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

Garrett B. Stevens
Office of the General Counsel
United States Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250-1417
(202) 720-5707 (Office)
(202) 690-4299 (Fax)
Garrett.stevens@usda.gov
Attorney for the United States Department of Agriculture
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: _____________________________
Garrett B. Stevens
Office of the General Counsel
United States Department
of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250-1417
(202) 720-5707 (Office)
(202) 690-4299 (Fax)
Attorney for the United States Department
of Agriculture
cc: Judge Peter M. Davenport (via e-mail)  
Erin C. Taylor (via e-mail)  
Bill Richmond (via e-mail)  
Charles M. English, Jr., Esquire (via e-mail)  
Marvin Beshore, Esquire (via e-mail)  
John H. Vetne, Esquire (via e-mail)  
Ben Yale, Esquire (via e-mail)  
Elvin Hollon (via e-mail)  
Carl Rasch (via e-mail)  
Joe Weis (via e-mail)  
Gary Schmiesing (via e-mail)