

Attachment #2

Summary of Dean Foods Proposals as Modified

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

The purpose of Proposal #3 is to increase the cost portion of the cost-benefit analysis made in determining whether to pool or depool since the present cost is obviously too low to discourage depooling. The costs of depooling and repooling are increased by requiring all of a producer's milk to have been pooled the prior 11 months or by making actual shipments to a pool distributing plant thus demonstrating performance to the fluid market. The end result should be that handlers will take most seriously the question of whether to depool. Importantly, however, this provision allows for immediate repooling so long as the producer's milk demonstrates an actual ability to serve the Class I market by shipping milk to a distributing plant 10 days during the month.

The present requirements to be pooled are:

- 1) One day's production of the dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farm is a producer, commonly referred to as one-day touch base provision (§ 1030.13 (d) (1)).
- 2) The producer must be pooled on a handlers' pool report. To qualify for this, the handler must do one of the following:
 - a. Ship the milk into a distributing plant.
 - b. Receive the milk into a qualified pool plant.
 - c. In the case of a cooperative, file the producer on their 9(c) report.

If a producer is continuously pooled (in any Federal Order) this provision will have NO effect on a handler pooling that producer. If a producer is depooled (not pooled on any Federal Order), to return to the present pooling requirements, Proposal #3 would require at least 10 days production be delivered to a pool distributing plant for the current month plus 10 months (11 months total).

Analysis That Would Be Performed By A Handler Seeking To Pool A Producer On Order 30 If Proposal #3 Were Adopted (See Appendix A).

1. Was all the producer's milk received as producer milk on a Federal Order this month?
 - Yes – Continue to Question 2.
 - No – Pooling requires 10 days production delivered to a FMMO #30 pool distributing plant.
2. Was all the milk received as producer milk on a Federal Order the prior 11 months?
 - Yes – The producer's milk can be pooled according to present requirements – there are NO implications of this provision.

- No – Pooling requires 10 days production delivered to a FMMO #30 pool distributing plant.

Example (See Appendix A).

April – Depool a producer.

May – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

June – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

July – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

August – Pooled all that producer’s milk on FMMO #32 (or any Federal order as far as that goes).

September – Pooled all that producer’s milk on FMMO #32 (or any Federal order as far as that goes).

October – Pooled all that producer’s milk on FMMO #32 (or any Federal order as far as that goes).

November – Pooled all that producer’s milk on FMMO #32 (or any Federal order as far as that goes).

December – Pooled all that producer’s milk on FMMO #32 (or any Federal order as far as that goes).

January – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

February – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

March – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

April – Milk may be pooled according to present requirements.

May – until first month of repool following next depool – Pool – Milk may be pooled according to present requirements.

Summary of why this works.

Milk was not in pool April – Triggering the 10-day shipping requirement.

When milk is pooled on another FMMO – FMMO #30 can’t do anything about that.

This provision recognizes milk pooled on another FMMO as being pooled milk and this effectively satisfies the 10-day shipping requirement for the month.

The combination of 10 days shipments with the balance pooled and pooling the milk on FMMO 32 (or any Federal order as far as that goes) met the 11 months requirement, so the next April the handler can pool as if the provision didn’t exist.

At April of the next year the handler has demonstrated his ability to adequately serve the market.

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

Again the purpose is to increase the cost portion of the cost-benefit analysis made in determining whether to pool or depool, but the cost portion is not increased as much as in preferred Proposal #3. Thus this is an alternative proposal to Proposal #3. The cost of depooling and repooling are increased by requiring all of a producer's milk to have been pooled in different time periods depending on the current calendar month or make shipments to a pool distributing plant. The end result should be that handlers will take more seriously the question of whether to depool. Importantly, however, this provision permits immediate repooling so long as the producer's milk demonstrates an actual ability to serve the Class I market by shipping milk to a distributing plant 10 days during the month. While this proposal is more complicated than Proposal #3 in explanation, it is actually more flexible for the handler.

The present requirements to be pooled are:

- 1) One day's production of the dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farm is a producer, commonly referred to as one-day touch base provision (§ 1030.13 (d) (1)).
- 2) The producer must be pooled on a handlers' pool report. To qualify for this, the handler must do one of the following:
 - a. Ship the milk into a distributing plant.
 - b. Receive the milk into a qualified pool plant.
 - c. In the case of a cooperative, file the producer on the 9(c) section of their report.

If a producer is continuously pooled (in any Federal Order) this proposed provision will have NO effect on that producer. If milk is depooled in the month of June it will have NO effect on that producer. If a producer is depooled (not pooled on any Federal Order), to return to present pooling requirements, this provision would require at least 10 days production be delivered to a pool distributing plant for the current month and could require up to 11 depending on the last month depooling occurred.

Analysis That Would Be Performed By A Handler Seeking To Pool A Producer On Order 30 If Proposal #4 Were Adopted (See Appendix B).

