

DAVID S. FISHER
6124 MEADVILLE RD., NARVON, PA 17555

DAVID S. FISHER
6124 MEADVILLE RD.
NARVON, PA 17555

October 28, 2002

From: DAVID S. FISHER

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

Attention: Lynda Bowman,

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

Respectfully yours,



DAVID S. FISHER
CERTIFIED ORGANIC FARMER

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

Original: 2218



**COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD**

November 7, 2002

SECRETARY

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

Mr. John Hartranft
130 Bricker Road
Bernville, PA 19506

Dear Mr. Hartranft:

Thank you for your letter expressing your concerns on pooling the Pennsylvania Milk Marketing Board's over-order premium. A copy of your letter will be forwarded to the Independent Regulatory Review Commission for their files.

Our responsibility, as a state agency, is to provide a stable regulatory environment which benefits the industry as a whole.

Thank you for your interest in this matter. If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lynda Bowman".

Lynda J. Bowman

cc: Beverly Minor, Chairwoman
Luke Brubaker, Member
Barbara Grumbine, Consumer Member
Independent Regulatory Review Commission
File

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

November 7, 2002

SECRETARY

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

Mr. Moses Esh
RR 2 Box 322
Myerstown, PA 17067

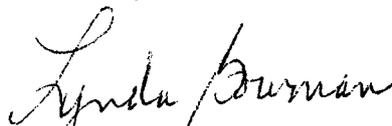
Dear Mr. Esh:

Thank you for your letter expressing your concerns on pooling the Pennsylvania Milk Marketing Board's over-order premium. A copy of your letter will be forwarded to the Independent Regulatory Review Commission for their files.

Our responsibility, as a state agency, is to provide a stable regulatory environment which benefits the industry as a whole.

Thank you for your interest in this matter. If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,


Lynda J. Bowman

cc: Beverly Minor, Chairwoman
Luke Brubaker, Member
Barbara Grumbine, Consumer Member
Independent Regulatory Review Commission
File

MOSES ESH
RR2 BOX 322, MYERSTOWN, PA 17067

October 28, 2002

From: **MOSES ESH**

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

Attention: **Lynda Bowman,**

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

Respectfully yours,

MOSES ESH
CERTIFIED ORGANIC FARMER

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

Original: 2218

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

November 7, 2002

SECRETARY

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

Mr Ivan Brubacher
619 Meadville Road
Narvon, PA 17555

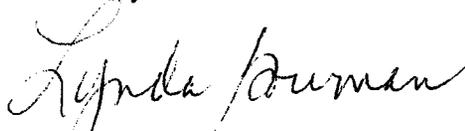
Dear Mr. Brubacher:

Thank you for your letter expressing your concerns on pooling the Pennsylvania Milk Marketing Board's over-order premium. A copy of your letter will be forwarded to the Independent Regulatory Review Commission for their files.

Our responsibility, as a state agency, is to provide a stable regulatory environment which benefits the industry as a whole.

Thank you for your interest in this matter. If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,


Lynda J. Bowman

cc: Beverly Minor, Chairwoman
Luke Brubaker, Member
Barbara Grumbine, Consumer Member
Independent Regulatory Review Commission
File

IVAN BRUBACHER
6119 MEADVILLE RD., NARVON, PA 17558

October 28, 2002

From: IVAN BRUBACHER

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

Attention: Lynda Bowman,

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

Respectfully yours,



IVAN BRUBACHER
CERTIFIED ORGANIC FARMER

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

Original: 2218

**COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD**

November 7, 2002

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

SECRETARY

Mr. Amos Beiler
1600 Noble Road
Kirkwood, PA 17536

Dear Mr. Beiler:

Thank you for your letter expressing your concerns on pooling the Pennsylvania Milk Marketing Board's over-order premium. A copy of your letter will be forwarded to the Independent Regulatory Review Commission for their files.

Our responsibility, as a state agency, is to provide a stable regulatory environment which benefits the industry as a whole.

Thank you for your interest in this matter. If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Lynda J. Bowman

cc: Beverly Minor, Chairwoman
Luke Brubaker, Member
Barbara Grumbine, Consumer Member
Independent Regulatory Review Commission
File

AMOS N. BEILER
1600 NOBLE RD., KIRKWOOD, PA 17536

October 28, 2002

From: AMOS N. BEILER

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

Attention: Lynda Bowman,

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

Respectfully yours,

Amos N. Beiler

AMOS N. BEILER
CERTIFIED ORGANIC FARMER

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

ORIGINAL: 2218



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COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

CHIEF COUNSEL

November 7, 2001

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

Mr. Troye Cooper
Field Representative
Wengert's Dairy
2401 Walnut Street
Lebanon, PA 17042

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

Dear Mr. Cooper:

It was a pleasure speaking with you concerning the proposed regulations establishing a marketwide pool of the PMMB mandated over-order premium. In your letter you expressed concern that, in your opinion, the over-order premium should not be evenly redistributed to cooperatives because the cooperatives do not "evenly distribute the premiums" that they receive from milk sales to their own member/owners. During testimony at PMMB hearings to set the state mandated over-order premium deals with such issues as cost of production, weather conditions and milk prices received by the producers. All Pennsylvania dairy farmers experience these conditions no matter how their milk is utilized.

You further indicated in your letter that Class I handlers have little opportunity to generate extra revenue beyond the PMMB Class I over-order premium levels. The Class I handlers do generate extra revenue by producing non-regulated products such as teas and juice drinks. The handlers are also guaranteed by the Milk Marketing Law to receive a rate of return of 2.5 to 3.5 percent.

It is important to remember that members of cooperatives are owners and have invested equity into the cooperative and its plants. This is not a "premium" over and above milk market pricing but rather a profit on their investment. This could be compared to the handler's guaranteed rate of return mentioned above.

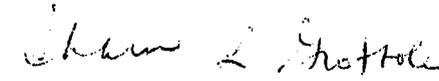
Mr. Troye Cooper
Page Two
November 7, 2001

Again, I would like to thank you for your participation in the regulatory process. You can receive a copy of the final-form regulations when they are completed by providing a written request to the PMMB or by accessing the PMMB website at http://www.sites.state.pa.us/PA_Exec/Milk/.

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

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

Wengert's DAIRY

RECEIVED
SEP 16 AM 9:05
MILK MARKETING BOARD
HARRISBURG PA.

PHONE: 717-273-2658
FAX: 717-273-2794

September 27, 2001

Sharon L. Grottola, Esq.
Chief Counsel
PA Milk Marketing Board
110 Ag Building
2301 North Cameron Street
Harrisburg, PA 17110

RECEIVED
COMMONWEALTH OF PA.
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MILK MARKETING BOARD
HARRISBURG PA.

Dear Representative Bunt,

I have tried to remain centered and passive about the issue of market wide pooling of the PMMB over order premium, however, I feel an obligation to defend independent milk producers in Pennsylvania.

