

total amount due the producer under this section, the burden shall rest upon the handler to prove to the compact commission that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(c) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant the handler may elect to pay such producers at the price of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than the otherwise required under this section and the rate of payment and the deduction shown on the statement required to be furnished under § 1307.6 are those used in computing the payment.

(d) If a handler claims that the required payment cannot be made because the producer is deceased or cannot be located, such payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the compact commission shall make such payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the compact commission findings upon verification as provided above such payment shall be made to the producer-settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the compact commission that the required payment has been made to the producer in which latter event the payment shall be refunded to the handler.

(f) At a partially regulated plant each handler shall make payments, on a pro rata basis, to all producers and dairy farmers for milk received from them during the month, the payment received pursuant to § 1307.3(b).

#### § 1307.5 [Reserved]

#### § 1307.6 Statements to producers.

In making the payments to producers required under § 1307.4, each handler and each cooperative shall furnish each producer, in addition to the information required under Federal and State regulations, a supporting statement, in such form acceptable to the commission, which shall show: The rate

and amount of the compact over-order producer price.

#### § 1307.7 Adjustment of accounts.

(a) Whenever the compact commission verification of a handler's reports or payments discloses an error in payments to or from the compact commission under § 1307.3 or § 1308.1, the compact commission shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 10th day of the prior month and ending with the 9th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the compact commission to the handler on or before the 20th day of the current month.

(b) Whenever the compact commission's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by § 1307.4, the handler shall make payment of the balance due the producer not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

#### § 1307.8 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under § 1307.3, § 1307.7 or § 1307.8 for which remittance has not been received in or paid from the compact commission office by close of business on the 18th day of any month, shall be increased one percent effective the following day.

### PART 1308—ADMINISTRATIVE ASSESSMENT

**Authority:** 7 U.S.C. 7256.

#### § 1308.1 Assessment for pricing regulations administration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The payment shall apply to:

(a) The quantity of fluid milk products disposed in the regulated area from a pool plant for which a value is determined under § 1306.1;

(b) The quantity of fluid milk products disposed in the regulated area from a cooperative association in its capacity as a handler under Section

1301.9(d) for which a value is determined under Section 1306.1; and

(c) The quantity distributed as route disposition in the regulated area from a partially regulated plant for which a value is determined under § 1306.2.

**Daniel Smith,**

*Executive Director.*

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### NORTHEAST DAIRY COMPACT COMMISSION

#### 7 CFR Chapter XIII

#### Results of Producer Referendum on Compact Over-Order Price Regulation

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Notice of Referendum Results.

**SUMMARY:** The Northeast Dairy Compact Commission adopted an over-order price regulation by Final Rule on May 14, 1997, which is published elsewhere in this issue of the **Federal Register**. To become effective the price regulation must be approved by at least two-thirds of all producers voting by referendum. A producer referendum was held during the period of May 15 through May 27, 1997. The Commission's price regulation was approved by more than two-thirds of all producers voting in the referendum.

**ADDRESSES:** Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

**FOR FURTHER INFORMATION CONTACT:** Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229-1941 or by facsimile at (802) 229-2028.

**SUPPLEMENTARY INFORMATION:** The Compact Commission was established under the authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93-320; Maine—Pub. L. 89-437, as amended, Pub. L. 93-274; Massachusetts—Pub. L. 93-370; New Hampshire—Pub. L. 93-336; Rhode Island—Pub. L. 93-106; Vermont—Pub. L. 89-95, as amended, 93-57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Public Law 104-127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7

U.S.C. 7256(1), authorized implementation of the Compact.

Article V, Section 13(a) of the Compact provides that to ascertain whether a price regulation established by the Commission is approved by producers the Commission shall conduct a referendum among producers. Section 13(b) provides further that a price regulation shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period, have been engaged in the production of milk subject to Commission price regulation. Section 13(c) directs the Commission to consider the approval or disapproval of any qualified cooperative association by block vote as the approval or disapproval of the producers who are members or stockholders in the cooperative association. Section 13(c)(4) provides that producers who are members of cooperatives may express their approval or disapproval of the order by ballot, and the Commission shall remove their vote from the total certified by the Cooperative.

By final rule, published in this **Federal Register**, the Commission adopted an over-order price regulation on May 14, 1997. The Final Rule includes specific findings of fact required under Section 12(a)(1)-(4) of the Compact. The following notice provides certification of the finding required under Section 12(a)(4), specifically: "Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13."

The Commission adopted the following resolution for certifying a referendum vote at its May 14, 1997 meeting:

*Referendum Approval Certification Procedure*

The Compact Commission resolves and adopts this procedure for certifying whether the Price Regulation adopted on May 14 has been duly approved by producer referendum in accordance with Article V, § 12 of the Northeast Interstate Dairy Compact.

The Compact Commission further resolves to designate and authorize a "Referendum Agent" to administer this procedure. The Referendum Agent shall:

1. Verify all ballots in accordance with Commission's requirements with respect to timeliness, Cooperative identification, producer eligibility, appearance of authenticity and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid shall be

marked "disqualified" with a notation of the reason for the disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation. Verification of ballots shall include those cast individually and by block vote.

2. Certify the following:
  - a. The total number of ballots cast.
  - b. The total number of ballots disqualified.
  - c. The total number of verified ballots cast in favor of the price.
  - d. The total number of verified ballots cast in opposition to the price regulation.
  - e. Whether two-thirds of all verified ballots were cast in the affirmative.
3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2, who shall publish such results in the **Federal Register**.
4. At the completion of his or her work, shall seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

The Commission hereby duly appoints Mae Schmidle as the Referendum Agent to act in accordance with the procedures adopted by this Resolution.

The Commission appointed Ms. Mae Schmidle, the Commission's Vice Chair as Referendum Agent. A referendum was held during the period of May 15 through May 27, 1997. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during January of 1997, the representative period determined by the Commission were deemed eligible to vote. The mailing of ballots to eligible producers was completed on 16, 1997 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by noon on May 27, 1997.

Eleven Cooperative Associations were notified of the procedures necessary to block vote by a pre-decisional letter dated April 7, 1997 and a post-decisional letter dated May 15, 1997. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely

notice was provided, (2) the number of eligible producers for whom they claimed to be voting, and (3) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that Cooperative Association block vote reporting forms had to be returned to the Commission offices by noon on May 27, 1997.

**Notice**

On May 27, 1997 the duly authorized referendum agent verified all Ballots according to procedures and criteria established by the Commission. A total of 4,169 ballots were mailed to eligible producers. All ballots and Block Vote Reporting Forms received by the Commission were opened and counted. A total of 3,270 producer ballots were returned to the Commission office. Ballots and Block Vote Reporting forms were verified or disqualified based on criteria established by the Commission, including timeliness, cooperative identification by cooperative members, producer eligibility, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason. A total of 112 ballots were disqualified by the referendum agent.

The referendum agent then certified the following:

A total of 4,169 ballots were mailed to eligible producers.

A total of 3,270 ballots were returned to the Commission.

A total of 112 ballots were disqualified.

A total of 3,158 ballots were verified.

A total of 3,146 verified ballots were cast in favor of the price regulation.

A total of 12 verified ballots were cast in opposition to the price regulation.

Accordingly, pursuant to the Referendum Approval Certification Procedure resolution adopted by the Northeast Dairy Compact Commission on May 14, 1997, I hereby provide notice that 3,146 of 3,158 verified ballots or 99.6 percent of all verified ballots cast were in favor of the price regulation and that, therefore, greater than two-thirds of all verified ballots were cast in the affirmative.

**Daniel Smith,**

*Executive Director.*

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