

106TH CONGRESS
1ST SESSION

H. R. 1604

To reauthorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1999

Mr. HUTCHINSON (for himself, Mr. ETHERIDGE, Mr. MCHUGH, Mr. BALDACCI, Mr. SWEENEY, Mr. BLUNT, Mr. BOEHLERT, Mr. BURR of North Carolina, Mr. BACHUS, Mr. CALLAHAN, Mr. EVERETT, Mr. CRAMER, Mr. RILEY, Mr. BERRY, Mr. DICKEY, Mr. SNYDER, Ms. DELAURO, Mr. GEJDENSON, Mrs. JOHNSON of Connecticut, Mr. LARSON, Mr. MALONEY of Connecticut, Mr. CASTLE, Ms. BROWN of Florida, Mr. BOYD, Mr. CANADY of Florida, Mr. FOLEY, Mrs. MEEK of Florida, Mrs. THURMAN, Mr. BARR of Georgia, Mr. BISHOP, Mr. CHAMBLISS, Mr. COLLINS, Mr. DEAL of Georgia, Mr. ISAKSON, Mr. KINGSTON, Mr. LEWIS of Georgia, Ms. MCKINNEY, Mr. NORWOOD, Mr. FLETCHER, Mr. LEWIS of Kentucky, Mr. LUCAS of Kentucky, Mr. WHITFIELD, Mr. BAKER, Mr. COOKSEY, Mr. JEFFERSON, Mr. JOHN, Mr. MCCRERY, Mr. TAUZIN, Mr. CAPUANO, Mr. MCGOVERN, Mr. NEAL of Massachusetts, Mr. OLVER, Mr. BARTLETT of Maryland, Mr. EHRLICH, Mr. GILCHREST, Mr. HOYER, Mrs. MORELLA, Mr. WYNN, Mr. ALLEN, Ms. DANNER, Mrs. EMERSON, Mr. HULSHOF, Ms. MCCARTHY of Missouri, Mr. SKELTON, Mr. TALENT, Mr. PICKERING, Mr. SHOWS, Mr. TAYLOR of Mississippi, Mr. THOMPSON of Mississippi, Mr. WICKER, Mr. BALLENGER, Mrs. CLAYTON, Mr. COBLE, Mr. HAYES, Mr. JONES of North Carolina, Mr. MCINTYRE, Mrs. MYRICK, Mr. PRICE of North Carolina, Mr. TAYLOR of North Carolina, Mr. WATT of North Carolina, Mr. BASS, Mr. ANDREWS, Mr. FRANKS of New Jersey, Mr. HOLT, Mr. LOBIONDO, Mrs. ROUKEMA, Mr. SAXTON, Mr. ACKERMAN, Mr. CROWLEY, Mr. ENGEL, Mr. FORBES, Mr. FOSSELLA, Mr. GILMAN, Mr. HINCHEY, Mr. HOUGHTON, Mrs. KELLY, Mr. KING, Mr. LAFALCE, Mr. LAZIO, Mrs. LOWEY, Mr. McNULTY, Mr. MEEKS of New York, Mr. OWENS, Mr. QUINN, Mr. RANGEL, Mr. REYNOLDS, Ms. SLAUGHTER, Mr. TOWNS, Mr. WALSH, Mr. LATOURETTE, Mr. COBURN, Mr. DOYLE, Mr. ENGLISH, Mr. GOODLING, Mr. GREENWOOD, Mr. HOEFFEL, Mr. HOLDEN, Mr. KANJORSKI, Mr. KLINK, Mr. MASCARA, Mr. PETERSON of Pennsylvania, Mr. PITTS, Mr. SHERWOOD, Mr. SHUSTER, Mr. KENNEDY of Rhode Island, Mr. WEYGAND, Mr. CLYBURN, Mr. SPRATT, Mr.

SPENCE, Mr. BRYANT, Mr. GORDON, Mr. HILLEARY, Mr. JENKINS, Mr. TANNER, Mr. BENTSEN, Mr. GREEN of Texas, Mr. HALL of Texas, Ms. JACKSON-LEE of Texas, Mr. LAMPSON, Mr. RODRIGUEZ, Mr. SANDLIN, Mr. STENHOLM, Mr. TURNER, Mr. BATEMAN, Mr. BOUCHER, Mr. GOODE, Mr. PICKETT, Mr. SISISKY, Mr. WOLF, Mr. BLILEY, Mr. SCOTT, Mr. SANDERS, Mr. MOLLOHAN, Mr. RAHALL, and Mr. WISE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reauthorize, and modify the conditions for, the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact.

1 *Resolved by the Senate and House of Representatives*
 2 *of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dairy Consumers and
 5 Producers Protection Act”.

6 **TITLE I—NORTHEAST**
 7 **INTERSTATE DAIRY COMPACT**

8 **SEC. 101. NORTHEAST INTERSTATE DAIRY COMPACT.**

9 Section 147 of the Agricultural Market Transition
 10 Act (7 U.S.C. 7256) is amended—

11 (1) in the matter preceding paragraph (1), by
 12 striking “Massachusetts, New Hampshire,” and in-
 13 serting “Maryland, Massachusetts, New Hampshire,
 14 New Jersey, New York,”;

15 (2) by striking paragraphs (1), (3), and (7);

1 (3) in paragraph (4), by striking “Delaware,
2 New Jersey, New York, Pennsylvania, Maryland,
3 and Virginia” and inserting “Delaware, Ohio, and
4 Pennsylvania”;

5 (4) in paragraph (5), by striking “the projected
6 rate of increase” and all that follows through “Sec-
7 retary” and inserting “the operation of the Compact
8 price regulation during the fiscal year, as determined
9 by the Secretary (in consultation with the Commis-
10 sion) using notice and comment procedures provided
11 in section 553 of title 5, United States Code”; and

12 (5) by redesignating paragraphs (2), (4), (5),
13 and (6) as paragraphs (1), (2), (3), and (4), respec-
14 tively.