First, I would like to express gratitude to the Milk Marketing Board and Pennsylvania lawmakers for their support of independent dairy producers in our great Commonwealth. The current milk marketing board regulations and structure have helped to generate extra revenue for the Pennsylvania dairy industry and the independent milk producers who are responsible for providing, "a sufficient quantity of pure and wholesome milk to the inhabitants of this Commonwealth."

As a field representative who works directly with independent dairy farmers in Pennsylvania, I recognize the extra effort dairymen are willing to make to fulfill this common goal. Those efforts are currently being rewarded with a competitive farm gate price that is partially due to the PMMB over order premium structure. Many producers also earn a monetary quality premium which helps to cover the cost of the extra steps they take to produce high quality milk.

Please recognize that the PMMB over order premium is not being used as a quality incentive. Most of Pennsylvania's handlers have separate quality incentive programs to reward producers for shipping high quality milk.

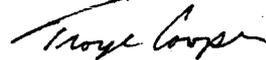
As today's dairy industry progresses, many dairy producers are recognizing the need to operate their farm as a business, and realize that marketing is a key to any enterprise. They are noticing that the number of marketing options is becoming limited. They are growing in size to be able to assemble a load of milk directly on their farm to market through cooperatives to a deficit Southeast United States milk market for a "volume premium." They are diversifying to do cash cropping, custom field work, custom

heifer raising, registered cow/bull marketing, or relying on independent milk handlers to buy milk directly off their farm and pay a reasonable Class I over order premium to put more money into their farm milk checks. Class I handlers have little opportunity to generate extra revenue beyond the PMMB Class I over order premium levels. Market wide pooling will make independent milk handlers farm gate pay price less competitive and may potentially limit producers' options of where to sell their milk.

With my milk marketing background beginning at Maryland and Virginia Milk Producers Cooperative Association, Inc., I have seen first hand that a well managed cooperative led by intelligent directors and driven management can generate additional revenues for its member/owner dairy producers. By capitalizing on opportunities to efficiently move milk down the East Coast to the milk deficit Southeast market, they are able to capture money from the Federal order V pool in addition to other premiums. Cooperatives can market milk to processors who pay premiums, (often over and above the PMMB Class I over order premium level), that can be recovered through value-added dairy product sales. Many cooperatives even operate processing plants that make and sell value added dairy products that generate profit for the cooperatives. These profits should translate to more money for their member/owner dairy producers in the form of cash and equity ownership in the cooperative. A well managed cooperative can usually return more than 20% of its profit, (which is required under the Capper Volstead Act), to its members. These returns can equal 75 cents per hundred weight or more in the form of cash and equity combined. This is a "premium" over and above milk market pricing. Additionally, cooperatives often pay different farm gate prices to their members based on volume, quality, location to processing facilities, etc. With these inequities already existent within cooperatives, I am troubled to understand their push for the establishment of a pool of the PMMB Class I over order premium monies. Why do cooperatives expect the PMMB and Pennsylvania lawmakers to establish regulations that "evenly re-distribute" premium money when they don't evenly distribute the premiums that they receive from milk sales among their own member/owners? Additionally, would it be fair to ask the PMMB and Pennsylvania lawmakers to consider regulations that "evenly re-distribute" profits that cooperatives generate among Pennsylvania's independent handler producers? These cooperatives are asking PA Class I handlers to supplement their existing over order premiums at the expense of PA independent milk handler producers.

On behalf of Pennsylvania independent handler milk producers I ask that the PMMB and Pennsylvania lawmakers consider these points as they move toward their decision on whether or not to establish a pool for Pennsylvania's much valued Class I over order premium.

Sincerely,



Troye Cooper
Field Representative for Wengert's Dairy

ORIGINAL: 2218

2001 NOV 16 11:09:05

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

SECRETARY

November 7, 2001

2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110
A.C. 717-787-4786

Mr. Earl Fink
Executive Vice President
PA Association of Milk Dealers
P.O. Box 1183
Harrisburg, PA 17108

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

Dear Earl:

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 opposition to the establishment of a marketwide pool. As you know, 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 regulations on the Board's website at http://www.sites.state.pa.us/PA_Exec/Milk/. According to your letter, you based your opposition on the following issues.

Under the proposed pooling proposal, it is possible some of the premium proceeds will go to non-Pennsylvania producers. Under the current handler pool distribution method, as much as 14% of the milk in the pool is from out of state producers. In addition, 52% of the milk processed as Class I is cooperative milk. So this scenario is occurring now.

The program has worked in large part due to dealer support. If the premium is diluted through pooling and used to subsidize manufacturing plants that are already subsidized under the federal order system, dealer support will erode. The original purpose of this premium was to maximize producer income during adverse conditions. That is still the purpose of the premium. The premium revenue is passed from the consumer to the producer

Supporters of market wide pooling argue that producers should share equally but they don't currently receive the same price. Under current federal and state pricing system, all producers receive different prices because of many different factors such as shipment to a different state or federal order, components, hauling rates, and higher quality premiums. The Board members have continually stated that they realize producers do not see like amounts in their mailbox checks. Their concern is for more Pennsylvania producers to share more equitably from this state-mandated premium.

Land O'Lakes enjoyed profits last year that were shared with its members but not shared with other farmers. LOL producers are owner/members who have equity in the coop's processing plants; therefore, they receive annual dividends on their equity. The over-order premium is not from dealers' profits. It is built into the wholesale/retail-pricing that consumers pay on the milk they purchase and that is to be paid to the producers.

The standards for Grade A milk are too low. The minimum bacteria standard for raw milk is 100,000 per milliliter but many well-run farms can achieve a count of 2,500 or less. The PMMB has no jurisdiction over these standards. These standards are from the Pasteurized Milk Ordinances set collectively by the states' Departments of Agriculture. Dealers can continue to attract quality milk with voluntary premiums that are included in resale pricing through the over price premium.

Non-Class I products do not have a premium on them because they are marketed nationally and a state-mandated premium would put them at a competitive disadvantage. The effects of pooling will give these plants a competitive advantage over their out-of-state competitors. In addition to Pennsylvania, four other states: California, Western New York, Maine and Hawaii have state-mandated premiums. These four states have market wide pools, not handler pools.

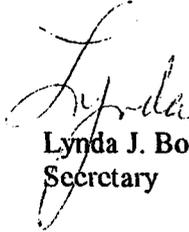
Manufacturing plants other than Land O'Lakes have not requested the advantage of pooling. Maryland and Virginia Cooperative, which has 647 Pennsylvania producers and owns balancing plants, and DFA, Mid-east which has 509 members, have both requested 90% pooling of the premium. Many of the small coops do not have a lobbying "voice" but are quite happy with the anticipated revenues for their producers.

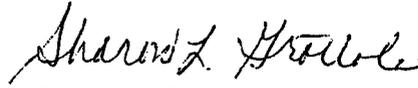
Manufacturing plants purchase surplus milk from Class I plants at less than the minimum Class II, III, or IV prices while the Class I operator must pay his farmers the established minimum prices for this milk. In some instances, this is true; however, there are several processors who buy out-of-state milk at less than PMMB minimum prices. PMMB regulations allow dealers to deduct losses on bulk sales from producer minimum obligations.

