



May 1, 2007

**VIA E-MAIL  
VIA FEDERAL EXPRESS**

Ms. Dana Coale  
Deputy Administrator,  
USDA/AMS/Dairy Programs  
Room 2968-S, Stop 0225  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-0255

**Re: Proposals for potential public hearing regarding order regulations for the Southeast.**

Dear Ms. Coale:

As a follow-up to my letter to you on April 17, 2007, Dean Foods Company requests that in any upcoming hearing involving the Southeast including Federal Orders 5, 6 and/or 7, that the following proposals also be considered:

The purpose of proposals 1 and 2 is to ensure that the transportation credit funds are used for the purpose of genuinely moving needed milk to the fluid milk market and to discourage economic incentives (existing or those which may be created by the new proposals submitted by others, if adopted) to simply pool milk and not consistently deliver that milk to the fluid milk market. The provision is a "net shipments" provision like the one adopted by the Secretary in the then Texas order (7 C.F.R. 1126) in 1988.

1. **Amend 7 C.F.R. § 1005.82(c)(2) Payments from the transportation credit balancing fund – as follows:**

a. **Renumber subsection 1005.82(c)(2)(iv) as 1005.82(c)(v) and insert a new subsection 1005.82(c)(2)(iv) that reads as follows:**

The amount of milk to which a credit would be applicable during each of the credit periods shall be offset by the amount of milk that a handler or affiliate of the handler causes to be received at plants located outside the marketing area with such offset to be applied in sequence beginning with the plant at which the greatest credit would apply.

2. Amend 7 C.F.R. § 1007.82(c)(2) **Payments from the transportation credit balancing fund** – as follows:

a. Renumber subsection 1007.82(c)(2)(iv) as 1007.82(c)(v) and insert a new subsection 1007.82(c)(2)(iv) that reads as follows:

The amount of milk to which a credit would be applicable during each of the credit periods shall be offset by the amount of milk that a handler or affiliate of the handler causes to be received at plants located outside the marketing area with such offset to be applied in sequence beginning with the plant at which the greatest credit would apply.

The purpose of proposals 3 – 5 is to lower the touch base requirement. While on the surface this may appear counter to Dean's past position, the touch base requirements seem to create an added incentive for milk to move unnecessarily. Rather, Dean believes the diversion limit should require actual deliveries of the milk and this proposal would do so more effectively.

3. Amend 7 C.F.R. § 1005.13(d)(1) **Producer Milk**, delete subsection (2) and renumber remaining subsections:

(1) In any month, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

4. Amend 7 C.F.R. § 1006.13(d)(1) **Producer Milk**– as follows:

(1) In any month, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

5. Amend 7 C.F.R. § 1007.13(d) (1) **Producer Milk**, delete subsection (2) and renumber remaining subsections:

(1) In any month, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

The purpose of proposals 6 – 8 is to lower the diversion limits. Consistent with comments made concerning proposals 3-5, Dean believes the diversion limit should require actual deliveries of the milk. It is our belief that the milk supply in the Southeast is deficit and will only worsen, thus the diversion limitation should reflect a deficit market.

6. Amend 7 C.F.R. § 1005.13(d)(3) and (4) **Producer Milk**– as follows:

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 10 percent during the months of July through November, 25 percent during the month of December, 15 percent during the months of January and February, and 35 percent during the months of March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the

month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested ;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 10 percent during the months of July through November, 25 percent during the month of December, 15 percent during the months of January and February, and 35 percent during the months of March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

7. Amend 7 C.F.R. § 1006.13(3) and (4) **Producer Milk**-- as follows:

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 15 percent during the months of July through November, 20 percent during the months of December through February, and 35 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 15 percent during the months of July through November, 20 percent during the months of December through February, and 35 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to §1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in §1000.9(c);

8. Amend 7 C.F.R. § 1007.13(d)(3) and (4) **Producer Milk**-- as follows:

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 10 percent during the months of July through November, 25 percent during the month of December, 15 percent during the months of January and February, and 35 percent during the months of March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 10 percent during the months of July through November, 25 percent during the month of December, 15 percent during the months of January and February, and 35 percent during the months of March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

If the Secretary should agree with our idea to require actual deliveries of the pooled milk with tight diversion limits, Dean Foods would support the idea of adding January and February as months in which Transportation Credits are paid and leave June to the discretion of the Market Administrator. We would prefer to see more of these "real delivery" rules in place before we can support permitting Transportation Credits to be paid for the months of March through May. We think such Transportation Credits could be acceptable if the diversion limits prove to be appropriate.

Finally, knowing that there is an industry request to increase the Class I differentials, we feel compelled to request as Proposal 9 that there be serious consideration given to having any increase in Class I differentials be applied toward a fluid market differential paid directly and *only to the producers actually delivering the milk to the fluid milk distributing plant*. Such funds would be paid to farmers to offset the cost of serving the fluid market and not be diluted with market wide pooling.

If you or your staff has any questions, please do not hesitate to contact me at 214-721-1158 or Dean Foods' counsel, Chip English at 202-508-4159.

Respectfully submitted,



Evan Kinser  
Director, Dairy Policy and Commodity  
Procurement

EWK

cc: Mr. Ernest Yates  
Mr. Chip English