15 **TITLE II—SOUTHERN DAIRY** 16 **COMPACT**

17 **SEC. 201. CONGRESSIONAL CONSENT TO SOUTHERN DAIRY** 18 **COMPACT.**

19 (a) IN GENERAL.—Congress consents to the South-
20 ern Dairy Compact entered into among the States of Ala-
21 bama, Arkansas, Kentucky, Louisiana, Mississippi, North
22 Carolina, South Carolina, Tennessee, Virginia, and West
23 Virginia, subject to the following conditions:

24 (1) LIMITATION OF MANUFACTURING PRICE
25 REGULATION.—The Southern Dairy Compact Com-

1 mission may not regulate Class II, Class III, or
2 Class III–A milk used for manufacturing purposes
3 or any other milk, other than Class I, or fluid milk,
4 as defined by a Federal milk marketing order issued
5 under section 8c of the Agricultural Adjustment Act
6 (7 U.S.C. 608c), reenacted with amendments by the
7 Agricultural Marketing Act of 1937 (referred to in
8 this title as “Federal milk marketing order”) unless
9 Congress has first consented to and approved such
10 authority by a law enacted after the date of enact-
11 ment of this joint resolution.

12 (2) ADDITIONAL STATES.—Florida, Georgia,
13 Kansas, Missouri, Oklahoma, and Texas are the only
14 additional States that may join the Southern Dairy
15 Compact, individually or otherwise.

16 (3) COMPENSATION OF COMMODITY CREDIT
17 CORPORATION.—Before the end of each fiscal year
18 in which a Compact price regulation is in effect, the
19 Southern Dairy Compact Commission shall com-
20 pensate the Commodity Credit Corporation for the
21 cost of any purchases of milk and milk products by
22 the Corporation that result from the operation of the
23 Compact price regulation during the fiscal year, as
24 determined by the Secretary (in consultation with
25 the Commission) using notice and comment proce-

1 dures provided in section 553 of title 5, United
2 States Code.

3 (4) MILK MARKETING ORDER ADMINIS-
4 TRATOR.—At the request of the Southern Dairy
5 Compact Commission, the Administrator of the ap-
6 plicable Federal milk marketing order shall provide
7 technical assistance to the Compact Commission and
8 be compensated for that assistance.

9 (b) COMPACT.—The Southern Dairy Compact is sub-
10 stantially as follows:

11 **“ARTICLE I. STATEMENT OF**
12 **PURPOSE, FINDINGS AND**
13 **DECLARATION OF POLICY**

14 **“§ 1. STATEMENT OF PURPOSE, FINDINGS AND DECLARA-**
15 **TION OF POLICY**

16 “The purpose of this compact is to recognize the
17 interstate character of the southern dairy industry and the
18 prerogative of the states under the United States Con-
19 stitution to form an interstate commission for the south-
20 ern region. The mission of the commission is to take such
21 steps as are necessary to assure the continued viability of
22 dairy farming in the south, and to assure consumers of
23 an adequate, local supply of pure and wholesome milk.

24 “The participating states find and declare that the
25 dairy industry is an essential agricultural activity of the

1 south. Dairy farms, and associated suppliers, marketers,
2 processors and retailers are an integral component of the
3 region's economy. Their ability to provide a stable, local
4 supply of pure, wholesome milk is a matter of great impor-
5 tance to the health and welfare of the region.

6 “The participating states further find that dairy
7 farms are essential and they are an integral part of the
8 region's rural communities. The farms preserve land for
9 agricultural purposes and provide needed economic stimuli
10 for rural communities.

11 “In establishing their constitutional regulatory au-
12 thority over the region's fluid milk market by this com-
13 pact, the participating states declare their purpose that
14 this compact neither displace the federal order system nor
15 encourage the merging of federal orders. Specific provi-
16 sions of the compact itself set forth this basic principle.

17 “Designed as a flexible mechanism able to adjust to
18 changes in a regulated marketplace, the compact also con-
19 tains a contingency provision should the federal order sys-
20 tem be discontinued. In that event, the interstate commis-
21 sion is authorized to regulate the marketplace in replace-
22 ment of the order system. This contingent authority does
23 not anticipate such a change, however, and should not be
24 so construed. It is only provided should developments in

1 the market other than establishment of this compact re-
2 sult in discontinuance of the order system.

3 “By entering into this compact, the participating
4 states affirm that their ability to regulate the price which
5 southern dairy farmers receive for their product is essen-
6 tial to the public interest. Assurance of a fair and equi-
7 table price for dairy farmers ensures their ability to pro-
8 vide milk to the market and the vitality of the southern
9 dairy industry, with all the associated benefits.

10 “Recent, dramatic price fluctuations, with a pro-
11 nounced downward trend, threaten the viability and sta-
12 bility of the southern dairy region. Historically, individual
13 state regulatory action had been an effective emergency
14 remedy available to farmers confronting a distressed mar-
15 ket. The federal order system, implemented by the Agri-
16 cultural Marketing Agreement Act of 1937, establishes
17 only minimum prices paid to producers for raw milk, with-
18 out preempting the power of states to regulate milk prices
19 above the minimum levels so established.