Thank you again for your comments on the proposed regulation establishing a marketwide pool of the PMMB mandated over-order premium.

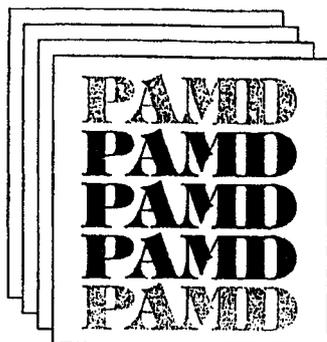
Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

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



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

October 22, 2001

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.

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PA MILK MARKETING BOARD

Sharon L. Grottola, Chief Counsel
PA Milk Marketing Board
October 22, 2001
Page 2

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, all producers will receive less.

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.

FAIRNESS ISSUE

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

Sharon L. Grottola, Chief Counsel
PA Milk Marketing Board
October 22, 2001
Page 3

\$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.

ALL GRADE A MILK IS NOT THE SAME

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 to 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.

Sharon L. Grottola, Chief Counsel
PA Milk Marketing Board
October 22, 2001
Page 4

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 Fink

EF/sea

ORIGINAL: 2218



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

NOV 15 10 59:05
MILK MARKETING BOARD

CHIEF COUNSEL

November 2, 2001

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

Mr. William Schreiber
Vice President of Eastern Operations
Land O'Lakes, Inc.
405 Park Drive
Carlisle, PA 17013

Re: Regulation – Marketwide Pooling of the Over-Order Premium

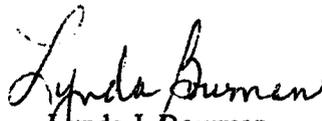
Dear Mr. Schreiber:

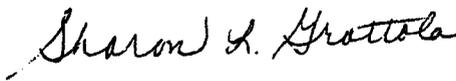
Thank you for your recent comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the PMMB mandated over-order premium. You expressed your support of 90% pooling rather than the 45% selected by the Board. As you know, the pooling issue was heavily debated by those, including Land O'Lakes, that supported a marketwide pool and those who opposed it. The Board had requested all interested parties to meet and arrive at some compromise on the percentage of the marketwide pool. This did not happen so the Board, at a regular sunshine meeting, discussed the issue at great length and arrived at the 45% pooling figure. Currently the proposed pooling regulation is before the Independent Regulatory Review Commission and the Senate and House Agriculture and Rural Affairs Committees for their review and comments. Following this 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 a marketwide pool of the mandated over-order premium.

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

Land O'Lakes, Inc.

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



Land O'Lakes Dairy Foods

October 12, 2001

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

Dear Chairperson Minor;

As you know, the Pennsylvania Milk Marketing Board has published a regulation to pool 45% of the Pennsylvania Over-Order Premium among all Pennsylvania dairy farmers. On behalf of Land O'Lakes, I am asking you to request the regulation be revised to pool 90% of the Over-Order Premium. 90% pooling is the only way to create a fair and equitably distributed premium system that benefits all Pennsylvania's dairy farmers.

In Pennsylvania, Land O'Lakes is 2,150 dairy farmers – nearly 25% of the state's dairy farmer population. Our cooperative exists solely to benefit those producers and add value to their dairy operations. That's why Land O'Lakes has made a significant investment in the Pennsylvania dairy industry and in the state's economy. We are a key balancer of milk produced in Pennsylvania. Our Carlisle manufacturing facility is able to process 15% of the milk produced in Pennsylvania. The industry depends on the Carlisle plant to absorb the excess milk supply when Class I utilization is low.

On behalf of the dairy farmers our cooperative represents, I am asking you to support 90% pooling. The PMMB established the premium to aid all Pennsylvania dairy farmers when faced with economic and weather hardships. The information they use to determine the level of the premium is derived from all farmers in the state, not just those in PMMB handler pools. However, the premium is paid back to the dairy farmers in PMMB handler pools, regardless of whether or not the statewide data applies to their specific operation.

The current Over-Order Premium is equivalent to an 11.5-cent surcharge on every gallon of milk sold in Pennsylvania. It's paid by all consumers. These consumers want and expect this premium to be equitably distributed to all farmers. Unfortunately the reality is that, even at 45% pooling, one dairy farmer can be getting as much as \$3,500 more annually than his neighbor who is producing the same quality milk under the same economic conditions. It's simply not fair that the one farmer would receive that much more of a benefit than the other farmer.

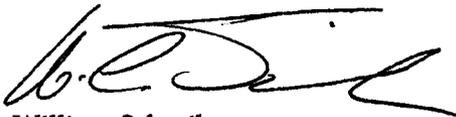
Request for 90% pooling/ page 2 -

Land O'Lakes currently distributes the PMMB Over-Order Premium dollars it receives directly to its Pennsylvania dairy farmer-members and will continue to do so if a regulation for 90% pooling of the premium is approved in Pennsylvania. When the PMMB premium rate is announced each month, our members will be able to look on their milk check and see those dollars being returned to them.

Pooling 90% of the PMMB premium also benefits those dairy farmers who sell their milk to out-of-state dealers. Every month the PMMB will announce a blended premium rate payable to dairy farmers. Out-of-state buyers will have to at least match that premium or Pennsylvania dairy producers will find other buyers who will. This will bring more dollars back into Pennsylvania, returning more to dairy farmers.

We believe that 90% pooling is already a compromise. At that level, 10% still remains to provide a more than adequate incentive for Class I or fluid milk handlers in Pennsylvania. Pooling the premium at any less than 90% provides a small minority of the state's dairy farmers with a significant and unfair competitive advantage over the majority of the state's dairy farmers. Please support 90% pooling as the only solution to fairly and equitably pool the Pennsylvania Over-Order Premium.

Sincerely yours,



William Schreiber
Vice President of Eastern Operations
Land O'Lakes, Inc.

ORIGINAL: 2218



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

RECEIVED
NOV 15 11 19:05

STATE
MILK COMMISSION

CHIEF COUNSEL

November 5, 2001

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

Mr. Harold M. Shaulis
1001 Indiantown Road
Somerset, PA 15501-5413

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

Dear Mr. Shaulis:

Thank you for your letter concerning the proposed regulations establishing a marketwide pool of the PMMB mandated over-order premium. In your letter you indicated several areas of concern. I have addressed each of these areas below.

The PMMB can only collect premiums on Class I milk produced, processed, and sold in Pennsylvania. The majority of over-order premiums collected by cooperatives and processors in Pennsylvania will not be in the pool because they are outside PMMB jurisdiction.

The PMMB does not currently collect premiums on Class I milk. After a public hearing, the Board mandates that an over-order premium is placed on Class I milk produced, processed, and sold in Pennsylvania. Since all Pennsylvania farmers suffer the adverse conditions testified to in the over-order premium hearings, it is a matter of a state-mandated premium being more equitably distributed.

The pooling of only the PMMB mandated premiums will lower the mailbox price that the out-of-state processors have had to meet in order to maintain their milk supply.

