to make this change?

3. Can a dairy farmer who is receiving payment under the current program use the formulae set forth in the regulation to determine what he will receive under the new program?

4. The Regulatory Analysis Form states that one of the reasons for establishing the over-order premium was to offer an incentive to dairy farmers to supply the Class I fluid plants. If dairy farmers who supply the Class I fluid market now have to share some of the premium with other producers under this pooling proposal, won't that act as a disincentive to those farmers now supplying the Class I market and, therefore, have the opposite effect from what is intended?

This memo will serve to toll the thirty-day statutory review period. Upon receipt of the clarification requested here, we will resume our review of the regulation.

DJD:mlm
CRA020438

Question 1.

How was the over-order premium process originally established? Was it by order of the Board? Was there a legal challenge to this premium when it was first established?

Answer:

The Milk Marketing Board (Board) established the over-order premium process in September 1988 through Official General Order No. A-856. The original over-order premium order was designated a "drought relief order." There was no legal challenge to this premium when it was first established. This mandated over-order premium has continued since 1988; however, at varying premium amounts and different marketing conditions. (See attachment detailing the history of the mandated over-order premium.)

The Board determined that the most appropriate manner in which to establish a marketwide pooling process was not through an official general order but rather through the regulatory process. Section 307 of the Milk Marketing Law, 31 P.S. § 700j-307, provides that the Board has the power to adopt regulations that are "necessary or appropriate to carry out the provisions of this act." Based on the determination by the Board that it has the authority to establish a marketwide pool, Section 307 grants the Board the right to promulgate these regulations to carry out the pooling process.

An additional reason that the Board determined that the regulatory route was most appropriate is the fact that the actions of several other state agencies are necessary in administering the pooling process; in particular, the Comptroller's Office and the State Treasurer's Office. It was imperative that these agencies have input into the development of the pooling regulations especially with regard to the distribution portion of the regulations. Regulations are a more practical way to establish marketingwide pooling in order to ensure the creation of an effective and efficient system to administer and enforce the pooling process.

The Board was also quite conscious of an unpublished opinion issued by the Commonwealth Court in Fleming Companies, Inc. v. Pennsylvania Milk Marketing Board, 1241 C.D.1998, that held that an order issued by the Board regarding license classifications should have been promulgated into regulations rather than through an order of the Board. In that case, based on section 411 of the Law, 31 P.S. § 700j-411, the Board was granted the authority to classify milk dealer licenses. The Court in Fleming concluded that the Board was not permitted by the Law to create a license classification system by an order because section 411 did not expressly authorize the Board to fix by order the licensing classifications of milk dealers. It was the desire of the Board to avoid any overturning of an official general order relative to marketwide pooling by Commonwealth Court.

Question 2.

It appears that the re-distribution of the over-order premium will be a zero-sum exercise. Those dairy farmers who currently receive the premium will receive less and the others will receive more, but the amount of the total premium will not change. What has happened to give rise to the Board's decision to make this change?

Answer:

Support for the Milk Marketing Board to institute marketwide pooling of its mandated over-order premium has been present since 1992 when Milk Marketing, Inc. (MMI), a cooperative that operated in Milk Marketing Areas 5 and 6 (the western and central portions of the state) petitioned the Board to create a marketwide pool in Milk Marketing Areas 5 and 6. A hearing was held on that petition and, on March 2, 1993, the Board issued Official General Order No. A-874 declining to establish a marketwide pool of the over-order premium in Milk Marketing Areas 5 and 6. MMI appealed the order and on December 28, 1993, Commonwealth Court issued an order holding the Board did not abuse its discretion by refusing to establish marketwide pooling system. 635 A.2d 1110 (Pa.Comm. 1993) Within the past several years, the Board has received numerous petitions from various industry groups to reconsider the pooling issue. The support for pooling by several groups increased with the passage of the Northeast Dairy Compact. The Northeast Dairy Compact was formed in 1996 and consists of the six New England states. The Northeast Dairy Compact boosts milk prices above federal minimums on milk to all producers and has a floor price of $16.94 per hundredweight for the producers in the Compact area. Many farm groups support Pennsylvania joining this Compact because it helps all producers. Last year, the Pennsylvania legislature passed a bill allowing Pennsylvania to join the Compact. Currently, a state may only join the Compact if it is contiguous to a member of the Compact. New York has also passed legislation to join the Compact; however, the U.S. Congress must grant approval for additional states to participate in the Compact. To date, no other states have received this approval. Some groups of producers that support pooling of Pennsylvania's over-order premium also support admission into the Compact and other groups support admission to the Compact but oppose the pooling issue.

The Board, when reaching its decision to institute pooling of its mandated over-order premium, took many factors into consideration; not the least being that, according to evidence presented and testimony received at every over-order premium hearing held before the Board, all dairy farmers faced the same situation that precipitated the setting of the over-order premium — poor weather, poor crops, low milk prices, and high production costs. The Board, as a state agency, felt that to limit the direct benefit of its mandated over-order premium to only those producers who provide Class I milk would be an injustice to the other Pennsylvania producers supplying all other classes of milk.