20 “In today’s regional dairy marketplace, cooperative,
21 rather than individual state action is needed to more effec-
22 tively address the market disarray. Under our constitu-
23 tional system, properly authorized states acting coopera-
24 tively may exercise more power to regulate interstate com-
25 merce than they may assert individually without such au-

1 thority. For this reason, the participating states invoke
2 their authority to act in common agreement, with the con-
3 sent of Congress, under the compact clause of the Con-
4 stitution.

5 **“ARTICLE II. DEFINITIONS AND** 6 **RULES OF CONSTRUCTION**

7 **“§ 2. DEFINITIONS**

8 “For the purposes of this compact, and of any supple-
9 mental or concurring legislation enacted pursuant thereto,
10 except as may be otherwise required by the context:

11 “(1) ‘Class I milk’ means milk disposed of in
12 fluid form or as a fluid milk product, subject to fur-
13 ther definition in accordance with the principles ex-
14 pressed in subdivision (b) of section three.

15 “(2) ‘Commission’ means the Southern Dairy
16 Compact Commission established by this compact.

17 “(3) ‘Commission marketing order’ means regu-
18 lations adopted by the commission pursuant to sec-
19 tions nine and ten of this compact in place of a ter-
20 minated federal marketing order or state dairy regu-
21 lation. Such order may apply throughout the region
22 or in any part or parts thereof as defined in the reg-
23 ulations of the commission. Such order may estab-
24 lish minimum prices for any or all classes of milk.

25 “(4) ‘Compact’ means this interstate compact.

1 “(5) ‘Compact over-order price’ means a min-
2 imum price required to be paid to producers for
3 Class I milk established by the commission in regu-
4 lations adopted pursuant to sections nine and ten of
5 this compact, which is above the price established in
6 federal marketing orders or by state farm price reg-
7 ulations in the regulated area. Such price may apply
8 throughout the region or in any part or parts there-
9 of as defined in the regulations of the commission.

10 “(6) ‘Milk’ means the lacteral secretion of cows
11 and includes all skim, butterfat, or other constitu-
12 ents obtained from separation or any other process.
13 The term is used in its broadest sense and may be
14 further defined by the commission for regulatory
15 purposes.

16 “(7) ‘Partially regulated plant’ means a milk
17 plant not located in a regulated area but having
18 Class I distribution within such area. Commission
19 regulations may exempt plants having such distribu-
20 tion or receipts in amounts less than the limits de-
21 fined therein.

22 “(8) ‘Participating state’ means a state which
23 has become a party to this compact by the enact-
24 ment of concurring legislation.

1 “(9) ‘Pool plant’ means any milk plant located
2 in a regulated area.

3 “(10) ‘Region’ means the territorial limits of
4 the states which are parties to this compact.

5 “(11) ‘Regulated area’ means any area within
6 the region governed by and defined in regulations es-
7 tablishing a compact over-order price or commission
8 marketing order.

9 “(12) ‘State dairy regulation’ means any state
10 regulation of dairy prices, and associated assess-
11 ments, whether by statute, marketing order or other-
12 wise.

13 **“§ 3. RULES OF CONSTRUCTION**

14 “(a) This compact shall not be construed to displace
15 existing federal milk marketing orders or state dairy regu-
16 lation in the region but to supplement them. In the event
17 some or all federal orders in the region are discontinued,
18 the compact shall be construed to provide the commission
19 the option to replace them with one or more commission
20 marketing orders pursuant to this compact.

21 “(b) The compact shall be construed liberally in order
22 to achieve the purposes and intent enunciated in section
23 one. It is the intent of this compact to establish a basic
24 structure by which the commission may achieve those pur-
25 poses through the application, adaptation and develop-

1 ment of the regulatory techniques historically associated
2 with milk marketing and to afford the commission broad
3 flexibility to devise regulatory mechanisms to achieve the
4 purposes of this compact. In accordance with this intent,
5 the technical terms which are associated with market
6 order regulation and which have acquired commonly un-
7 derstood general meanings are not defined herein but the
8 commission may further define the terms used in this com-
9 pact and develop additional concepts and define additional
10 terms as it may find appropriate to achieve its purposes.

11 **“ARTICLE III. COMMISSION**
12 **ESTABLISHED**

13 **“§ 4. COMMISSION ESTABLISHED**

14 “There is hereby created a commission to administer
15 the compact, composed of delegations from each state in
16 the region. The commission shall be known as the South-
17 ern Dairy Compact Commission. A delegation shall include
18 not less than three nor more than five persons. Each dele-
19 gation shall include at least one dairy farmer who is en-
20 gaged in the production of milk at the time of appointment
21 or reappointment, and one consumer representative. Dele-
22 gation members shall be residents and voters of, and sub-
23 ject to such confirmation process as is provided for in the
24 appointing state. Delegation members shall serve no more
25 than three consecutive terms with no single term of more

1 than four years, and be subject to removal for cause. In
2 all other respects, delegation members shall serve in ac-
3 cordance with the laws of the state represented. The com-
4 pensation, if any, of the members of a state delegation
5 shall be determined and paid by each state, but their ex-
6 penses shall be paid by the commission.