We agree that the over-order premium has a strong influence on mailbox prices to Pennsylvania producers; however, we are not aware of any study that demonstrates the assertion of lower mailbox prices due to partial pooling minimum prices. The PMMB's resale pricing orders address dealer recovery of voluntary premiums that are currently adding to the mailbox prices.

Land O'Lakes is the primary milk purchaser pushing for the pooling of the mandated over-order premium. Their new milk manufacturing and processing facility in Carlisle has been very profitable for the cooperative but does not return as much money per hundredweight as would Class I products. Land O'Lakes has

Mr. Harold Shaulis
Page 2
November 5, 2001

placed profitability for the cooperative ahead of the maximum return to its owner/members and, therefore, now wish to share in the premiums on the Class I milk sales for which other farmers and processors are in competition.

It is our understanding that Land O'Lakes' priorities are set by the owners/members whom you mention. Other cooperatives have also requested marketwide pooling of the over-order premium.

If pooling is such a good idea, why doesn't Land O'Lakes voluntarily put all the over-order premiums they collect on non-Class I milk into the pool?

The PMMB enforces minimum pricing, which for Class I products produced, processed, and sold in Pennsylvania includes the over-order premium. We do not intend to include any voluntary premiums in Class I, II, III, or IV products into our pool. All interested parties agreed that mandated premiums on non-Class I milk would not be appropriate.

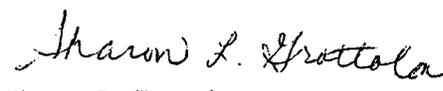
Currently the proposed regulation is before the Independent Regulatory Review Commission and the Senate and House Agriculture and Rural Affairs Committees for consideration and comments to the Board. Following its review, the Board will make changes, if necessary, and submit the regulation in its final 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 the marketwide pooling of the mandated over-order premium.

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

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

Grottola, Sharon

From: Harold [hmshaven@shol.com]
Sent: Monday, October 15, 2001 8:17 AM
To: Sharon Grottola
Cc: Linda Bowman
Subject: comment on PMMB pooling

2001 NOV 15 8:19:05

1001 Indiantown Road
 Somerset, PA 15501-5413
 October 15, 2001

Friday, October 12, 2001
 Sharon Grottola, Chief Counsel
 110 Agriculture Building
 Harrisburg, PAA 17110-9408

Dear Ms. Grottola

I am a dairy farmer from Somerset, PA, and am writing to encourage you to oppose allowing the Pennsylvania Milk Marketing Board to pool mandated over order premiums on Class I milk produced, processed, and sold in Pennsylvania. I oppose this proposal for three reasons. First, all the over order premiums will not be pooled, only the PMMB mandated premiums. Secondly this proposal would reduce the mailbox price paid to many of our state's dairy farmers and place our processors at a competitive disadvantage. Finally, I question the motives of the main Cooperative supporting the proposal. Currently over order premiums are being collected on all classes of milk produced in the Northeast. The ability to demand these over order premiums on all milk is due in part to the PMMB's ability to require over order premiums on Class I milk. The PMMB can only collect premiums on Class I milk produced, processed, and sold in PA, due to interstate commerce regulations on the federal level. This means that the majority of over order premiums collected by cooperatives and processors in Pennsylvania will not be in the pool, only because they are outside PMMB jurisdiction. Premiums in excess of three dollars per hundredweight are being collected on milk shipped to the Southeastern United States, but under this proposal, those premiums would not be included in the PMMB pool.

Secondly, out of state processors who purchase Pennsylvania produced milk have historically had to meet or exceed the mailbox prices paid to Pennsylvania producers selling to PMMB regulated processors. The pooling of only the PMMB mandated premiums will lower the mailbox price that the out of state processors have had to meet in order to maintain their milk supply. Not only does this mean lower income for our farm families that sell to out of state processors, but since any of the milk that is processed out of state and then brought into Pennsylvania to be sold as Class I products must be sold at PMMB minimum wholesale prices, those out of state processors are profiting at a greater rate than our in state processors, and may either keep the extra profit, or can sell items unregulated by PMMB, such as iced tea and fruit drinks, at reduced prices to steal market share from PMMB regulated plants.

The primary milk purchaser pushing for the pooling of mandated Class I premiums is Land O' Lakes Cooperative. They have a large, modern milk processing facility located in central Pennsylvania, which processes all sorts of dairy products, but does not handle any Class I milk. This plant has been very profitable for the Cooperative, but does not return as much money per hundredweight to the dairy farmer members of the Cooperative as would Class I products. Their management has recently expanded and further modernized the facility, making a conscious decision to place profitability for the Cooperative ahead of the maximum return to their farmer members. In order to compensate for that decision, they wish to share in the premiums on the Class I milk sales that for which other farmers and processors are in competition. Land O' Lakes has routinely commanded premiums on the milk they run through their Pennsylvania plant, collect large premiums on trailer loads of milk they send to the southeastern United States, and charge Pennsylvania processors "give up" charges to cover spot needs of those processors. If the pooling of premiums is such a good idea, why aren't they volunteering to put all the over order premiums they collect on milk not regulated by the PMMB into the pool?

Should you have any questions, please feel free to contact me.

Sincerely yours;
 Harold M. Shaulis

10/15/2001

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

November 2, 2001

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

Re: Regulation – Marketwide Pooling of the Over-Order Premium

Dear Mr. Warshaw:

Thank you for your recent in-depth comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. You indicated in your comments that you do not support a marketwide pool. One of the reason for this was based on your assertion that the Board is without power to establish a marketwide pool. You argued this point at every meeting held with industry members; however, based on memoranda of law received from these participants, the Board determined it had the power to establish a pool. On September 4, 2001, the Pennsylvania Office of Attorney General issued a memorandum stating that the regulation was approved for “form and legality pursuant to the Commonwealth Attorneys Act.”

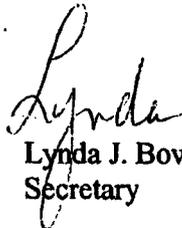
The proposed pooling regulation is currently before the Independent Regulatory Review Commission and the Senate and House Agriculture and Rural Affairs Committees for consideration and comments. Following these reviews, the Board will make any changes, if necessary, and submit the regulation in its final form to IRRC and the Committees. As you are aware, 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/.

Allen C. Warshaw, Esquire
Page Two
November 2, 2001

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

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

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

Original: 2218

D & R Acres
R.D. 1 Box 347
Worthington, PA 16262
November 1, 2001

2001-11-01 10:00

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

Dear Chairperson Minor:

I am writing in regards to Milk Marketing Board's regulation to pool 45 percent of the PA Over-Order Premium. My family farms in Armstrong County milking 75 cows. Although I agree with the Board's decision to pool the Over-Order Premium, I feel more pooling is a fairer way to create an equitably distributed premium system which will benefit all PA dairy farmers. I feel strongly that 90 percent pooling is the right thing to be done.

