

apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Shell egg processors who meet the facility and operating requirements are entitled to pack their eggs in packages bearing official USDA grade identification when AMS graders are present to certify that the eggs meet the requirements as labeled. Plants in which these grading services are performed are called official plants. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 159 are official plants that use USDA's grading service and would be subject to this rule. Of these 159 official plants, the AMS believes approximately 25 would meet the small business definition.

The EPIA, enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption, with implementing regulations in 7 CFR part 59. Congress amended the refrigeration and labeling requirements of the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991.

In 1992, the AMS proposed changes to 7 CFR part 59 to implement the 1991 EPIA amendments and to 7 CFR part 56 to make its temperature and labeling requirements consistent with part 59. Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS. Egg products inspection functions under the EPIA were delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS. FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59, later redesignated as 9 CFR part 590, which became effective August 27, 1999. Among other changes, the amendments require a storage temperature at no greater than 45 °F (7.2 °C) for eggs after they have been packed into containers destined for the ultimate consumer.

Since the proposed changes to the shell egg grading regulations were not finalized, AMS is revising 7 CFR part 56 to conform to the FSIS temperature and labeling requirements mandated by the 1991 EPIA amendments. Because the proposed rule was published some years ago, AMS published this rule as an interim final rule with request for comments. We are only making changes deemed necessary to avoid conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

All shell egg processors that currently use or are likely to use USDA grading service typically have over 3,000 layers and are therefore required to comply with the provisions of the EPIA.

Accordingly, all eggs these processors pack into consumer containers for the ultimate consumer must comply with EPIA refrigeration and labeling requirements. Additionally, industry practice is to refrigerate all processed and graded eggs the same way, whether packed into containers destined for the ultimate consumer, or only officially identified as U.S. Grade AA, A, or B.

Therefore, AMS has determined that the provisions of this rule will not impose any additional requirements on small or large egg handlers.

Accordingly, it will not have a significant economic impact on a substantial number of small entities that use USDA's voluntary shell egg grading service. In addition, FSIS discussed its RFA analysis when it published its final rule for 7 CFR part 59, and determined that it would not have a significant economic impact on a substantial number of all small entities that produce and process chicken eggs.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements that appear in part 56 have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581-0128. There are no new requirements provided for in this rulemaking action.

After consideration of all relevant material presented, including the comments received, we are finalizing the interim rule without change.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

PART 56—VOLUNTARY GRADING OF SHELL EGGS

Accordingly, the interim rule amending 7 CFR part 56 which was published at 64 FR 56945 on October 22, 1999, is adopted as a final rule without change.

Dated: May 24, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00-13481 Filed 5-30-00; 8:45 am]

BILLING CODE 3410-02-P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1306, 1307 and 1309

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends the over-order price regulation to establish a milk supply management plan. This new program addresses the requirement in the Northeast Interstate Dairy Compact that the Commission take such action as necessary and feasible to ensure that the over-order price regulation does not create an incentive for milk producers to generate additional supplies of milk. This rule establishes an assessment/refund plan under which the Commission will withhold 7.5 cents from the per hundredweight producer price in each month there is a Compact payment, so long as the resultant Compact producer price is at least 25 cents per hundredweight. The Commission will, on an annual basis, return the withheld funds to only those Compact eligible producers who increased their milk production at a rate of one percent or less, as compared to the prior year's milk production. The refund will be paid to eligible producers by distributing one-half of the assessed funds on an equal payment to each eligible producer and one-half on a per hundredweight basis of the total milk production for the program year, up to a maximum per hundredweight refund of \$12,000. The program year will be from July 1 through June 30. This supply management plan is intended to ensure that the over-order price regulation does not create an incentive

to generate additional supplies of milk and that it continues to meet the Commission's primary mission to assure the continued viability of dairy farming in the northeast and to assure New England consumers of an adequate and local supply of milk.

EFFECTIVE DATE: July 1, 2000.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

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:

I. Background

The Northeast Dairy Compact Commission ("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. 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. In November 1999, the Congressional consent to the Compact was extended through September 30, 2001. 7 U.S.C. 7256(3), as amended by Pub. L. 106-113 § 4.