7 **“§ 5. VOTING REQUIREMENTS**

8 “All actions taken by the commission, except for the
9 establishment or termination of an over-order price or
10 commission marketing order, and the adoption, amend-
11 ment or rescission of the commission’s by-laws, shall be
12 by majority vote of the delegations present. Each state del-
13 egation shall be entitled to one vote in the conduct of the
14 commission’s affairs. Establishment or termination of an
15 over-order price or commission marketing order shall re-
16 quire at least a two-thirds vote of the delegations present.
17 The establishment of a regulated area which covers all or
18 part of a participating state shall require also the affirma-
19 tive vote of that state’s delegation. A majority of the dele-
20 gations from the participating states shall constitute a
21 quorum for the conduct of the commission’s business.

22 **“§ 6. ADMINISTRATION AND MANAGEMENT**

23 “(a) The commission shall elect annually from among
24 the members of the participating state delegations a chair-
25 person, a vice-chairperson, and a treasurer. The commis-

1 sion shall appoint an executive director and fix his or her
2 duties and compensation. The executive director shall
3 serve at the pleasure of the commission, and together with
4 the treasurer, shall be bonded in an amount determined
5 by the commission. The commission may establish through
6 its by-laws an executive committee composed of one mem-
7 ber elected by each delegation.

8 “(b) The commission shall adopt by-laws for the con-
9 duct of its business by a two-thirds vote, and shall have
10 the power by the same vote to amend and rescind these
11 by-laws. The commission shall publish its by-laws in con-
12 venient form with the appropriate agency or officer in each
13 of the participating states. The by-laws shall provide for
14 appropriate notice to the delegations of all commission
15 meetings and hearings and of the business to be trans-
16 acted at such meetings or hearings. Notice also shall be
17 given to other agencies or officers of participating states
18 as provided by the laws of those states.

19 “(c) The commission shall file an annual report with
20 the Secretary of Agriculture of the United States, and
21 with each of the participating states by submitting copies
22 to the governor, both houses of the legislature, and the
23 head of the state department having responsibilities for
24 agriculture.

1 “(d) In addition to the powers and duties elsewhere
2 prescribed in this compact, the commission shall have the
3 power:

4 “(1) To sue and be sued in any state or federal
5 court;

6 “(2) To have a seal and alter the same at pleas-
7 ure;

8 “(3) To acquire, hold, and dispose of real and
9 personal property by gift, purchase, lease, license, or
10 other similar manner, for its corporate purposes;

11 “(4) To borrow money and issue notes, to pro-
12 vide for the rights of the holders thereof and to
13 pledge the revenue of the commission as security
14 therefor, subject to the provisions of section eighteen
15 of this compact;

16 “(5) To appoint such officers, agents, and em-
17 ployees as it may deem necessary, prescribe their
18 powers, duties and qualifications; and

19 “(6) To create and abolish such offices, employ-
20 ments and positions as it deems necessary for the
21 purposes of the compact and provide for the re-
22 moval, term, tenure, compensation, fringe benefits,
23 pension, and retirement rights of its officers and em-
24 ployees. The commission may also retain personal
25 services on a contract basis.

1 **“§ 7. RULEMAKING POWER**

2 “In addition to the power to promulgate a compact
3 over-order price or commission marketing orders as pro-
4 vided by this compact, the commission is further empow-
5 ered to make and enforce such additional rules and regula-
6 tions as it deems necessary to implement any provisions
7 of this compact, or to effectuate in any other respect the
8 purposes of this compact.

9 **“ARTICLE IV. POWERS OF THE**
10 **COMMISSION**

11 **“§ 8. POWERS TO PROMOTE REGULATORY UNIFORMITY,**
12 **SIMPLICITY, AND INTERSTATE COOPERATION**

13 “The commission is hereby empowered to:

14 “(1) Investigate or provide for investigations or
15 research projects designed to review the existing
16 laws and regulations of the participating states, to
17 consider their administration and costs, to measure
18 their impact on the production and marketing of
19 milk and their effects on the shipment of milk and
20 milk products within the region.

21 “(2) Study and recommend to the participating
22 states joint or cooperative programs for the adminis-
23 tration of the dairy marketing laws and regulations
24 and to prepare estimates of cost savings and benefits
25 of such programs.

1 “(3) Encourage the harmonious relationships
2 between the various elements in the industry for the
3 solution of their material problems. Conduct
4 symposia or conferences designed to improve indus-
5 try relations, or a better understanding of problems.

6 “(4) Prepare and release periodic reports on ac-
7 tivities and results of the commission’s efforts to the
8 participating states.

9 “(5) Review the existing marketing system for
10 milk and milk products and recommend changes in
11 the existing structure for assembly and distribution
12 of milk which may assist, improve or promote more
13 efficient assembly and distribution of milk.

14 “(6) Investigate costs and charges for pro-
15 ducing, hauling, handling, processing, distributing,
16 selling and for all other services performed with re-
17 spect to milk.

18 “(7) Examine current economic forces affecting
19 producers, probable trends in production and con-
20 sumption, the level of dairy farm prices in relation
21 to costs, the financial conditions of dairy farmers,
22 and the need for an emergency order to relieve crit-
23 ical conditions on dairy farms.

1 **“§ 9. EQUITABLE FARM PRICES**

2 “(a) The powers granted in this section and section
3 ten shall apply only to the establishment of a compact
4 over-order price, so long as federal milk marketing orders
5 remain in effect in the region. In the event that any or
6 all such orders are terminated, this article shall authorize
7 the commission to establish one or more commission mar-
8 keting orders, as herein provided, in the region or parts
9 thereof as defined in the order.