At our co-op. meeting of Dairy Farmers of America, Inc. it was asked that pooling be better explain to members. From what I understand, the Over-Order Premium was created to help dairy farmers when faced with economic and weather-related hardships. This premium is very beneficial to some; however, it isn't distributed equitably. The majority of proceeds go to a small minority of farmers.

Our family farm strives to produce quality milk the same or better than my neighbors under the same economic conditions. The way I understand pooling, my neighbors could still get as much as \$3,000 more through the premium distribution process. Would you think it fair for your neighbor to receive over \$200 more a month for the same amount of work as you do?

Consumers I have spoken to don't seem to mind giving the 11 cent surcharge per gallon of fluid milk. Many worried the PA farmers are becoming extinct in their area. Consumers didn't realize that the surcharge was being unequally distributed. Most strongly disliked this.

Dairy farming is changing every day. We are part of the competitive new world. I feel we must have a fair price for all dairy products like milk. The means the same access to premiums that our neighbors do. Please approve a regulation to pool 90 percent of the PA Over-Order Premium to benefit all Pennsylvania Dairy Farmers.

Sincerely yours,

Willetta Beers

cc: The Honorable Raymond Bunt, Jr.
The Honorable Michael Waugh
John R. McGinley, Jr., IRC Chairperson
Senator Don White
Representative Jeff Coleman

ORIGINAL: 2218



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

November 1, 2001

CHIEF COUNSEL

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

John J. Bell, Esquire
Pennsylvania Farm Bureau
P.O. Box 8736
Camp Hill, PA 17001-8736

Re: Proposed Regulation – Marketwide Pooling of the Over-Order Premium

Dear Mr. Bell:

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 100% pooling rather than the 45% selected by the Board. As you know, the Board had a difficult time with the pooling issue that was debated quite heavily by those who supported or opposed a marketwide pool. The Board reached their decision when the interested parties did not arrive at any compromise on their positions. The Board members, as was clearly evident in their sunshine meeting when they arrived at the 45%, were working hard to arrive at a workable solution to the pooling issue.

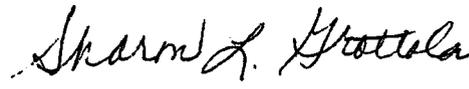
As you are aware, the proposed pooling regulation is before the Independent Regulatory Review Commission (IRRC) and the Senate and House Agriculture and Rural Affairs Committees for their review and comments. Following this review, the Board will make any changes it feels are necessary and submit the 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 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 PMMB mandated over-order premium.

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel



**Pennsylvania
Farm Bureau**

2001 OCT 16 AM 9:06

October 16, 2001

RECEIVED
MILK MARKETING BOARD
HARRISBURG PA.
01 OCT 19 AM 9 20

Sharon L. Grottola, Esquire, Chief Counsel
Pennsylvania Milk Marketing Board
Room 110, Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110-9408

RE: Proposed Rulemaking on the Over-Order Premium Pool, Contained in the September 22, 2001 Issue of the *Pennsylvania Bulletin* (31 Pa. B. 5367)

Dear Ms. Grottola:

These comments are offered by Pennsylvania Farm Bureau regarding the aforementioned proposed rulemaking.

The proposed rulemaking would require a partial pooling and distribution of the over-order premium currently mandated by the Milk Marketing Board ("Board") on Class I milk (milk used for drinking purposes) that is produced, processed and marketed in Pennsylvania. Specifically, the Board is proposing that 45% of premium dollars required to be paid to Pennsylvania producers each month be pooled and redistributed statewide to all Pennsylvania producers shipping milk to Pennsylvania plants, regardless of what form the producer milk is ultimately marketed. The proposed rulemaking would continue to allow the remaining 65% of mandated monthly premium dollars collected by each dealer to be distributed by each dealer to only those producers who ship milk to that dealer.

Pennsylvania Farm Bureau believes that 100% of the Board's mandated premium dollars should be equitably pooled and shared by Pennsylvania producers statewide. The Board has provided an over-order premium since 1988. Throughout the history of the over-order premium, the overriding principle behind the Board's establishment of the premium was to provide to all Pennsylvania dairy farmers servicing the market additional income that was not being provided through normal marketing means. Whether to meet sudden and harsh increases in milk production costs as a result of drought or energy shortages or to bolster sagging milk prices and economic losses that would likely result to producers, the premium that the Board has mandated dealers to pay to producers was intended to provide all Pennsylvania dairy farmers with additional income to offset natural or economic conditions that seriously threatened farmers' continued economic viability.

The current mechanism for distribution of the over-order premium, however, prevents a significant portion of farmers from sharing in premium proceeds. Distribution of the premium under the current "individual handler pool" basis unfairly rewards dairy farmers whose dealers are able to market their milk as fluid milk and disadvantages farmers whose dealers must market and use their milk for cheese, butter or other manufactured products. A dealer that markets a high percentage of milk as Class I is only required to share its collected premiums with the farmers who specifically ship to that dealer. Another dealer whose milk is predominantly marketed for cheese, butter or other non-fluid products will have little or no premium proceeds to distribute.

Even though two neighboring farmers incur essentially the same costs to produce their milk and produce essentially the same quality of milk, the one producer who is fortunate to ship his milk to the Pennsylvania Class I dealer will receive much more of the premium than his neighbor who ships to the Pennsylvania dealer whose milk is marketed for cheese or butter use.

Pennsylvania Farm Bureau believes the current method for distribution of the over-order premium is unfair. Neighboring dairy farmers are all experiencing similar costs to produce milk, regardless of whether the milk was ultimately marketed at retail as fluid milk or as cheese, butter or other manufactured milk products. Under the federal order milk marketing system, neighboring farmers marketing to different local dealers essentially receive the same price for their milk, since federal orders requires order-wide pooling and distribution of proceeds resulting from milk marketed in that order. Yet the individual handler method for distribution of the Board's over-order premium causes one farmer to receive a significantly higher price than his neighbor because of the specific dealer to which he markets his milk.

The Board's decision to propose a method for statewide pooling of the over-order premium is certainly recognition by the Board that the current system for distribution of premium proceeds is inequitable. But the Board's specific proposal to pool only 45% of premium proceeds will not in fact accomplish the purpose that the Board wishes to accomplish through its proposed rulemaking. A review of the Board's own data clearly shows that a 45% statewide distribution of premium proceeds will provide negligible relief to farmers shipping milk to non-Class-I dealers, and will not eliminate the significant disparity in prices that the current method of premium distribution has created between neighboring farmers servicing the Pennsylvania market.

If the Board believes that the current method for distribution of the over-order premium is unfair, we would think the Board would want to establish a percentage level of statewide distribution that would meaningfully secure equity among Pennsylvania farmers servicing the market. The Board's establishment of a 45% level of statewide premium distribution will neither accomplish the objective that the Board intends to accomplish through its proposed rulemaking nor accomplish the principal objective that has historically driven the Board to mandate over-order premiums – to provide price relief to all Pennsylvania farmers servicing local markets.

