

UNITED STATES DEPARTMENT OF AGRICULTURE

**HEARING ON PROPOSED AMENDMENTS TO THE
MIDEAST FEDERAL MILK ORDER**

DOCKET NOS. AO-166-A77; DA-08-06

**OPPOSITION OF THE SECRETARY OF AGRICULTURE
TO THE MOTION OF DEAN FOODS COMPANY
AND NATIONAL DAIRY HOLDINGS LLC TO REOPEN HEARING**

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OPPOSITION OF THE SECRETARY OF AGRICULTURE
TO THE MOTION OF DEAN FOODS COMPANY
AND NATIONAL DAIRY HOLDINGS LLC TO REOPEN HEARING

The Secretary of Agriculture, by his undersigned counsel, files this Opposition to the Motion to Reopen Hearing filed on behalf of Dean Foods Company and National Dairy Holdings LLC, dated September 22, 2008.

As was stated in the Opposition to the Motion of Dean Foods Company and National Dairy Holdings LLC filed by counsel for Michigan Milk producers, et al. (Proponents' Opposition), the basis for the Motion to Reopen is the difference in data on Exhibit 5, Request 3-B, placed into the record by the Federal Milk Market Administrator for Order 33 and attachment 4 to Exhibit 12. Counsel for the Secretary concurs that the difference in certain numbers on these exhibits provides no basis for reopening the hearing record.

As stated by proponents' counsel the attachments to Exhibit 12 were made part of the hearing record so that the exhibit was complete. Counsel for Dean Foods, et al. Identified Exhibit 12 and made it a part of the record (TR. pgs. 47-49) without including the attachments. Both the letter, which is Exhibit 12, and the attachments had been posted on the USDA website for a number of weeks prior to the hearing and were available to all participants in the hearing.

Farther, as stated by proponents' counsel exhibit 5, supported by the sworn and cross-examined testimony of the Assistant to the Market Administrator, provides the authoritative data for the record. Any differences in that data and any of the information submitted with the hearing request could have been the subject of cross-examination at the hearing since the hearing request was a document available to all on the agency's website. Be that as it may, any differences in these data are completely immaterial.

For the same reasons set forth in Proponents' Opposition, the Secretary requests that the Motion to Reopen be denied because it is totally unnecessary.

Respectfully Submitted,

By: _____

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