Pursuant to its rulemaking 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 on May 30, 1997.¹ The Commission has subsequently amended and extended the compact over-order price regulation. The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

The Compact requires the Commission, when establishing a compact over-order price, to "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." Compact Article IV, Section 9(f). As required by this section, the

Commission has taken several steps to monitor milk production in New England since implementation of the over-order price regulation. In 1997, the Commission contracted with two Universities to conduct various studies, including an assessment of the cost of milk production in New England and an analysis of milk supply in the Compact region. In 1998, the Commission's Committee on Regulations and Rulemaking held five regional meetings to obtain information from the region's farmers regarding the increase in milk production in the region and the Commission's responsibilities under Article IV, Section 9(f) of the Compact. The Commission also conducted an historical review of milk supply control methods that have been attempted in the past on a national or regional level. Finally, the Commission initiated a series of informal rulemaking proceedings.

The Commission began informal rulemaking proceedings relating to milk supply management by issuing a notice on November 27, 1998. In that notice the Commission requested public comment and testimony on several subjects and issues, including whether additional supply management policies and provisions should be incorporated into the over-order price regulation.² The Commission specifically solicited comments on four distinct methods of addressing milk supply management through the Compact producer price payment. The four options were: (1) to establish a cap that would limit the milk eligible for the Compact payments to up to 95,000 pounds of a producer's monthly milk production; (2) to establish a cap that would limit the milk eligible for the Compact payments at the 1998 production level for farms producing in excess of 600,000 pounds per month; (3) a refund/assessment plan that would withhold an assessment from each Compact monthly pool and refund the assessed funds to only producers who did not increase their milk production during the program period; and (4) a split pool proposal that would withhold a certain amount from each monthly pool and then redistribute those funds to all eligible producers by dividing the total and paying a set percentage to all farms on an equal basis and the remainder on a per hundredweight basis.

The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998. At its January 13, 1999

meeting, the Commission voted to close the subjects and issues rulemaking proceeding and to refer the issues and comments and testimony received to the Committee on Regulations and Rulemaking for review and analysis. The Committee was directed to return to the Commission with its recommendations no later than the May 1999 meeting.

The Committee presented its recommendations to the Commission at the April 7, 1999 meeting. The Commission voted to initiate an informal rulemaking proceeding and to propose a specific assessment and refund program to address its responsibilities under Article IV, Section 9(f) of the Compact.³ The assessment and refund program proposed assessing a flat rate of \$250,000, or approximately four cents per hundredweight, from each producer pool. The assessment obligation would have carried forward to the next pool in any month without a Compact payment. The refund of the assessments would have been paid to only those producers who increased their milk production at a rate of one percent or less. The refund would be paid in two parts, the first at a flat rate to each eligible producer, and the second part to only those producers who reduced their milk production based on the hundredweight of milk that the current year's production was less than the prior year's production. The Commission held a public hearing on May 5, 1999 in Concord, New Hampshire and received comments until May 19, 1999.

At its meeting on June 2, 1999, and after considering the testimony and comments submitted in the rulemaking proceeding, the Commission voted to reopen the proceeding and to propose as a second option a base/excess plan, in addition to a modified assessment/refund plan.⁴ The proposed base/excess plan would establish a monthly base production level for each producer, using the prior year's production in that month as the base. The producer would then only be eligible for Compact payments on the volume of milk produced in the current month up to the base volume of milk produced in the same month in the prior year. There would be no Compact payment on milk produced in excess of the base. The amended assessment and refund plan would establish an assessment of five cents per hundredweight against the producer pay price, but only in months with a Compact payment.

¹ 62 FR 29626, May 30, 1997.

² 63 FR 65563, Nov. 27, 1998.

³ 64 FR 19084, Apr. 19, 1999.

⁴ 64 FR 33027, June 21, 1999.

The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and August 4, 1999 in White River Junction, Vermont on the proposed base/excess and modified assessment/refund plans. The Commission received written comments through August 18, 1999.

At its September 1, 1999 meeting, the Commission voted to postpone deliberation on the proposed supply management rules pending resolution of legislation in Congress regarding reauthorization and expansion of the Compact. The Commission repeated this action at its October 6, 1999 and November 10, 1999 meetings.

Following Congressional reauthorization on November 29, 1999, the Commission began deliberations on the proposed supply management rules at its December 1, 1999 meeting. The Commission voted to reject the proposed base/excess plan, due to excessive administrative costs associated with that proposal, as demonstrated in the hearing record through testimony and comment, and to move forward with the analysis of the public comment on the proposed assessment/refund program. The Commission's Committee on Regulations and Rulemaking continued its analysis of the rulemaking record.