We feel the Board needs to establish a much higher percentage of premium to be pooled statewide than the percentage the PMMB has originally proposed. Unless this is done, the Board will not provide the equity in distribution of proceeds that we feel should exist among neighboring Pennsylvania dairy producers.

We would urge the Board to amend its proposed rulemaking to require 100% of the proceeds mandated to be paid to Pennsylvania producers through the over-order premium be pooled statewide to all Pennsylvania producers shipping milk to Pennsylvania plants.

Sincerely,

A handwritten signature in black ink that reads "John J. Bell". The signature is written in a cursive style with a large initial "J".

John J. Bell
Counsel, Governmental Affairs

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**COMMENTS OF THE PENNSYLVANIA ASSOCIATION
OF MILK DEALERS
RE: POOLING**

Original: 2218

2001 OCT 31 AM 9:41

REVIEW COMMISSION

I. Introduction

Presently pending before this Board are regulations which establish a market-wide pooling system for producer payments through which the Board would equalize the distribution of the Pennsylvania mandated over-order premium among producers of all classes of milk. The Pennsylvania Association of Milk Dealers respectfully submits that the Board is without the power to establish a market-wide pool and that, in any case, pooling would be harmful to the majority of farmers in Pennsylvania.

II. Background¹

Raw milk is sold by farmers for four classes of uses – Classes I-IV. “Class I milk” includes milk utilized to produce fluid milk products (whole, skim, 2%, etc). Class II milk includes milk utilized to produce products such as fluid creams, yogurt, ice cream and other frozen deserts. Class III milk includes milk utilized to produce cheese products. Class IV includes milk utilized to produce powder products and butter.

The price paid to farmers for most raw milk is regulated on two levels. First, the federal government sets an absolute minimum price which must be paid to farmers in certain areas of the country (Pennsylvania has some areas which are not within the geographical areas regulated by the Federal Government). That price varies for each class of usage. The price is highest for milk

¹It the understanding of the PAMD that these comments will be forwarded to the relevant legislative committees and the Independent Regulatory Review Committee. Accordingly, this memorandum will attempt to provide sufficient background to allow those entities to understand the underlying issues.

sold for Class I usage. However, under the federal system, the money paid for all raw milk is “pooled” in a common fund and distributed to farmers in an amount based on the average price paid for all raw milk in the relevant geographical area, after component adjustments.

PMMB also has the power and duty to set minimum prices for raw milk (and for Class I products sold at wholesale and retail). Obviously, it cannot set a minimum price for raw milk which is lower than that established by the federal regulatory agency. However, it may set a higher price.

With regard to Classes II, III and IV, PMMB has historically set the minimum price at the same level as that established by the federal government. However, the Board has, for the last thirteen years, established a premium (the “over-order premium”) which must be paid for raw “Class I milk” which is produced, processed and sold in Pennsylvania.

Historically, that premium has been paid by the milk processors (dealers) directly to the farmers from whom they purchase their milk. Farmers receive the PMMB over-order premium only if they sell milk for Class I usage. The amount of that premium is based on the extent of the dealer’s Class I usage. For example, if 50% of the milk purchased by a dealer is utilized as Class I milk, that dealer is required to pay all of the Pennsylvania farmers from whom it purchases milk a premium equal to 50% of the amount set by the Board as the over-order premium. Under this system, dealers are able to utilize the premium to ensure that there will be an adequate supply of high quality milk for Class I uses since farmers selling milk for Class I usage receive the largest part of the premium.

The proposed regulations seek to change that. They would require a pooling of a certain percentage of the premiums paid for Class I milk on a state-wide basis among all Pennsylvania

farmers selling raw milk in Pennsylvania. Under this system, dealers (and consumers of fluid milk products) end up paying premiums to all farmers whether or not they supply milk for Class I usage. Stated otherwise, dealers and consumers (to whom the cost of premiums is passed through when minimum retail prices are set) end up subsidizing farmers who have nothing to do with supplying the milk they are processing and drinking.

II. The Proposed Market-Wide Pooling System

The Board has issued as proposed regulations which would establish a system by which all Pennsylvania producers would share in the mandatory over-order premium which has traditionally been paid only for Class 1 milk. Such a system would require some dealers to pay their producers more than they do under the present system and others to pay less. Those paying less would subsidize those who pay more. In order to accomplish this transfer between dealers, the Board would establish a pooling fund, held by the State Treasurer and managed by the Board, into which some dealers would pay and from which other dealers would receive payments.

Under the proposal, 45% of the total over-order premium would be pooled among all producers selling milk for any purpose in Pennsylvania. The Board would determine a blended raw milk price on a market-wide basis based on market wide pooling of that 45%. Those dealers with Class I utilization would end up paying their producers less than before and would pay that difference into the pooling fund. Those milk handlers with Class II, III and IV utilization would pay their producers the market-wide blend price and receive payments from the fund equal to the difference between the blend price and the lower price they would have paid under the existing system. The effect of such a system would be to require consumers (and makers) of Class I products to subsidize producers whose milk is used to make entirely different products.

Moreover, the dealers with Class I utilization still have to pay the same amount of money to their producers in order to compete with other handlers. Thus, those dealers are doubly penalized.

In order to implement such a system, the Board would have to calculate a market-wide blend price, create a pooling fund and calculate and mandate the payment of funds into and out of the fund. For the reasons set forth below, the Board is without power to take such actions.

III. The Milk Marketing Board Is Without Power to Establish a Market-Wide Pool

It has long been the law of this Commonwealth that "the power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist. Such tribunals are extrajudicial. They should act within the strict and exact limits defined." Pennsylvania Human Relations Commission v. St. Joe Minerals Corp., 476 Pa. 302, 310, 382 A.2d 731, 735-736 (1978) (quoting Green v. Milk Control Comm'n, 340 Pa. 1, 3, 16 A.2d 9 (1940)). See also United Artists' Theater Circuit, Inc. v. City of Philadelphia. Philadelphia Historical Commission, 535 Pa. 370, 389; 635 A.2d 612, 622 (1993); Lookenbill v. Garrett, 490 A.2d 857 (Pa. Super. 1985); Com. v. Tilghman, 531 A.2d 441 (Pa. Super. 1987).

That this principle applies fully to the Milk Marketing Law is also clear. In Green, the Supreme Court held that:

The principle guiding to decision is this: The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist. Such tribunals are extra judicial. They should act within the strict and exact limits defined: *Citizens Passenger Ry. Co. v. Public Service Com.*, 271 Pa. 39, 114 A. 642; *Swarthmore Borough v. Public Service Com.*, 277 Pa.472, 121 A. 488; *Blue Mountain Cons. Water Co. v. Public Service Com.*, 125 Pa. Superior Ct. 1, 189 A. 545; *State*

Board of Milk Control v. Richman Ice Cream Co., 117 N.J. Equity 296, 175 A. 796. With the principle stated before us, turning to the law embodying the powers of the Milk Control Commission, we find nothing said about milk shipped to dealers on consignment. It speaks of the "purchase" of milk by dealers, its "delivery and sale" to them; it uses the words "buy," "purchase," "prices," "bought or sold," "sell or buy." The words "consign" or "consignment" nowhere appear. We are asked by the Commonwealth to interpolate these words into the Act. This we cannot do without violating the important principle to which we have adverted. If the legislature desires to change the law, this can shortly be demonstrated by an amendment at the coming session, writing into the Act a provision covering milk sent to dealers on consignment.

