

# Attachment #1

## Dean Foods Company FMMO #30 Amended Proposals

### *Proposal #3 – Dairy Farmer for other markets provision (Full Year version)*

Amend § 1030.12 by adding a new paragraph (b)(5) to read as follows:

#### § 1030.12 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 Sec. 1000.9(c) if any<sup>1</sup> pool plant operator or any<sup>2</sup> 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<sup>3</sup> plant during the month.

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And a conforming change in Sec. 1030.13 (d)(1):<sup>4</sup>

...if a dairy farmer loses producer status under the order in this part (except as a result of a loss of Grade A approval not to exceed 21 days in a calendar year), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production...

<sup>1</sup> Change TR Page 490 Line 3 – 4, Page 513 Line 20 – 22, Page 514 Line 13 – 18. Reasoning – Allowing the to stay might open the door for handlers to shuffle producer back and forth between reports to assist each other in depooling and repooling without implication. The language needs to be as tight as possible because handlers are good at finding the holes (Ms. Ledman TR Page 660 Line 4 – Line 22). TR Page 578 Line 20 – Page 579 Line 14 and Page 609 Line 4 – Page 610 Line 1.

<sup>2</sup> Change TR Page 490 Line 5 – 6, Page 513 Line 22 – 24, Page 514 Line 13 – 18. Reasoning – See Footnote #1. TR Page 578 Line 20 – Page 579 Line 14 and Page 609 Line 4 – Page 610 Line 1.

<sup>3</sup> Change TR Page 490 Line 7 – 9, and Page 513 Line 24 – Page 514 Line 1. Reasoning – Excluding distributing was an oversight when the proposal was submitted, its omission with the split plant provisions would render this language virtually useless as a solution to the problem. TR Page 516 Line 12 – Page 517 Line 10, Page 518 Line 18 – Line 22, Page 553 Line 10 – Page 554 Line 10.

<sup>4</sup> Change TR Page 490 Line 10 – 5. Reasoning – Current language would allow a producer to be pooled for only 2 days out of two months and continue to be pooled. The proposal needs this conforming change to be highly effective, is simply another attempt to close the loopholes referred to in Footnote #1. TR Page 502 Line 23 – Page 503 Line 1, Page 515 Line 9 – 12 and Page 592 Line 25 – Page 595 Line 7.

**Proposal #4 – Dairy Farmer for other markets provision (Seasonal version)**

Amend § 1030.12 by adding a new paragraph (b)(5) and (6) as follows:

**§ 1030.12 Producer.**

\* \* \* \* \*

(b) \* \* \*

(5) For any month of February<sup>5</sup> through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in Sec. 1000.9(c) if any<sup>6</sup> pool plant operator or any<sup>7</sup> 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, any of the 3 preceding months, or during any of the preceding months of July through January<sup>8</sup>, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing<sup>9</sup> plant during the month; and

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(6) For any month of July through January<sup>10</sup>, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in Sec. 1000.9(c) if any<sup>11</sup> pool plant operator or any<sup>12</sup> 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 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<sup>13</sup> plant during the month.

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<sup>5</sup> Change TR Page 494 Line 6 – 7. Reasoning – The purpose was to incentives milk to stay in the pool during the short season. As we more closely studied the marketplace it was decide that the period of July through January more closely resembled the short period than the original proposal. Part the concern is the strong demand for milk prior to the holidays in late December and the strong demand for milk to refill distributing plants for students returning to school in January. We concede that the both months have time of surplus, but it is important that the Secretary also understand both months have times of at least tightness to shortages of supply. Page 520 Line 18 – 22.

<sup>6</sup> Change TR Page 494 Line 8, Page 519 Line 7 – 9. Reasoning – See Footnote #1. TR Page 578 Line 20 – Page 579 Line 14 and Page 609 Line 4 – Page 610 Line 1.

<sup>7</sup> Change TR Page 494 Line 9 – 10, Page 519 Line 10 – 12. Reasoning – See Footnote #1. TR Page 578 Line 20 – Page 579 Line 14 and Page 609 Line 4 – Page 610 Line 1.

<sup>8</sup> Change TR Page 494 Line 10 – 12, Page 519 Line 12 – 14. Reasoning – See Footnote #6. TR Page 520 Line 23 – Page 521 Line 4.

<sup>9</sup> Change TR Page 494 Line 12 – 14, Page 519 Line 16 – 18. Reasoning – See Footnote #3. TR Page 520 Line 6 – 12.

<sup>10</sup> Change TR Page 494 Line 15 – 16, Page 519 Line 20 – 22. Reasoning – See Footnote #6. TR Page 520 Line 23 – Page 521 Line 4, also see footnote #8.

<sup>11</sup> Change TR Page 494 Line 17 – 18, Page 519 Line 21 – 24. Reasoning – See Footnote #1. TR Page 578 Line 20 – Page 579 Line 14.

<sup>12</sup> Change TR Page 494 Line 18 – 20, Page 519 Line 24 – Page 520 Line 1. Reasoning – See Footnote #1. TR Page 578 Line 20 – Page 579 Line 14.

<sup>13</sup> Change TR Page 494 Line 20 – 22, Page 520 Line 1 – 3. Reasoning – See Footnote #3. TR Page 520 Line 6 – 12, Page 553 Line 10 – Page 554 Line 10.