Also, the exercise of redistribution of a pool is not a novel idea and is widely accepted in the dairy industry. An important part of the job function of the USDA's Agricultural

Marketing Service, Dairy Division, is marketwide pooling. Essentially all the federal milk marketing orders operate market wide pools for determining producer prices. In a milk marketing order, producers do not receive the Class prices directly. Instead, all producers who supply milk to a federal order receive the same uniform or "blend" price for their milk. The blend price is a weighted average price derived from pooling all milk proceeds received from all milk used in the various classes in a market area. The blend price assures that all producers share equally in the higher valued fluid market. The blend price also ensures that all producers share equally in the lower prices that are received for milk diverted to manufacturing uses. Therefore, no producer captures only the higher, fluid-use price, but no producer has to bear only the lower, manufacturing price for milk. Cooperatives may combine the proceeds of its members from all markets and pay a reblended price to their members, which may be higher or lower than the price in a particular Federal order market.

Question 3.

Can a dairy farmer who is receiving payment under the current program use the formulae set forth in the regulation to determine what he will receive under the new program?

Answer

No. The formula is based on information that is compiled through milk dealers' monthly reports submitted to the Milk Marketing Board. Pursuant to the Milk Marketing Law, information on these reports is to be considered confidential. The Board staff will be the individuals who determine the amount the producer will receive and will forward this information to the milk dealers so that they may make the payments directly to the producers. The formula used in the current calculation of the over-order premium is also gathered through data on reports submitted on a monthly basis.

The Board, in its proposed pooling regulation and its current over-order premium order, requires a line item on the producer's check that identifies it as a PMMB mandated over-order premium. The Board further plans to announce the monthly over-order premium on the agency's website as well as in industry newspapers such as Lancaster Farming.

Question 4.

The Regulatory Analysis Form states that one of the reasons for establishing the over-order premium was to offer an incentive to dairy farmers to supply the Class I fluid plants. If dairy farmers who supply the Class I fluid market now have to share some of the premium with other producers under this pooling proposal, won't that act as a disincentive to those farmers now supplying the Class I market and, therefore, have the opposite effect from what is intended?

Answer:

It is correct that one of the reasons for establishing the PMMB mandated over-order premium was to maintain an adequate supply of Class I fluid milk. Even with the pooling of the over-order premium with other producers, there still remains an incentive to the producer to supply the Class I market. The proposed regulation develops a method whereby 45% of the over-order premium would be pooled. This pool would be shared with all Pennsylvania dairy farmers whose milk is produced and sold in Pennsylvania. The Class I producers would participate in this pool. The remaining 55% of the over-order premium would be distributed to only the Class I producers. The Class I producers continue to receive greater benefits from the over-order premium than the non-Class I producers; therefore, an incentive would still be present to encourage producers to supply the Class I market.

EXHIBIT III

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$2,519,417.21
Receipts by Class I Dealers	277,412,999			pool value	$0.00
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	0%	Class I exclusive	100%		

Premium (per cwt) to Class 1 Producers by proces	$0.9082
Premium (per cwt) to Non Class 1 Producers (PA P	$0.0000

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$602,470.87	$0.7811	13.83%	$0.00	$0.0000	$602,470.87	$0.7811
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$90,332.45	$0.1669	7.85%	$0.00	$0.0000	$90,332.45	$0.1669
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$225,150.20	$0.5481	5.41%	$0.00	$0.0000	$225,150.20	$0.5481
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$218,642.72	$0.1065	29.03%	$0.00	$0.0000	$218,642.72	$0.1065
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$83,268.28	$0.1190	2.79%	$0.00	$0.0000	$83,268.28	$0.1190
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$7,911.24	$0.0082	14.08%	$0.00	$0.0000	$7,911.24	$0.0082
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,165	2,726,776	$1,291,641.44	$0.8419	27.02%	$0.00	$0.0000	$1,281,641.44	$0.8419
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$2,519,417.21	$0.3176	100.00%	$0.00	$0.0000	$2,519,417.21	$0.3176
*Producer/Dealer pounds not included.		557,736,005				**************current*****************			*************processing**************		**********pooled value************	

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$1,385,679.46
Receipts by Class I Dealers	277,412,999			pool value	$1,133,737.74
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	45%	Class I exclusive	55%		

Premium (per cwt) to Class 1 Producers by proces	$0.7013
Premium (per cwt) to Non Class 1 Producers (PA P	$0.2018