340 Pa. at 3. Thus, unless there is language which clearly and unmistakably grants the Board the power to create and administer a system by which producer payments can be blended, pooled or otherwise equalized, the Board lacks the power to mandate market-wide pooling. There is no such language.

Significantly, the Milk Marketing Law does refer to "blending," but only to state the

Legislature's intent:

that no provision contained herein shall be deemed or construed to prevent any cooperative . . . from blending the net proceeds of its sales or consignments or deliveries in all its markets or of its sales or deliveries within any particular market in various classes and whether in fluid form or as manufactured products, both within and without the Commonwealth, and paying its producers such blended price, with such deductions and differentials as may be authorized under contract between such association or corporation, and its producers, and with prior written approval of the board, or from making collective sales of the milk of its members and other producers represented by it, or from making such sales or deliveries at a blended price based upon sales or deliveries thereof in the various classes, and whether in fluid form or as manufactured products, both within and without the Commonwealth, which price is to be paid either directly to the producers or to the cooperative agricultural association or corporation.

31 P.S. § 700j-809 (emphasis added). Thus, the Legislature was certainly aware of both the concept and the practice of blending and consciously chose to grant the cooperatives broad power

to blend their proceeds. Its failure explicitly to grant the Board similar power is, therefore, especially telling and prevents a finding that that power is implied in the Law.

The Board also lacks the power to require dealers to subsidize each other with regard to producer payments. While the Law does authorize the Board to require and regulate payments by dealers to producers for raw milk, it contains no grant of authority to require or regulate payments among dealers (either directly or through a pooling fund) with regard to raw milk purchased from producers. Absent a clear and unmistakable grant of authority to require such payments, the Board is without power to do so and, therefore, has no power to enforce a market-wide pool.

The principle is clear as is its application to the issue of market-wide pooling. Under Greene, the Board cannot implement a system of market-wide pooling without a clear grant of power. There is no such grant of authority in the Milk Marketing Law. Clearly, the Legislature was familiar with the practice of blending and chose not to grant the Board the authority to adopt that practice. Similarly, there is no grant of authority to require the dealers to make payments to each other related to their purchase of raw milk from producers. Accordingly, this Board is without power to implement a system of market-wide pooling of producer payments and should not convene a hearing for the purpose of considering such a system.

1. Market-Wide Pooling Will Adversely Affect A Significant Number of Pennsylvania Producers

The proposal for marketwide pooling is an attempt by one large national cooperative, Land O'Lakes, headquartered in Minnesota, to extend the scope of subsidies which independent

family farmers who supply Class I fluid plants will have to make to manufacturing plants which Land O' Lakes owns and operates and which largely ship their products outside of Pennsylvania.

Of the 67 counties in Pennsylvania, 28 are now covered by Federal milk orders which require some form of pooling. What Land O' Lakes wants to do is extend that pooling to cover the other 39 counties, encompassing all of Pennsylvania. In the more than 60 years of milk control in Pennsylvania, we have never had the need for market pooling in the majority of Pennsylvania counties which Land O' Lakes now wants to pool.

The independent Pennsylvania family farm will be profoundly damaged by the extension of pooling across the Commonwealth. Based on data from February of 2001, the pooling proposed by the Board would have the following effects on producers selling milk for Class I utilization.

1. A dealer with 91% Pennsylvania Class I utilization would pay its producers \$.45 per hundredweight less than was actually paid in February of 2001.
2. Another dealer with 80% Pennsylvania Class I utilization would pay its producers \$.374 per hundredweight less. That dealer has 13,000,000 pounds of class I sales.
3. Another dealer with over 21,000,000 pounds and a Pennsylvania Class I utilization rate of 47% will pay its producers \$23.4 less.

In each case, most of the producers affected are, in fact, independent farmers.

On other hand, manufacturers with no Class I utilization, the largest of which belongs to Land O' Lakes, will pay their producers a \$.226 premium. Because Pennsylvania manufacturing plants will export a greater percentage of their product out of state as compared with fluid milk plants, the effect of the proposed regulations with respect to Pennsylvania consumers is that

Pennsylvania consumers will pay more for drinking milk as a subsidy to manufacturing plants who will ship manufactured product for consumption outside of Pennsylvania. This is particularly inequitable when one considers that the vast majority of states to which the manufactured product is going to be delivered have not seen fit to take any steps to protect their family farms.

As a more outrageous inequity of Land O' Lakes proposal, it must be noted that the subsidy which Land O' Lakes seeks from Pennsylvania consumers and the damage that they would visit upon Pennsylvania independent family farms will serve not simply to give them a status of equitable fairness, but will give them a competitive advantage over their manufacturing competitors in other states. This is simply because - if Pennsylvania provides for a pooling subsidy to their manufacturing plants, that subsidy will reduce their costs and will advantage them because their competitors in other states where there is no similar pooling mechanism, will not have such a subsidy. It is not fair, appropriate, or equitable to expect Pennsylvania farmers and Pennsylvania consumers to provide a competitive advantage to Land O' Lakes.

Land O' Lakes is asking this Board to provide to it a double advantage in Pennsylvania which will not exist to the north, to the south, nor to the west of the Commonwealth. It is asking not only for support prices which will not be imposed in those other areas around us, but their asking for a pooling system which will give them an economic subsidy for their manufacturing operations. If there is a fall of prices around Pennsylvania, this will mean that Pennsylvania consumers will be paying prices that are grossly excessive when compared with the prices in surrounding areas and the only beneficiaries of those excessive prices will be the Land O' Lakes. If such happens, Pennsylvania dealers will be driven to source raw milk from out of state;

Pennsylvania consumers along state borders will object to the Board's actions; and Pennsylvania farms will ultimately lose a market for their milk.

Yet another reason why the big co-ops' proposal is inequitable lies in a simple and cursory look at the effects of changing the size of pool milk in eastern Pennsylvania. For example, under Order 1 which encompasses dealers located in PMMB Areas 1 and 4, the current Class I utilization was 43.7% in August of 2001. If we go to a Pennsylvania only pool that utilization rate will drop to 30.5%. This means that whereas previously, consumers in all of Order 1, that is, in New York, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, the District of Columbia and the rest of Pennsylvania (outside Order 1) have been subsidizing manufacturing plants, those plants which are largely located in Pennsylvania, will be subsidized only by Pennsylvania consumers. The result of this is that in order to carry the larger percentage of Pennsylvania manufacturing plants, the consumer may have to pay significantly more for their fluid milk products.

