

ATTACHMENT 4

Proposed Language

Attachment # 4
Dean Foods Company FMMO #33 Amended Proposals

Proposal #2 – Cooperative Supply Plant

1. Amend Sec. 1033.7 by revising paragraph (d) (not (d)(1) or (d)(2)) to read as follows:

Sec. 1033.7(d) Pool Plant.

(d) A plant located in the marketing area and operated by a cooperative association if, during the months of August through November 40 percent and during the months of December through July 30 percent or more of the producer milk of members of the association (and any producer milk of non-members and members of another cooperative association which may be marketed by the cooperative association) is delivered to a distributing plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:¹

(1) * * *

(2) * * * (or as amended in Proposal 2 per the hearing notice)

Proposal #3 – Definition of Temporary

1. Amend Sec. 1033.13 by revising paragraphs (d)(1) to read as follows:

Sec. 1033.13 Producer milk.

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of loss of Grade A approval not to exceed 21 days in a calendar year, unless it is determined by the market administrator to be unavoidable circumstances beyond the control of the dairy farmer such as a natural disaster (ice storm, wind storm, flood or fire in which case the market administrator may determine the time of extension granted to the affected farm(s)²) the dairy farmer's milk shall not be

¹ See Brief - paragraphs III. H. 29-31.

² Change TR Page 973 Line 6-14. Reasoning – Support of this language is not meant to penalize dairy farmer, rather ensure that any degraded farms are for the intended purposes of public safety, not a way of avoiding the pooling regulation (TR Page 973 Line 16 – 23.

eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant,³

Proposal #4 – Dairy Farmer for other market provision (Full Year version)

Amend § 1033.12 by adding a new paragraph (b)(5) to read as follows:

§ 1033.12 Producer.

(b) * * *

(5) For any month, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c), if any⁴ pool plant operator or any⁵ cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month or any of the preceding 11 months, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month. The Market Administrator shall have the authority to waive the effects of this provision as to any individual producer who becomes associated with a different handler after being depooled if the Market Administrator determines: (1) that the depooling was not affirmatively approved by the producer; and (2) that the change in shipping and reporting was not the result of a subterfuge undertaken by handlers to avoid the proscriptions of this provision.

Proposal #8 – Dairy Farmer for other market provision (Seasonal version)

Amend § 1033.12 by adding new paragraphs (b)(5) and (6) as to read as follows:

§ 1033.12 Producer.

(b) * * *

(5) For any month of February through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if any⁶ pool plant operator or any⁷ cooperative association caused milk

³ Change TR Page 93 Line 1 – 14, Page 972 Line 17 – Page 973 Line 18. The strike through only represents the language in relation to the hearing notice published in the Federal Register. Dean Foods is not proposing or advocating this language being deleted from the regulation. Dean Foods in this proposal is proposing to leave this section (1033.13 (d)(2)&(3)) unchanged.

⁴ Change TR Page 962 Line 13 – 17. Reasoning – Allowing the to stay might open the door for handlers to shuffle a producer(s) back and forth between report to assist each other in depooling and repooling without implications. The language needs to be as tight as possible because handlers are good at finding the holes (TR Page 983 Line 20 – Page 985 Line 13).

⁵ Change TR Page 962 Line 17 – 21. Reasoning – See footnote#4.

⁶ Change TR Page 967 Line 23 – Page 968 Line 1. Reasoning – See Footnote#4

⁷ Change TR Page 668 Line 2 – Line 42. Reasoning – See Footnote#4.

from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same⁸ month, any of the 3 preceding months, or during any of the preceding months of July through January, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month;

(6) For any month of July through January, any dairy farmer whose milk is received at a pool plant or a cooperative association handler described in § 1000.9(c) if any⁹ pool plant operator or by any¹⁰ cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the month or the preceding month, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month; and

(7) The Market Administrator shall have the authority to waive the effects of paragraphs (5) or (6) of this section as to any individual producer who becomes associated with a different handler after being depooled if the Market Administrator determines: (1) that the depooling was not affirmatively approved by the producer; and (2) that the change in shipping and reporting was not the result of a subterfuge undertaken by handlers to avoid the proscriptions of this provision.

Proposal #9 – Limits on Transportation Credits

Amend proposed § 1033.55 to add a new paragraph (f)

§ 1033.55 Transportation credits.

Preferred Option 1:

(f) If a handler requests transportation credits pursuant to paragraph (b) of this section on bulk milk, no milk from that same farm shall be diverted during that month to a plant located outside the marketing area. For purposes of this paragraph only, a plant located outside the marketing area does not include a plant located in a state that contains any part of the marketing area or a plant in a state immediately adjacent to the marketing area.¹¹

⁸ Stated in Exhibit 33 page 12, was inadvertently not noted as a change. Reasoning – clarifies that the three distinct time periods being talked about.

⁹ Change TR Page 1041 Line 7 – Line 19, 1041 Line 1 – 5. Reasoning – See Footnote#4.

¹⁰ Change TR Page 1041 Line 19 – Line 21, 1041 Line 1 – 5. Reasoning – See Footnote#4.

¹¹ Thus plants located in Illinois, Indiana, Michigan, Kentucky, Ohio, West Virginia, Maryland, Pennsylvania and New York would be exempt from this provision.

Option 2:

(f) If a handler requests transportation credits pursuant to paragraph (b) of this section on bulk milk for which any milk from the same farm or farms is in the same month diverted to a plant located outside the marketing area, the milk for which a transportation credit is requested shall not count as a delivery pursuant to §1033.13(d). For purposes of this paragraph only, a plant located outside the marketing area does not include a plant located in a state that contains any part of the marketing area or a plant in a state immediately adjacent to the marketing area.¹²

¹² Thus plants located in Illinois, Indiana, Michigan, Kentucky, Ohio, West Virginia, Maryland, Pennsylvania and New York would be exempt from this provision.