

# Proposed Rules

Federal Register

Vol. 63, No. 158

Monday, August 17, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NORTHEAST DAIRY COMPACT COMMISSION

### 7 CFR Parts 1301 and 1304

#### Over-Order Price Regulation

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Proposed rule; extension of comment period; request for additional comments.

**SUMMARY:** The Northeast Dairy Compact Commission previously proposed to amend the current Compact Over-order Price Regulation to exclude all milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area. The Commission is extending the comment period on these proposed amendments and is requesting additional comment and testimony on issues regarding diverted and transferred milk. In conjunction with its continuing deliberations regarding diverted and transferred milk, the Commission also proposes to amend the definition of *producer* to be consistent with the previously proposed amendments regarding diverted and transferred milk and to update this rule to include December 1998 as an additional requirement.

**DATES:** Written comments and exhibits for the proposed amendments to parts 1301 and 1304 published at 63 FR 31943, June 11, 1998, and the proposed amendment in this document may be submitted until 5:00 p.m., September 16, 1998. A public hearing to take testimony and receive documentary evidence relevant to the proposed rules will be held on September 2, 1998 at 9:00 a.m. Pre-filed testimony is requested and encouraged and may be submitted until 5:00 p.m., August 26, 1998.

**ADDRESSES:** Send comments and pre-filed testimony to Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

The public hearing will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, New Hampshire.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Becker, 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:

##### Background

The Northeast Dairy Compact Commission (the "Commission") was established under 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, Pub. L. 93-57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 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.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a Compact Over-order Price Regulation. See, 62 FR 29626 (May 30, 1997). The Commission subsequently amended and extended the Compact Over-order Price Regulation on October 23, 1997.

See 62 FR 62810 (November 25, 1997). The Commission further amended the Over-order Price Regulation relative to certain milk sold by school food authorities in New England. See 63 FR 10104 (February 27, 1998). The current Compact Over-order Price Regulation is codified at 7 CFR Part 1300.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission previously proposed to amend the current Compact Over-order Price Regulation to exclude all milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area and to establish a reserve fund for reimbursement to school food authorities. 63 FR 31943

(June 11, 1998). A public hearing was held on July 1, 1998 and comments were received until July 15, 1998.

The Commission held its deliberative meeting, pursuant to 7 C.F.R. 1361.8, on August 5, 1998 to consider whether to propose for producer referendum the amendments to the Compact Over-order Price Regulation. At this meeting, the Commission adopted the amendment establishing a reserve fund for school food authorities, subject to a producer referendum to be held between August 14, 1998 and August 24, 1998.

The Commission also decided, at the August 5, 1998 meeting, to continue its deliberations and seek additional testimony and comment on the previously proposed amendments to the diverted and transferred milk provisions. The Commission is continuing to consider these proposed amendments, but believes that additional testimony, data and comment in response to specific questions would be of assistance to it. The Commission additionally decided to propose conforming amendments to the definition of *producer* in the Compact Over-order Price Regulation. The Commission will hold a public hearing on September 2, 1998 to hear additional testimony and receive documentary evidence regarding the previously proposed amendments to the diverted and transferred milk provisions and the definition of *producer milk* and also regarding the newly proposed amendments to the definition of *producer*. The comments on any of these proposed amendments will be accepted until 5:00 p.m. on September 16, 1998.

#### Diverted or Transferred Milk

The current Compact Over-order Price Regulation permits certain milk, which is not disposed of in the compact regulated area, to be qualified for payment of the Compact Over-order producer premium. In the exercise of its administrative discretion, the Compact Commission previously proposed, as a matter of policy, to amend the rules governing the definitions of "producer milk" (at section 1301.12) and "diverted milk" (at section 1301.23), as well as the rule governing the "classification of transfers and diversions" (at section 1304.2) to exclude from the pool milk that is transferred or diverted, in bulk, from a pool plant to a plant located

outside of the regulated area, and thereby disqualify it from the Compact Over-order producer premium.<sup>1</sup> The proposed amendments do not affect milk diverted or transferred to a partially regulated plant.<sup>2</sup>

In conjunction with its continuing deliberations regarding diverted and transferred milk, the Commission is now also proposing certain conforming amendments to the definition of *producer* at section 1301.11. This section establishes the criteria a producer must meet to qualify for Compact Over-order producer premiums. The Commission proposes to amend this section to be consistent with the proposed rules regarding diverted and transferred milk by adding a cross-reference to the definition of *producer milk*. This reference is required to prevent any ambiguity caused by the proposed amendment to the definition of *producer milk* which cross-references the proposed amendment to the definition of *diverted milk*.