10 “(b) A compact over-order price established pursuant
11 to this section shall apply only to Class I milk. Such com-
12 pact over-order price shall not exceed one dollar and fifty
13 cents per gallon at Atlanta, Ga., however, this compact
14 over-order price shall be adjusted upward or downward at
15 other locations in the region to reflect differences in min-
16 imum federal order prices. Beginning in nineteen hundred
17 ninety, and using that year as a base, the foregoing one
18 dollar fifty cents per gallon maximum shall be adjusted
19 annually by the rate of change in the Consumer Price
20 Index as reported by the Bureau of Labor Statistics of
21 the United States Department of Labor. For purposes of
22 the pooling and equalization of an over-order price, the
23 value of milk used in other use classifications shall be cal-
24 culated at the appropriate class price established pursuant
25 to the applicable federal order or state dairy regulation
26 and the value of unregulated milk shall be calculated in

1 relation to the nearest prevailing class price in accordance
2 with and subject to such adjustments as the commission
3 may prescribe in regulations.

4 “(c) A commission marketing order shall apply to all
5 classes and uses of milk.

6 “(d) The commission is hereby empowered to estab-
7 lish a compact over-order price for milk to be paid by pool
8 plants and partially regulated plants. The commission is
9 also empowered to establish a compact over-order price to
10 be paid by all other handlers receiving milk from pro-
11 ducers located in a regulated area. This price shall be es-
12 tablished either as a compact over-order price or by one
13 or more commission marketing orders. Whenever such a
14 price has been established by either type of regulation, the
15 legal obligation to pay such price shall be determined sole-
16 ly by the terms and purpose of the regulation without re-
17 gard to the situs of the transfer of title, possession or any
18 other factors not related to the purposes of the regulation
19 and this compact. Producer-handlers as defined in an ap-
20 plicable federal market order shall not be subject to a com-
21 pact over-order price. The commission shall provide for
22 similar treatment of producer-handlers under commission
23 marketing orders.

24 “(e) In determining the price, the commission shall
25 consider the balance between production and consumption

1 of milk and milk products in the regulated area, the costs
2 of production including, but not limited to the price of
3 feed, the cost of labor including the reasonable value of
4 the producer's own labor and management, machinery ex-
5 pense, and interest expense, the prevailing price for milk
6 outside the regulated area, the purchasing power of the
7 public and the price necessary to yield a reasonable return
8 to the producer and distributor.

9 “(f) When establishing a compact over-order price,
10 the commission shall take such other action as is necessary
11 and feasible to help ensure that the over-order price does
12 not cause or compensate producers so as to generate local
13 production of milk in excess of those quantities necessary
14 to assure consumers of an adequate supply for fluid pur-
15 poses.

16 “(g) The commission shall whenever possible enter
17 into agreements with state or federal agencies for ex-
18 change of information or services for the purpose of reduc-
19 ing regulatory burden and cost of administering the com-
20 pact. The commission may reimburse other agencies for
21 the reasonable cost of providing these services.

22 **“§ 10. OPTIONAL PROVISIONS FOR PRICING ORDER**

23 “Regulations establishing a compact over-order price
24 or a commission marketing order may contain, but shall
25 not be limited to any of the following:

1 “(1) Provisions classifying milk in accordance
2 with the form in which or purpose for which it is
3 used, or creating a flat pricing program.

4 “(2) With respect to a commission marketing
5 order only, provisions establishing or providing a
6 method for establishing separate minimum prices for
7 each use classification prescribed by the commission,
8 or a single minimum price for milk purchased from
9 producers or associations of producers.

10 “(3) With respect to an over-order minimum
11 price, provisions establishing or providing a method
12 for establishing such minimum price for Class I
13 milk.

14 “(4) Provisions for establishing either an over-
15 order price or a commission marketing order may
16 make use of any reasonable method for establishing
17 such price or prices including flat pricing and for-
18 mula pricing. Provision may also be made for loca-
19 tion adjustments, zone differentials and for competi-
20 tive credits with respect to regulated handlers who
21 market outside the regulated area.

22 “(5) Provisions for the payment to all pro-
23 ducers and associations of producers delivering milk
24 to all handlers of uniform prices for all milk so deliv-
25 ered, irrespective of the uses made of such milk by

1 the individual handler to whom it is delivered, or for
2 the payment of producers delivering milk to the
3 same handler of uniform prices for all milk delivered
4 by them.

5 “(A) With respect to regulations estab-
6 lishing a compact over-order price, the commis-
7 sion may establish one equalization pool within
8 the regulated area for the sole purpose of equal-
9 izing returns to producers throughout the regu-
10 lated area.

11 “(B) With respect to any commission mar-
12 keting order, as defined in section two, subdivi-
13 sion three, which replaces one or more termi-
14 nated federal orders or state dairy regulations,
15 the marketing area of now separate state or
16 federal orders shall not be merged without the
17 affirmative consent of each state, voting
18 through its delegation, which is partly or wholly
19 included within any such new marketing area.

20 “(6) Provisions requiring persons who bring
21 Class I milk into the regulated area to make com-
22 pensatory payments with respect to all such milk to
23 the extent necessary to equalize the cost of milk pur-
24 chased by handlers subject to a compact over-order
25 price or commission marketing order. No such provi-

1 sions shall discriminate against milk producers out-
2 side the regulated area. The provisions for compen-
3 satory payments may require payment of the dif-
4 ference between the Class I price required to be paid
5 for such milk in the state of production by a federal
6 milk marketing order or state dairy regulation and
7 the Class I price established by the compact over-
8 order price or commission marketing order.

