

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In the Matter of:

**MILK IN THE APPALACHIAN AND) DOCKET NOS. AO-388-A17 and
SOUTHEAST MARKETING AREAS) AO-366-A46; DA-05-06**

**COMMENTS AND EXCEPTIONS
TO
TENTATIVE PARTIAL DECISION**

SUBMITTED BY

DEAN FOODS COMPANY

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**COMMENTS AND EXCEPTIONS TO
TENTATIVE PARTIAL DECISION
FILED ON BEHALF OF DEAN FOODS COMPANY**

Dean Foods Company files these comments and exceptions to the Secretary's Tentative Partial Decision (71 Fed. Reg. 54117-54134 (September 13, 2006)) regarding the transportation credit balancing fund provisions of the Appalachian and Southeast marketing orders. Dean applauds the Secretary's reasoned decision-making in concluding properly that the pooling of diverted milk arising from supplemental milk supplies receiving transportation credits results in unwarranted lowering of the blend price to producers who regularly and consistently supply the Class I needs. Indeed such activities give rise to disorderly marketing conditions. Dean further commends and supports the Secretary's decision to take action to remedy such problems through eliminating milk receiving supplemental transportation payments from the calculation to determine the amount of milk that can be diverted on a handler's pool report. With the Secretary's aggressive action to correct this abusive practice, Dean can endorse the action taken by the Secretary in adopting Proposals 1 and 3. Dean believes the collective and connected action is consistent with the Secretary's Congressional command to maintain orderly marketing conditions.

Dean agrees with the Secretary's Findings [71 Fed. Reg at 54130 - 54132] and finds them rich with facts in clarifying the intent of the provisions of the Orders as well as the interpreting the record to reveal the need for action. Specifically, Dean concurs with the Secretary's judgment to take action on the underlying intent of Dean's Proposal 4 to limit the pooling of additional surplus milk on the Order through the diversion process. Dean concurs with the Secretary's conclusion that Proposal 4 was an indirect

approach to remedying the concern, while the Secretary's decision is both direct and concise at getting at the concerns Dean raised. The direct approach is simpler, clearer and better than Dean's proposed indirect approach and should be maintained in any Final Decision. Dean notes that when evaluating the language for both §§ 1005.13(d)(3) and 1007.13 (d)(3), the language includes a semicolon in Order 7 instead of a comma for Order 5 preceding the new language beginning with "excluding..." Thus, Dean invites the Secretary to change the semicolon to a comma for Order 7, and confirm that the overall language correctly accomplishes the intent of the decision. In his Final Decision on this matter, the Secretary can and should reiterate his conclusions regarding disorderly conditions -- diverting unnecessary milk that results from supplemental transportation payments from the Southeast and Appalachian orders leads to disorderly marketing. Ample record evidence supports this conclusion. In being supportive of the Secretary's action to directly address these conditions, Dean is not abandoning its support of Proposal 5.

As to Proposals 1 and 3, Dean sees them as connected and is supportive of the Secretary's findings on these proposals in light of action taken on the intent of Proposal 4. As voiced in both testimony and brief Dean [71 Fed. Reg. at 54122] supported Proposal 3 with two concerns. The Secretary in this decision has suitably dealt with the concern of pooling abuse. As to its second concern, Dean appreciates the Secretary's detailed discussion and analysis about the costs and reimbursements for hauling supplemental milk. It would be unfortunate to move forward with this decision and learn that a loophole was somehow created in cost coverage that allowed a new game to be played creating new and different disorderly marketing conditions. On the surface it

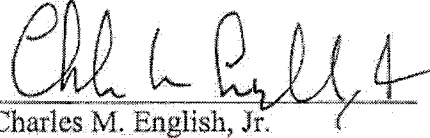
would appear that care has been taken to limit such risk, yet Dean reserves the right to monitor market conditions and handlers' behavior and return to the Secretary requesting re-evaluation of actual costs relative to reimbursement levels. Thus, Dean would urge the Secretary to reiterate the rationale [71 Fed. Reg. at 54128] for concluding that care was taken to reimburse only a portion of the supplemental hauling costs and the Decision is not intended to provide full compensation (or more) for such haul.

With the Secretary's action to address pooling abuse and a methodology to provide for hauling rate adjustments to reflect changing fuel costs, Dean supports the Secretary's action to increase the maximum assessment on Class I milk to provide for a fully funded transportation credit balancing fund. As stated in the Secretary's findings, the record was clear that the current assessment level is insufficient to provide for the intended transportation credit. Furthermore, the acceptance of Proposal 3 is likely to increase the funds needed to cover requested credits. Thus, in absence of action to modify the maximum assessment no real change can occur. While, Dean appreciates that action has been taken to limit abuse and care was taken to address cost and the level of reimbursement, it urges the Market Administrators to keep the assessment as low as possible to limit any excess dollars in the fund. The demand for milk is not so strong that any and all dollars can be demanded of the marketplace and consumers without negative implications. Dean feels the market conditions warrant the change and are completely comfortable communicating this message to our customers and consumers. In return we urge the Secretary to be vigilant in recognizing the competitive nature of the beverage marketplace in which milk must compete.

Dean Foods Company appreciates that the Secretary took seriously its analysis and conclusion about the plight of the dairy farmers consistently serving the Southeast and Appalachian marketing areas. The aggressive action by the Secretary speaks volumes about the need for clear action to correct market loopholes. It is with this clear statement by the Secretary we are supportive of the other actions taken by the Secretary.

Thank you for recognizing the Sick Man of the Dairy Industry, referenced in Dean's original brief, and providing for a strong dose of medicine. Hopefully this action will bring healing and health in short order.

Respectfully submitted,



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