The Commission also proposes to amend the definition of *producer*, as needed, to be consistent with any amendments adopted by the Commission to the rules regarding diverted and transferred milk. Specifically, sections 1301.11(b) (2) and (3) may require amendment to maintain internal consistency of the regulations if the Commission adopts amendments to the previously noticed rules regarding the definitions of "producer milk" (at section 1301.12) and "diverted milk" (at section 1301.23), as well as the rule governing the "classification of transfers and diversions" (at section 1304.2). Although the proposed amendments are merely conforming, the Commission invites comment on these provisions as currently contained in the Over-order Price Regulation.

Finally, the Commission proposes to amend the definition of *producer* to update the criteria for producers historically associated with the New England market to add the requirement that these producers moved their milk to a pool plant in the regulated area in December of 1998, in addition to December 1996 and December 1997, as currently provided in the regulation.

Accordingly, the Commission extends the comment period and specifically requests additional comments, data and

testimony on issues relating to diverted and transferred milk, including:

1. Historical data regarding the volume and percentage of milk diverted and transferred out of the compact regulated area;

2. Information and statistical data regarding the impact, if any, of implementation of a cap on the volume and/or percentage of diverted and transferred milk eligible for Compact Over-order producer premiums and, assuming that some cap is implemented, what percentage that cap should be, with supporting documentation for the recommended cap, and recommendations for a methodology for calculating a cap, with supporting documentation for the methodology;

3. Information and identification of statistical data regarding the seasonal variability of milk production and milk consumption in the compact regulated area and the impact, if any, such variability has on the volume and percentage of milk diverted and transferred out of the compact regulated area;

4. Information and identification of statistical data regarding other influences, if any, on the volume and percentage of milk diverted and transferred out of the compact regulated area; and

5. Information and identification of statistical data regarding the impact, if any, of the provisions contained in the regulation defining the term *producer* on the volume and percentage of milk diverted or transferred out of the regulated area.

#### Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 C.F.R. 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing on September 2, 1998, or afterward, of relevant facts, statistics, data, conclusions and other information provided by or through the United States Department of Agriculture, including but not limited to such matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

#### Extension of Time for Submission of Comments

The Commission extends the comment period until 5:00 p.m. September 16, 1998 on the proposed

rules amending parts 1301 and 1304 published at 63 FR 31943, June 11, 1998, amending the provisions regarding diverted and transferred milk.

#### Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing at 9:00 AM on September 2, 1998 at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, New Hampshire.

#### Request for Written Comments and Pre-filed Testimony

Pursuant to the Commission rules, 7 C.F.R. 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on September 16, 1998. Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 PM deadline but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the witness's name, address and occupation and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 5:00 PM August 26, 1998.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601, (802) 229-2028 (fax).

For more information contact the Compact Commission offices.

#### List of Subjects in 7 CFR Parts 1301 and 1304

Milk.

#### Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR Chapter XIII as follows:

#### PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

<sup>1</sup> 63 FR 31943 (June 11, 1998).

<sup>2</sup> The Compact and Commission regulations define a *partially regulated plant* to mean a milk plant not located in the regulated area, but having Class I distribution within the regulated area, or receipts from producers located in the regulated area. Compact Article II, Section 2(7); 7 C.F.R. 1301.6.

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

2. Section 1301.11 is amended by revising paragraph (b) to read as follows:

**§ 1301.11 Producer.**

\* \* \* \* \*

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant, provided that on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during December 1996 and December 1997 and December 1998, all of that milk was physically moved to a pool plant in the regulated area. Or: to be considered a qualified producer, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the current month and for five (5) months subsequent to July of the preceding calendar year, all of that milk must have moved to a pool plant and be defined as *producer milk* under § 1301.12, provided that the total amount of milk at a pool plant eligible to qualify producer who did not qualify in December 1996 and December 1997 and December 1998 shall not exceed the total bulk receipts of fluid milk products less:

(1) Producer receipts as described in paragraph (a) of this section and producer receipts as described in paragraph (b) of this section who are qualified based on December 1996 and December 1997 and December 1998;

(2) 90% of the total bulk transfers of fluid milk products (not including bulk transfers of skimmed milk and condensed milk) disposed outside of the regulated area; and

(3) 100% of packaged fluid milk products disposed outside of the regulated area.