1. Was all the producer's milk received as producer milk on a Federal Order this month?
 - Yes – Continue to Question 2.
 - No – Pooling requires 10 days production delivered to a FMMO #30 pool distributing plant.
2. Are you filing a report for any month July through January?
 - Yes – The producer's milk can be pooled according to present requirements – there are NO implications of this provision.
 - No – Continue to Question 3.
3. Was all the milk received as producer milk on any Federal Order each month the prior July through January?
 - Yes – Continue to Question 4.
 - No – Pooling requires 10 days production delivered to a FMMO #30 pool distributing plant.

4. Was all the milk received as producer milk on any Federal Order the each of the prior 3 months?
- Yes – The producer’s milk can be pooled according to present requirements – there are NO implications of this provision.
 - No – Pooling requires 10 days production delivered to a FMMO #30 pool distributing plant.

Example (See Appendix B).

February – Depool a producer.

March – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

April – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

May – 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

June – If each month the prior July – January all the producer milk was pooled then Milk may be pooled according to present requirements. If all the producer milk was not pooled on any FMMO each month the prior July – January then 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped. Or, the producer can be depooled with no implication.

July – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

August – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

September – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

October – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

November – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

December – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

January – Milk may be pooled according to present requirements decision to not do so will effect next February – June pooling requirements.

February – April – If each month the prior July – January all the producer milk was pooled then Milk may be pooled according to present requirements. If all the producer milk was not pooled on any FMMO each month the prior July – January then 10 days delivery of that producer to a FMMO #30 pool distributing plant – balance of producer’s milk pooled regardless of where shipped.

June – See June above.

Summary of why this works.

The month that a handler depools effects what is required to return to present pooling standard.

The month that a handler wants to return to the pool effects what is required to return to present pooling standard.

When milk is pooled on another FMMO – FMMO #30 can't do anything about that.

This provision recognizes milk pooled on another FMMO as being pooled milk and this effectively satisfies the 10-day shipping requirement for the month.

June is a free month, meaning that if you depool in June there is no effect on any other month's pooling decision.

While this might look complicated there is no reason to believe the handlers will not learn how to work it. Look at past handler performance when there was economic gain (i.e. California pooling, depooling, distant milk pooling). Handlers have a track record of being able to clearly interpret and apply the rules to their maximum benefit.

Proposal # 5 – Gradual Repooling Provision

The purpose is to increase the cost portion of the cost-benefit analysis made in determining whether to pool or depool, but not by as much as Proposals #3 or 4. Thus this is an alternative proposal to Proposals #3 and 4. This increases the cost by limiting the handler's ability to increase the milk actually reported on their pool report, with the exception of milk shipped to a distributing plant. The end result should be that handlers will take more seriously the question of whether and how much milk to depool. Importantly, however, this provision permits immediate repooling so long as the milk demonstrates an actual ability to serve the Class I market by shipping milk to a distributing plant. Proposal #3 and #4 monitors performance on a producer by producer basis. This proposal monitors performance on a handler level overall.

The present requirements to be pooled are:

- 1) One day's production of the dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farm is a producer, commonly referred to as one-day touch base provision (§ 1030.13 (d) (1)).
- 2) The producer must be pooled on a handlers' pool report. To qualify for this, the handler must do one of the following:
 - a. Ship the milk into a distributing plant.
 - b. Receive the milk into a qualified pool plant.
 - c. In the case of a cooperative, file the producer on the 9(c) section of their report.

If a producer is continuously pooled (in any Federal Order) this provision will have NO effect on a handler pooling that producer. If a handler depools (not pooled on any Federal Order) some milk, the next month the handler will only be able to pool 115% of the prior month's pooled pounds, with a couple exceptions. The handler will be able to increase its pooled pounds unlimited if the shipments are all to distributing plants. Milk that has been pooled on a different FMMO for the previous six months can be added to the report without being included in the 115% cap.

Analysis That Would Be Performed By A Handler Seeking To Pool On Order 30 If Proposal #5 Were Adopted (See Appendix C).

1. Is the amount of milk you wish to pool greater than 115% of the prior month FMMO #30 pooled pounds?
 - Yes – Continue to Question 2.
 - No – The handler can pool according to present requirements – there are NO implications of this provision.
2. If you have any producers who have been pooled on another FMMO or any combination of FMMOs for 6 consecutive months it can be subtracted. With that milk removed is the amount of milk you wish to pool greater than 115% of the prior month FMMO #30 pooled pounds?
 - Yes – Continue to Question 3.
 - No – The handler can pool according to present requirements – there are NO implications of this provision.
3. With the milk that remains, did you have any milk that was not physically received at a pool distributing plant?
 - Yes – This portion of milk will have to be reduced to the level that, when added to the pounds received at a pool distributing plant will not exceed 115% of the prior month's pool report. This could require going in and pooling certain days of individual producers and not pooling the balance.
 - No – The handler can pool according to present requirements – there are NO implications of this provision.