9 “(7) Provisions specially governing the pricing
10 and pooling of milk handled by partially regulated
11 plants.

12 “(8) Provisions requiring that the account of
13 any person regulated under the compact over-order
14 price shall be adjusted for any payments made to or
15 received by such persons with respect to a producer
16 settlement fund of any federal or state milk mar-
17 keting order or other state dairy regulation within
18 the regulated area.

19 “(9) Provision requiring the payment by han-
20 dlers of an assessment to cover the costs of the ad-
21 ministration and enforcement of such order pursu-
22 ant to Article VII, Section 18(a).

23 “(10) Provisions for reimbursement to partici-
24 pants of the Women, Infants and Children Special

1 Supplemental Food Program of the United States
2 Child Nutrition Act of 1966.

3 “(11) Other provisions and requirements as the
4 commission may find are necessary or appropriate to
5 effectuate the purposes of this compact and to pro-
6 vide for the payment of fair and equitable minimum
7 prices to producers.

8 **“ARTICLE V. RULEMAKING**
9 **PROCEDURE**

10 **“§ 11. RULEMAKING PROCEDURE**

11 “Before promulgation of any regulations establishing
12 a compact over-order price or commission marketing
13 order, including any provision with respect to milk supply
14 under subsection 9(f), or amendment thereof, as provided
15 in Article IV, the commission shall conduct an informal
16 rulemaking proceeding to provide interested persons with
17 an opportunity to present data and views. Such rule-
18 making proceeding shall be governed by section four of
19 the Federal Administrative Procedure Act, as amended (5
20 U.S.C. § 553). In addition, the commission shall, to the
21 extent practicable, publish notice of rulemaking pro-
22 ceedings in the official register of each participating state.
23 Before the initial adoption of regulations establishing a
24 compact over-order price or a commission marketing order
25 and thereafter before any amendment with regard to

1 prices or assessments, the commission shall hold a public
2 hearing. The commission may commence a rulemaking
3 proceeding on its own initiative or may in its sole discre-
4 tion act upon the petition of any person including indi-
5 vidual milk producers, any organization of milk producers
6 or handlers, general farm organizations, consumer or pub-
7 lic interest groups, and local, state or federal officials.

8 **“§ 12. FINDINGS AND REFERENDUM**

9 “(a) In addition to the concise general statement of
10 basis and purpose required by section 4(b) of the Federal
11 Administrative Procedure Act, as amended (5 U.S.C.
12 § 553(c)), the commission shall make findings of fact with
13 respect to:

14 “(1) Whether the public interest will be served
15 by the establishment of minimum milk prices to
16 dairy farmers under Article IV.

17 “(2) What level of prices will assure that pro-
18 ducers receive a price sufficient to cover their costs
19 of production and will elicit an adequate supply of
20 milk for the inhabitants of the regulated area and
21 for manufacturing purposes.

22 “(3) Whether the major provisions of the order,
23 other than those fixing minimum milk prices, are in
24 the public interest and are reasonably designed to
25 achieve the purposes of the order.

1 “(4) Whether the terms of the proposed re-
2 gional order or amendment are approved by pro-
3 ducers as provided in section thirteen.

4 **“§ 13. PRODUCER REFERENDUM**

5 “(a) For the purpose of ascertaining whether the
6 issuance or amendment of regulations establishing a com-
7 pact over-order price or a commission marketing order,
8 including any provision with respect to milk supply under
9 subsection 9(f), is approved by producers, the commission
10 shall conduct a referendum among producers. The ref-
11 erendum shall be held in a timely manner, as determined
12 by regulation of the commission. The terms and conditions
13 of the proposed order or amendment shall be described
14 by the commission in the ballot used in the conduct of
15 the referendum, but the nature, content, or extent of such
16 description shall not be a basis for attacking the legality
17 of the order or any action relating thereto.

18 “(b) An order or amendment shall be deemed ap-
19 proved by producers if the commission determines that it
20 is approved by at least two-thirds of the voting producers
21 who, during a representative period determined by the
22 commission, have been engaged in the production of milk
23 the price of which would be regulated under the proposed
24 order or amendment.

1 “(c) For purposes of any referendum, the commission
2 shall consider the approval or disapproval by any coopera-
3 tive association of producers, qualified under the provi-
4 sions of the Act of Congress of February 18, 1922, as
5 amended, known as the Capper-Volstead Act, bona fide
6 engaged in marketing milk, or in rendering services for
7 or advancing the interests of producers of such com-
8 modity, as the approval or disapproval of the producers
9 who are members or stockholders in, or under contract
10 with, such cooperative association of producers, except as
11 provided in subdivision (1) hereof and subject to the provi-
12 sions of subdivision (2) through (5) hereof.

13 “(1) No cooperative which has been formed to
14 act as a common marketing agency for both coopera-
15 tives and individual producers shall be qualified to
16 block vote for either.

17 “(2) Any cooperative which is qualified to block
18 vote shall, before submitting its approval or dis-
19 approval in any referendum, give prior written notice
20 to each of its members as to whether and how it in-
21 tends to cast its vote. The notice shall be given in
22 a timely manner as established, and in the form pre-
23 scribed, by the commission.

1 “(3) Any producer may obtain a ballot from the
2 commission in order to register approval or dis-
3 approval of the proposed order.