\* \* \* \* \*

Dated: August 11, 1998.

**Kenneth M. Becker,**

*Executive Director.*

[FR Doc. 98-21989 Filed 8-14-98; 8:45 am]

BILLING CODE 1650-01-P

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 25**

[AG Order No. 2172-98]

RIN 1105-AA51

**National Instant Criminal Background Check System User Fee Regulation**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The rule will provide for and establish a user fee to be assessed to Federal Firearms Licensees (FFLs) for

the processing by the FBI of National Instant Criminal Background Check System (NICS) background checks. A NICS background check will determine whether information available to the system provides reasonable cause to believe that transfer of a firearm to an individual would violate state or federal law. In states in which the state government has not agreed to designate a Point of Contact (POC) to receive and process requests from FFLs for NICS background checks, FFLs will be required to contact, either by telephone or other electronic means, the NICS Operations Center at the FBI to initiate and process a NICS background check.

There are substantial costs associated with operating the FBI's NICS Operations Center. The \$200 million authorized to be appropriated by the Brady Handgun Violence Prevention Act, Public L. 103-159, section 106(b) was limited to the purpose of improving the criminal history record systems of the states. A small portion of those funds was made available to the FBI to help design the NICS. The funds are not available, however, to cover the FBI's annual operating cost for the NICS. Therefore, FFLs will be assessed a processing fee for each NICS background check processed by the FBI's NICS Operations Center. The purpose of the fee is to recover the full cost of providing this service to FFLs doing business in states where the FBI is contacted directly by the FFLs. This rulemaking sets forth the FBI's legal authority to charge a user fee for NICS background checks and the cost analysis to be used to calculate the fee.

**DATES:** Written comments must be received on or before September 16, 1998.

**ADDRESSES:** All comments concerning this proposed rule should be mailed to: Mr. Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147.

**FOR FURTHER INFORMATION CONTACT:** Mr. Emmet A. Rathbun, Unit Chief, telephone number (304) 625-2000.

**SUPPLEMENTARY INFORMATION:** On November 30, 1993, Public L. 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Public L. 103-159, the "Brady Handgun Violence Prevention Act" (Brady Act) requires the Attorney General to establish by November 30, 1998, "a national instant criminal background check system that any [firearms] licensee may contact, by telephone or by other electronic means

in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code, or State law." In order to provide this service directly to certain FFLs and to recover the associated costs, the FBI will assess FFLs a user fee in states where the FBI is contacted directly by the FFLs.

**NICS Background Checks**

The Brady Act provides that before a firearm may be transferred, FFLs must request a NICS background check on a prospective firearm purchaser who is not licensed under 18 U.S.C. 923. A Notice of Proposed Rulemaking establishing regulations to protect the security and privacy of the information in the NICS and describing the manner in which the system will function was published in the **Federal Register** on June 4, 1998, 63 FR 30430, "National Instant Criminal Background Check System Regulations." Generally, a NICS background check will consist of a search of the NICS Index (an FBI database containing information concerning certain individuals prohibited by law from possessing firearms), the National Crime Information Center (NCIC), and the Interstate Identification Index (III), for matching records that may provide reason to believe that the transfer of a firearm to a prospective purchaser would violate Federal or state law.

The method by which an FFL will request background checks will depend upon the state where the FFL is conducting business. In states that agree to designate a POC, state or local law enforcement agencies will serve as POCs for the purpose of processing NICS checks. As POCs, these agencies will receive inquiries by FFLs, check state and local record systems for disqualifying records, initiate NICS background checks through electronic access to the NICS via the NCIC communications network, analyze any matching records, provide responses back to the FFL, and process appeals. The FBI will not charge the state agencies or the FFLs a fee for NICS background checks processed by state POCs. The comparatively minor cost to the FBI of providing automated record responses to POCs (who research and analyze the records) will be covered by funds appropriated to the FBI rather than by a NICS user fee. Charging FFLs a fee to recover the POC's cost of processing NICS background checks is at the discretion of the state.

Where the state will not be a POC, the FFLs will telephonically contact the