## Proposal #5 – Gradual Repooling Provision

Amend Section 1030.13 by adding a new paragraph (f) to read as follows:

### § 1030.13. Producer Milk

\* \* \* \*

(f) The quantity of milk reported by a handler pursuant to Sec. 1030.30(a)(1) and/or Sec. 1030.30(c)(1),<sup>14</sup> may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool by the market administrator. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to Sec. 1000.44(a)(3)(v) and Sec. 1000.44(b),<sup>15</sup> The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to Sec. ----- .13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 115 percent limitation;

(3) The market administrator may waive the 115 percent limitation utilizing;

(i) For a new handler on the order,<sup>16</sup> or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) The market administrator may increase or decrease the applicable limitation for a month consistent with the procedures in Sec. 1030.7(g); and

(5) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

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Deleted: (3)(v)

Deleted: subject to the provisions of Sec. 1030.13(f)(3),

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## Proposal #6 – Touch-Base Provision

Amend §1030.13 by adding new paragraphs (d)(1), through (4) and redesignating paragraph (d)(4) as paragraph (d)(5), to read as follows:

### § 1030.13. Producer Milk

\* \* \* \* \*

(d) \* \* \* \* \*

<sup>14</sup> Change TR Page 495 Line 2 – 4, Page 522 Line 7 – 9. Reasoning – The intent of this proposal was to limit milk coming back into the pool following depooling. With these time period specified as noticed it would have made it difficult to get milk into the pool at a part of the tightest time of the year. This needed to be removed to make it equally challenging to return depooled milk in all times of the year as opposed to just during the tight period.

<sup>15</sup> Change TR Page 495 Line 4 – 5, Page 522 Line 10 – 12. Reasoning – This reference does not exist. TR Page 522 Line 13 – 14.

<sup>16</sup> Change TR Page 495 Line 4 – 7, Page 522 Line 15 –Page 523 Line 5. Reasoning – It is almost a circular reference and is unnecessary.

(1) Milk of a dairy farmer shall not be eligible for diversion ~~unless~~<sup>17</sup> 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 a loss of Grade A approval ~~not to exceed 21 days in a calendar year~~<sup>18</sup>), the dairy farmer's milk shall not be eligible for diversion ~~unless~~<sup>19</sup> milk of the dairy farmer has been physically received as producer milk at a pool plant ~~during the month~~<sup>20</sup>;

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(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of July through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through June if the requirement of paragraph (d)(2) of this section (Sec. 1030.13) in each of the prior months of July through November is not met, except in the case of dairy farmer who marketed no Grade A milk during each of the prior months of July through November.

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Deleted: (4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in Sec. 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 65 percent in each of the months of July through November and 75 percent in each of the months of December through June.

~~Proposal #6 (b) (Kinser Testimony) – Proposal #8 (Christ Testimony)~~<sup>22</sup>

~~§ 1030.7. Producer Milk~~

~~\*\*\*\*\*~~

~~(e)\*\*\*\*\*~~

~~(1)\*\*\*~~

~~(v) Qualifying shipments by plants located outside the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(i) of this section.~~

~~(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the~~

<sup>17</sup> Change TR Page 835 Line 25 – Page 836 Line 5. Reasoning – This was made to accommodate some of the concerns of the opponents to help this proposal be reasonable in the eyes of the opponents and the Secretary. This change slightly dilutes the power of the proposal, while still accomplishing the intent.

<sup>18</sup> Change TR Page 495 Line 12 – 14, Page 527 Line 6 – 9. Reasoning – See Footnote #4. TR Page 502 Line 23 – Page 503 Line 11, Page 503 Line 1 and Page 515 Line 9 – 12 and Page 592 Line 25 – Page 595 Line 7.

<sup>19</sup> Change TR Page 836 Line 17 – Line 25. Reasoning – See Footnote #17. TR Page 836 Line 25 – Page 837 Line 5

<sup>20</sup> Change TR Page 836 Line 17 – Line 25. Reasoning – See Footnote #17. TR Page 836 Line 25 – Page 837 Line 5

<sup>21</sup> Change TR Page 495 Line 15 – 16, Page 527 Line 17 – 18. Reasoning – If the Secretary would adopt the prior language we do not believe this language for this order would currently be necessary. TR Page 527 Line 18 – 22.

<sup>22</sup> Original Testimony was offered by Mr. Kinser and Mr. Christ (TR Page 495 Line 17 – Page 496 Line 13 and TR Page 530 Line 20 – Page 531 Line 25) this testimony position was later amended (TR Page 837 Line 6 – Page 838 Line 8) to join proposal #1 and #2. There was question by Ms Warlick (TR Page 540 Line 23 – Page 542 Line 14), questioning by Mr. Gulden (TR Page 602 Line 18 – Page 603 line 22), and clarification by Mr. English (TR Page 607 Line 17 – Page 608 Line 6), that is now mute given the change presented Mr. Christ's final statement. This proposal and any support of such a position is being withdrawn (See Dean Foods' Post-Hearing Brief at 18).

~~Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to § 1000.9(c) or § 1030.13(c) to plants described in paragraphs (a), (b) and (c) of this section. The operator of a supply plant located outside the area described above cannot include such shipments as qualifying shipments. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the area described above.~~