4 “(4) A producer who is a member of a coopera-
5 tive which has provided notice of its intent to ap-
6 prove or not to approve a proposed order, and who
7 obtains a ballot and with such ballot expresses his
8 approval or disapproval of the proposed order, shall
9 notify the commission as to the name of the coopera-
10 tive of which he or she is a member, and the com-
11 mission shall remove such producer’s name from the
12 list certified by such cooperative with its corporate
13 vote.

14 “(5) In order to insure that all milk producers
15 are informed regarding the proposed order, the com-
16 mission shall notify all milk producers that an order
17 is being considered and that each producer may reg-
18 ister his approval or disapproval with the commis-
19 sion either directly or through his or her cooperative.

20 **§ 14. TERMINATION OF OVER-ORDER PRICE OR MAR-**
21 **KETING ORDER**

22 “(a) The commission shall terminate any regulations
23 establishing an over-order price or commission marketing
24 order issued under this article whenever it finds that such

1 order or price obstructs or does not tend to effectuate the
2 declared policy of this compact.

3 “(b) The commission shall terminate any regulations
4 establishing an over-order price or a commission mar-
5 keting order issued under this article whenever it finds
6 that such termination is favored by a majority of the pro-
7 ducers who, during a representative period determined by
8 the commission, have been engaged in the production of
9 milk the price of which is regulated by such order; but
10 such termination shall be effective only if announced on
11 or before such date as may be specified in such marketing
12 agreement or order.

13 “(c) The termination or suspension of any order or
14 provision thereof, shall not be considered an order within
15 the meaning of this article and shall require no hearing,
16 but shall comply with the requirements for informal rule-
17 making prescribed by section four of the Federal Adminis-
18 trative Procedure Act, as amended (5 U.S.C. § 553).

19 **“ARTICLE VI. ENFORCEMENT**

20 **“§ 15. RECORDS; REPORTS; ACCESS TO PREMISES**

21 “(a) The commission may by rule and regulation pre-
22 scribe record keeping and reporting requirements for all
23 regulated persons. For purposes of the administration and
24 enforcement of this compact, the commission is authorized
25 to examine the books and records of any regulated person

1 relating to his or her milk business and for that purpose,
2 the commission's properly designated officers, employees,
3 or agents shall have full access during normal business
4 hours to the premises and records of all regulated persons.

5 “(b) Information furnished to or acquired by the
6 commission officers, employees, or its agents pursuant to
7 this section shall be confidential and not subject to dislo-
8 sure except to the extent that the commission deems dis-
9 closure to be necessary in any administrative or judicial
10 proceeding involving the administration or enforcement of
11 this compact, an over-order price, a compact marketing
12 order, or other regulations of the commission. The com-
13 mission may promulgate regulations further defining the
14 confidentiality of information pursuant to this section.
15 Nothing in this section shall be deemed to prohibit (i) the
16 issuance of general statements based upon the reports of
17 a number of handlers, which do not identify the informa-
18 tion furnished by any person, or (ii) the publication by
19 direction of the commission of the name of any person vio-
20 lating any regulation of the commission, together with a
21 statement of the particular provisions violated by such
22 person.

23 “(c) No officer, employee, or agent of the commission
24 shall intentionally disclose information, by inference or
25 otherwise, which is made confidential pursuant to this sec-

1 tion. Any person violating the provisions of this section
2 shall, upon conviction, be subject to a fine of not more
3 than one thousand dollars or to imprisonment for not
4 more than one year, or to both, and shall be removed from
5 office. The commission shall refer any allegation of a viola-
6 tion of this section to the appropriate state enforcement
7 authority or United States Attorney.

8 **“§ 16. SUBPOENA; HEARINGS AND JUDICIAL REVIEW**

9 “(a) The commission is hereby authorized and em-
10 powered by its members and its properly designated offi-
11 cers to administer oaths and issue subpoenas throughout
12 all signatory states to compel the attendance of witnesses
13 and the giving of testimony and the production of other
14 evidence.

15 “(b) Any handler subject to an order may file a writ-
16 ten petition with the commission stating that any such
17 order or any provision of any such order or any obligation
18 imposed in connection therewith is not in accordance with
19 law and praying for a modification thereof or to be ex-
20 empted therefrom. He shall thereupon be given an oppor-
21 tunity for a hearing upon such petition, in accordance with
22 regulations made by the commission. After such hearing,
23 the commission shall make a ruling upon the prayer of
24 such petition which shall be final, if in accordance with
25 law.

1 “(c) The district courts of the United States in any
2 district in which such handler is an inhabitant, or has his
3 principal place of business, are hereby vested with jurisdic-
4 tion to review such ruling, provided a complaint for that
5 purpose is filed within thirty days from the date of the
6 entry of such ruling. Service of process in such pro-
7 ceedings may be had upon the commission by delivering
8 to it a copy of the complaint. If the court determines that
9 such ruling is not in accordance with law, it shall remand
10 such proceedings to the commission with directions either
11 (1) to make such ruling as the court shall determine to
12 be in accordance with law, or (2) to take such further pro-
13 ceedings as, in its opinion, the law requires. The pendency
14 of proceedings instituted pursuant to this subdivision shall
15 not impede, hinder, or delay the commission from obtain-
16 ing relief pursuant to section seventeen. Any proceedings
17 brought pursuant to section seventeen, except where
18 brought by way of counterclaim in proceedings instituted
19 pursuant to this section, shall abate whenever a final de-
20 cree has been rendered in proceedings between the same
21 parties, and covering the same subject matter, instituted
22 pursuant to this section.