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$331,358.98	$0.4296	13.83%	$156,787.44	$0.2033	$488,146.42	$0.6329
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$49,682.85	$0.0918	7.85%	$88,973.86	$0.1644	$138,656.71	$0.2562
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$123,832.61	$0.3015	5.41%	$61,289.12	$0.1492	$185,121.73	$0.4507
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$120,253.50	$0.0586	29.03%	$329,102.88	$0.1603	$449,356.37	$0.2188
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$45,797.55	$0.0654	2.79%	$31,625.36	$0.0452	$77,422.91	$0.1106
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$4,351.18	$0.0045	14.08%	$159,627.48	$0.1649	$163,978.66	$0.1694
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,155	2,726,776	$710,402.79	$0.4830	27.02%	$306,331.61	$0.1997	$1,016,734.40	$0.6627
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$1,385,679.46	$0.1747	100.00%	$1,133,737.74	$2.0949	$2,519,417.21	$0.3176
*Producer/Dealer pounds not included.		557,736,005				***************current*****************			*************processing**************		*********pooled value************	

Feb-00

PA Processed Class I Pounds (after diversions)	152,691,952	Premium	$1.65	class 1 value	$251,941.72
Receipts by Class I Dealers	277,412,999			pool value	$2,267,475.49
PA processed milk by Non-Class I processors*	284,346,168				
PA Total Production	793,260,921				
Premium generated	$2,519,417.21				
Percentage of Class I pooled	90%	Class I exclusive	10%		

Premium (per cwt) to Class 1 Producers by proces	$0.4945
Premium (per cwt) to Non Class 1 Producers (PA P	$0.4036

	PA TOTAL PRODUCTION	PA RECEIPTS BY CLASS 1 DEALERS		PA PROCESSED NON-CLASS 1 LBS.	PA PROCESSED NON PA LBS.	PREMIUM PAID BY CLASS 1 UTILIZATION	PAID CWT TO PRODUCERS	PERCENT OF PA PROCESSED	PREMIUM PAID FOR PA PROCESSING	PAID CWT TO PRODUCERS	TOT PREMIUM PAID	TOT CWT PD TO PRODUCERS
Producer Group A	77,130,714	69,362,735	10%	7,767,979	0	$60,247.09	$0.0781	13.83%	$313,574.88	$0.4065	$373,821.97	$0.4847
Producer Group B	54,118,225	10,400,015	7%	33,370,183	10,348,027	$9,033.25	$0.0167	7.85%	$177,947.72	$0.3288	$186,980.97	$0.3455
Producer Group C	41,077,454	13,869,821	5%	16,281,022	10,926,611	$22,515.02	$0.0548	5.41%	$122,578.24	$0.2984	$145,093.26	$0.3532
Producer Group D	205,331,559	23,533,193	26%	138,367,144	43,431,222	$21,864.27	$0.0106	29.03%	$658,205.75	$0.3206	$680,070.02	$0.3312
Producer Group E	69,978,894	11,368,643	9%	4,189,276	54,420,975	$8,326.83	$0.0119	2.79%	$63,250.71	$0.0904	$71,577.54	$0.1023
Producer Group F	96,820,883	13,560,607	12%	64,967,247	18,293,029	$791.12	$0.0008	14.08%	$319,254.96	$0.3297	$320,046.08	$0.3306
Producer Group G	95,378,276	0	12%	0	95,378,276	$0.00	$0.0000	0.00%	$0.00		$0.00	
Producer Group H	153,424,916	135,317,985	19%	15,380,155	2,726,776	$129,164.14	$0.0842	27.02%	$612,663.22	$0.3993	$741,827.37	$0.4835
Total*	793,260,921	277,412,999	100%	280,323,006	235,524,916	$251,941.72	$0.0318	100.00%	$2,267,475.49	$4.1899	$2,519,417.21	$0.3178
*Producer/Dealer pounds not included.		557,736,005				***************current*****************			*************processing*************		*********pooled value************	

ANALYSIS OF PMMB POOLING ALTERNATIVES

	PA Production	PA Processed	Handler 100% Pooled 0%	Handler 55% Pooled 45%	Handler 10% Pooled 90%
Producer Group A	10%	14%	$0.7811	$0.6329	$0.4847
Producer Group B	7%	8%	$0.1669	$0.2562	$0.3466
Producer Group C	5%	5%	$0.5481	$0.4507	$0.3532
Producer Group D	26%	29%	$0.1065	$0.2188	$0.3312
Producer Group E	9%	3%	$0.1190	$0.1106	$0.1023
Producer Group F	12%	14%	$0.0082	$0.1694	$0.3306
Producer Group G	12%	0%	$0.0000	$0.0000	$0.0000
Producer Group H	19%	27%	$0.8419	$0.6627	$0.4835
Percent of Premium Dollars to Groups A, C and H (34% of PA Production)			84%	67%	50%
Percent increased		Groups B, D and F		45%	
Percent decreased		Groups A, C and H		34%	
Percent Indifferent		Groups E and G		21%	
Disparity between highest and lowest			$0.8337	$0.5521	$0.3824
Disparity between highest and announced pool price				$0.4609	$0.0799
Announced Pooled Price			$0.0000	$0.2018	$0.4036
Incentive to deliver Class I (PA Processsed)			$ 1.6500	$ 0.9075	$ 0.1650
Incentive to deliver Class I (NonPA Processed)			$ 1.6500	$ 1.1093	$ 0.5686