Example (See Appendix C).

Assume 100 Million pound per month handler, with no monthly variation.

March – Depool 50 million pounds, which means you pool 50 million pounds.

April – Without looking at milk movements 57.5 (1.15×50) can be pooled.

However, if 65 million pounds went to a pool distributing plant, the handler would be able to pool all 65 million pounds, even though it is in excess of 115% of the prior month, because the milk was received at a pool distributing plant. The balance of 35 million pounds will have to be pool on another order or not pooled at all.

May – Without looking at milk movements 74.75 (1.15×65) can be pooled.

However, if 12 million pounds had been pooled on FMMO #33 for the past 6 months (or any Federal order as far as that goes) and now the handler is going to pool that on FMMO 30 that can be added. This would allow a total of 86.75 (74.75 plus 12) million pounds to be pooled, even though it is in excess of 115% of the prior month, because the milk had been pool for the six consecutive prior months on a Federal Order. The balance of 13.25 million pounds will have to be pool on another order or not pooled at all.

June – Without looking at milk movements 99.76 (1.15×86.75) can be pooled.

However, if 12.25 million pounds had been pooled on FMMO #33 for the past 6 months (or any Federal order as far as that goes) and now the handler is going to pool that on FMMO 30 that can be added. This would allow a total of 87 (74.75 plus 12.25) million pounds to be pooled, even though it is in

excess of 115% of the prior month, because the milk had been pool for the six consecutive prior months on a Federal Order. The balance of .24 million pounds will have to be pool on another order or not pooled at all.

July – Without looking at milk movements 114.72 (1.15 X 99.76) can be pooled. However, if the handler only has 100 million pounds then they will be able to pool all their milk in a normal fashion, with no implications of this provision.

Summary of why this works.

The amount of milk pooled effects how much milk can be pooled the following month. The amount of milk pooled/depooled effects how much time it will take to return to a 100% pooled status.

When milk is pooled on another FMMO – FMMO #30 can't do anything about that.

This provision recognizes milk pooled on another FMMO as being pooled milk as long as it has been pooled for the six prior months.

Proposal # 6 – Touch Base Provision

The purpose of this Proposal is to require handlers to demonstrate that they have the ability to serve the Class I market. This proposal is a complement to Proposal #3 (alternatively, Proposal #4 or #5), or if those are rejected this proposal could stand on its own. The end result is that handlers will be better prepared to ship milk to the fluid market as needed. This will increase the current “one-day touch base” to two days per month in the short season and two days every month if the prior season was missed.

Presently, one day's production of the dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farm is a producer, commonly referred to as one-day touch base provision (§ 1030.13(d)(1)). This is also referred to as “once and done,” meaning that once one days' production is received in any pool plant the producer could be diverted to non-pool plant for the rest of the producer's existence (Tr. 712:5-713:15 [Paul Kurburz]). This proposal would require two days milk production to be received into a pool plant from July to November. In the event that two days are not received for each of those months, two days' production would be required in the remaining months. It further requires two days' production if a producer lost association with the pool for either depooling or associating with a different Federal Order. Keeping in mind that a pool plant could be as simple as a silo at a cheese plant designated as such.

Analysis That Would Be Performed By A Handler Seeking To Pool A Producer On Order 30 If Proposal #6 Were Adopted (See Appendix D).

1. Are you filing a report for any month July through November?
 - Yes – At least 2 days' milk production must be received into a pool plant.
 - No – Continue to Question 2.
2. Was the producer pooled on Order 30 the prior month?
 - Yes – Continue to Question 3.
 - No – At least 2 days' milk production must be received into a pool plant.

3. Was at least 2 days' milk production received into a pool plant each month for the prior July through November?
 - Yes – no milk required at a pool plant to pool.
 - No – At least 2 days' milk production must be received into a pool plant.

Example (See Appendix D).

July – November – At least 2 days milk production must be received into a pool plant or depool.

December – June – If each month during the prior July through November at least 2 days' milk production was received into a pool plant and the producer was pooled on Order #30 the prior month, no shipments are required to pool, otherwise at least 2 days' milk production must be received into a pool plant or depool.

Summary of why this works.

Any month July through November at least two days' milk production must be received into a pool plant or that producer has to be depooled, or pooled on another Federal Order. If during the prior July through November at least two days' milk production was not received into a pool plant in each month then at least two days' milk production must be received into a pool plant or that producer has to be depooled, or pooled on another Federal Order.

If the producer is pooled on another Federal Order in order to return to FMMO #30 at least two days' milk production must be received into a pool plant or that producer has to be depooled.

If the producer has been depooled in order to return to FMMO #30 at least two days milk production must be received into a pool plant or that producer has to be depooled.

This mildly increases the stakes for depooling a producer.

Most importantly it ensures that milk is being received into pool plants from which shipments can be made to the Class I market.