Finally, and perhaps most importantly, there is absolutely no guarantee premiums paid to Land O' Lakes will go to Pennsylvania producers. To the contrary, Land O' Lakes is a national co-op with members all over the country. There is no requirement that it use Pennsylvania premiums solely for the benefit of Pennsylvania farmers. Nor could there be. Rather, Land O' Lakes is entitled to, and presumably does, use all of its revenues to benefit all of its members. There is absolutely no reason that Pennsylvania dealers and consumers should be subsidizing farmers in other states who provide no benefit in return to Pennsylvania.

V. Pooling Would Impose an Unfair and Undue Burden on Consumers of Class I Products

The necessary effect of pooling producer proceeds on a market-wide basis would be to cause consumers of Class I products, primarily fluid milk products, to subsidize producers for milk used to produce other products such as cheese and ice cream. This Board has a duty to protect the consumers, as well as the producers and dealers. Requiring consumers of fluid milk products to pay a higher price to subsidize other dairy products is wholly inconsistent with that duty.

Respectfully submitted,



Allen C. Warshaw, Esquire
Attorney Id No. 17145
Duane, Morris & Heckscher LLP
305 North Front Street, 5th Floor
P.O. Box 1003
Harrisburg, PA 17108-1003
(717) 237-5500

Counsel for Pennsylvania Milk
Dealers Association
Association

Date: 10/22/01

DEALER MEMBERS OF PENNSYLVANIA
ASSOCIATION OF MILK DEALERS

Bechtel's Dairy & Restaurant
Lewisburg, PA

Brookwood Farms
Harrisburg, PA

Clover Farms Dairy
Reading, PA

Carl Colterayahn Dairy, Inc.
Pittsburgh, PA

Cream-O-Land Dairy
Florence, NJ

Dean Dairy Products Co.
Sharpsville, PA

Dietrich's Milk Products, LLC
Reading, PA

Fairmont Products - (Division of Dean Dairy Products)
Belleville, PA

Fike's Dairy, Inc.
Uniontown, PA

Galliker Dairy Company
Johnstown, PA

Guers Dairy
Pottsville, PA 17901

Harrisburg Dairies, Inc.
Harrisburg, PA

Hershey Foods Corporation
Hershey, PA

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www.pennstate.edu/~dairy

High View, Inc., t/a Vale Wood Farms
Loretto, PA

Kemps Foods, Inc./Crowley Foods, Inc.
Lancaster, PA

Longacre's Modern Dairy, Inc.
Barto, PA

Marburger Farm Dairy, Inc.
Evans City, PA

Meadow Brook Farms Dairy Co.
Pottstown, PA 19464

Pocono Mountain Dairies
Blakeslee, PA

Ritchey's Dairy, Inc.
Martinsburg, PA

Rosenberger's Dairies, Inc.
Hatfield, PA

Ruter Bros. Dairy, Inc.
York, PA

Schneider's Dairy, Inc.
Pittsburgh, PA

Schneider-Valley Farms, Inc.
Williamsport, PA

Turkey Hill Dairy
Conestoga, PA

Turner Dairy Farms, Inc.
Pittsburgh, PA

Tuscan/Lehigh Dairies, L.P.
Lansdale, PA

United Dairy, Inc.
Martins Ferry, OH

University Creamery
University Park, PA

Upstate Farms Cooperative, Inc.
LeRoy, NY

Wawa Dairy, Division of Wawa, Inc.
Wawa, PA

Wengert's Dairy
Lebanon, PA

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Original: 2218

Dairylea

Cooperative Inc. 

(800) 654-8838



DAIRY FARMERS of AMERICA, INC.
- Northeast Area Council
(800) 928-2867

Senate Ag

October 31, 2001

2218

Senator <Name>
Senate Post Office
Main Capitol Building
Harrisburg, PA 17120

Dear Senator < Name>:

We are writing to you to express our opposition to the Pennsylvania Milk Marketing Board's proposal to pool the Class I over order premium. Pooling this premium will reduce the income of our member farms in Pennsylvania. We need your help to stop this pooling proposal.

Dairylea Cooperative and the Northeast Council of Dairy Farmers of America represent more than 2,000 Pennsylvania producers. Through our joint marketing and membership venture, Dairy Marketing Services, we are the largest suppliers of milk to Pennsylvania's Class I (i.e., beverage milk) plants.

Present State regulations, administered by the Milk Marketing Board, result in a premium payment for milk produced in Pennsylvania, sold to Class I plants in Pennsylvania and ultimately sold in Pennsylvania and consumed as a beverage. The premium payment now goes to those that bear the costs of delivering the milk to these Class I plants. The Milk Marketing Board proposes to pool a portion of this premium to farmers that don't deliver to these Class I plants, and don't carry the costs and burden of supplying these plants. This is patently unfair and a "taking" under the Pennsylvania and US Constitutions. Additionally, there has not been sufficient time for all issues to be heard or analyzed.

A full analysis of this proposal will show that pooling this premium will likely:

- ✓ result in a state mandate to tax the earnings of some dairy farmers and redistribute their income to other farmers,
- ✓ reduce the total amount of premiums paid to dairy farmers in Pennsylvania,
- ✓ place Pennsylvania Class I plants at a competitive disadvantage to their competitors in other states,
- ✓ force them to buy more milk from dairy farmers in other states, and,
- ✓ reduce marketing options for Pennsylvania produced milk.

Thank you for your consideration in this matter. Attached is a copy of our response to the Milk Marketing Board's pooling proposal, for your review. Please feel free to contact one of us, or Ed Gallagher, if you have any questions on this matter. Ed can be reached at 1-800-654-8838, ext. 658.

Sincerely,

Dairylea Cooperative Inc.
Clyde Rutherford, President

Dairy Farmers of America
Northeast Area Council
Lew Gardner, Chairman

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

Address:
49 Jameson Road
Canton, New York 13617



Phone: 315-386-8116
315-386-8117
Fax: 315-379-0213

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

Dear Chairperson Minor,

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 in your deliberations.

Sincerely,

Judith A. Aldrich, Director of Information

315-386-8116
315-386-8117
315-379-0213



COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

October 24, 2001

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

CHIEF COUNSEL

Original: 2218

Judith A. Aldrich
Director of Information
Allied Federated Coops Incorporated
49 Jameson Road
Canton, New York 13617

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

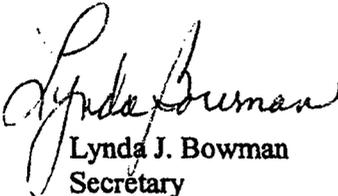
Dear Ms. Aldrich:

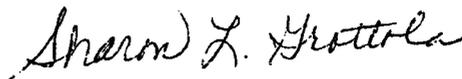
Thank you for your comments regarding the decision of the Pennsylvania Milk Marketing Board to establish a marketwide pool of the mandated over-order premium. You expressed your support of 100% pooling rather than the 45% selected by the Board. As you know, the pooling issue was heavily debated by those in support of a marketwide pool and those opposed to one. 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 a marketwide pool of the mandated over-order premium.

Very truly yours,

Through:


Lynda J. Bowman
Secretary


Sharon L. Grottola
Chief Counsel

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

Original: 2218



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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) 783-6482

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 L. 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