23 **“§ 17. ENFORCEMENT WITH RESPECT TO HANDLERS**

24 “(a) Any violation by a handler of the provisions of
25 regulations establishing an over-order price or a commis-

1 sion marketing order, or other regulations adopted pursu-
2 ant to this compact shall:

3 “(1) Constitute a violation of the laws of each
4 of the signatory states. Such violation shall render
5 the violator subject to a civil penalty in an amount
6 as may be prescribed by the laws of each of the par-
7 ticipating states, recoverable in any state or federal
8 court of competent jurisdiction. Each day such viola-
9 tion continues shall constitute a separate violation.

10 “(2) Constitute grounds for the revocation of li-
11 cense or permit to engage in the milk business under
12 the applicable laws of the participating states.

13 “(b) With respect to handlers, the commission shall
14 enforce the provisions of this compact, regulations estab-
15 lishing an over-order price, a commission marketing order
16 or other regulations adopted hereunder by:

17 “(1) Commencing an action for legal or equi-
18 table relief brought in the name of the commission
19 of any state or federal court of competent jurisdic-
20 tion; or

21 “(2) Referral to the state agency for enforce-
22 ment by judicial or administrative remedy with the
23 agreement of the appropriate state agency of a par-
24 ticipating state.

1 “(c) With respect to handlers, the commission may
2 bring an action for injunction to enforce the provisions
3 of this compact or the order or regulations adopted there-
4 under without being compelled to allege or prove that an
5 adequate remedy of law does not exist.

6 **“ARTICLE VII. FINANCE**

7 **“§ 18. FINANCE OF START-UP AND REGULAR COSTS**

8 “(a) To provide for its start-up costs, the commission
9 may borrow money pursuant to its general power under
10 section six, subdivision (d), paragraph four. In order to
11 finance the costs of administration and enforcement of
12 this compact, including payback of start-up costs, the
13 commission is hereby empowered to collect an assessment
14 from each handler who purchases milk from producers
15 within the region. If imposed, this assessment shall be col-
16 lected on a monthly basis for up to one year from the date
17 the commission convenes, in an amount not to exceed
18 \$.015 per hundredweight of milk purchased from pro-
19 ducers during the period of the assessment. The initial as-
20 sessment may apply to the projected purchases of handlers
21 for the two-month period following the date the commis-
22 sion convenes. In addition, if regulations establishing an
23 over-order price or a compact marketing order are adopt-
24 ed, they may include an assessment for the specific pur-
25 pose of their administration. These regulations shall pro-

1 vide for establishment of a reserve for the commission's
2 ongoing operating expenses.

3 “(b) The commission shall not pledge the credit of
4 any participating state or of the United States. Notes
5 issued by the commission and all other financial obliga-
6 tions incurred by it, shall be its sole responsibility and no
7 participating state or the United States shall be liable
8 therefor.

9 **“§ 19. AUDIT AND ACCOUNTS**

10 “(a) The commission shall keep accurate accounts of
11 all receipts and disbursements, which shall be subject to
12 the audit and accounting procedures established under its
13 rules. In addition, all receipts and disbursements of funds
14 handled by the commission shall be audited yearly by a
15 qualified public accountant and the report of the audit
16 shall be included in and become part of the annual report
17 of the commission.

18 “(b) The accounts of the commission shall be open
19 at any reasonable time for inspection by duly constituted
20 officers of the participating states and by any persons au-
21 thorized by the commission.

22 “(c) Nothing contained in this article shall be con-
23 strued to prevent commission compliance with laws relat-
24 ing to audit or inspection of accounts by or on behalf of
25 any participating state or of the United States.

1 **“ARTICLE VIII. ENTRY INTO**
2 **FORCE; ADDITIONAL MEM-**
3 **BERS AND WITHDRAWAL**

4 **“§ 20. ENTRY INTO FORCE; ADDITIONAL MEMBERS**

5 “The compact shall enter into force effective when
6 enacted into law by any three states of the group of states
7 composed of Alabama, Arkansas, Florida, Georgia, Ken-
8 tucky, Louisiana, Maryland, Mississippi, North Carolina,
9 Oklahoma, South Carolina, Tennessee, Texas, Virginia
10 and West Virginia and when the consent of Congress has
11 been obtained.

12 **“§ 21. WITHDRAWAL FROM COMPACT**

13 “Any participating state may withdraw from this
14 compact by enacting a statute repealing the same, but no
15 such withdrawal shall take effect until one year after no-
16 tice in writing of the withdrawal is given to the commis-
17 sion and the governors of all other participating states.
18 No withdrawal shall affect any liability already incurred
19 by or chargeable to a participating state prior to the time
20 of such withdrawal.

21 **“§ 22. SEVERABILITY**

22 “If any part or provision of this compact is adjudged
23 invalid by any court, such judgment shall be confined in
24 its operation to the part or provision directly involved in
25 the controversy in which such judgment shall have been

1 rendered and shall not affect or impair the validity of the
2 remainder of this compact. In the event Congress consents
3 to this compact subject to conditions, said conditions shall
4 not impair the validity of this compact when said condi-
5 tions are accepted by three or more compacting states. A
6 compacting state may accept the conditions of Congress
7 by implementation of this compact.”.

8 **SEC. 202. RESERVATION OF RIGHTS.**

9 The right to alter, amend, or repeal this title is re-
10 served.

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