At the February 2, 2000 Commission meeting, because so much time had passed since the last public comment period and new milk production statistics were available, the Commission voted to close the pending supply management proceedings and instructed the Committee on Regulations to hold a public meeting and to return to the Commission's March meeting with a new proposed rule to address the Commission's responsibilities under Article IV, Section 9(f) of the Compact. The Committee held a public meeting on February 23, 2000 to discuss the Commission's supply management options.

On March 8, 2000 the Commission voted to propose a revised assessment/refund plan that would assess five cents against the producer price in each month with a Compact pool, and refund those funds to all producers who had maintained their milk production at or below one percent of the prior year's production. The refund would be distributed in two parts, with the first paid to all eligible producers at an equal payment to each producer and the second part on a per hundredweight basis of total milk production for the program year. The Commission held a public hearing on April 5, 2000 in

Bedford, New Hampshire.⁵ The Commission accepted written comments until April 19, 2000.

Based on the comments received in the public meetings on supply management in April and May 1998 and February 2000 and oral testimony and written comments and exhibits received in the December 1998 subjects and issues rulemaking proceeding, and the May, July and August 1999 and April 2000 public hearings and proposed rulemaking proceedings, the Commission implements a supply management plan through an assessment and refund payment to producers who maintain their milk production up to one percent of the prior year's production level. The comments and testimony received as part of the public participation in the rulemaking proceedings and the milk supply management plan are described in detail below.

II. Summary of Public Comments and Testimony

A. Summary of 1998 Proceedings

The Commission has closely monitored the milk supply in the New England states since the implementation of the over-order price regulation. In 1998, the Commission initiated a comprehensive investigation into the increase in milk production that occurred in the first three quarters of 1998 and to evaluate how best to address its obligations under Article IV, Section 9(f) of the Compact. These activities included holding five regional meetings of the Committee on Regulations and Rulemaking and the review and analysis of supply management options proposed for the United States Dairy Industry over the years. The Commission also initiated a subjects and issues rulemaking proceeding to obtain public comments and testimony regarding additional regulation of the New England milk supply.

The Commission held five regional meetings of its Committee on Regulations and Rulemaking in April and May of 1998. These meetings were held in Vermont, Massachusetts, Saratoga Springs, New York, Connecticut and Maine. The Commission received oral and written comments in response to those meetings. A summary of the oral⁶ and

written⁷ comments is included in the December 1998 rulemaking record. Additional letters and telephone calls were received by the Commission in response to the regional meetings of the Committee on Regulations and Rulemaking and the letters are also included in the record.⁸ The overwhelming opinion of dairy farmers was that the Compact over-order price was not responsible for the increase in milk supply, but rather that the favorable weather and grain prices and long term business plans were responsible. Still many individuals did express support for the adoption of a supply management plan by the Compact Commission.

In addition, the Commission reviewed the supply management options proposed for the United States dairy industry.⁹ The review includes a discussion of Federal Milk Market Orders, The Dairy Price Support Program, Voluntary Supply Control Programs, such as the Milk Diversion Program, the Dairy Termination Program, and Refundable Assessment, as well as Mandatory Supply Control, such as allocating the "right of production" and a quota system. This review also includes a bibliography.

In December 1998, the Commission initiated a public hearing, at the request of the Massachusetts delegation to the Commission, to consider placing a limit on the amount of milk on which the Compact over-order producer price is paid. The purpose of the proposed limit, or cap, would be "to increase the level of income stability for the average sized farmers and to limit the incentives for increased production in the Compact region."¹⁰ On November 27, 1998, the Commission published a notice of proposed rulemaking and requested testimony and comments on whether to amend the formula for distribution of monies from the producer-settlement fund, including whether to adopt a cap on the amount of milk, per producer, eligible for the Compact over-order producer price and whether additional supply management policies and provisions should be incorporated into the over-order price regulation.¹¹ The Commission held a public hearing on December 11, 1998 in Boxborough, Massachusetts and received written

⁷ Written Statements Submitted at the Public Hearings, WC 12/98 at 57-163.

⁸ Producer Letters and Phone Calls Concerning the Issue of Increased Milk Production, WC 12/98 at 164-257.

⁹ Supply Management Options Proposed for the US Dairy Industry: Historical Review, WC 12/98 at 44-56.

¹⁰ WC 12/98 at 39.

¹¹ 63 FR 65563, November 27, 1998.

⁵ 65 FR 12146, Mar. 8, 2000.

⁶ Summary of Testimony Concerning the Issue of Increased Milk Production in the Region, Written Comments December 1998 rulemaking record, hereinafter "WC 12/98" at 22-38.

comments and exhibits until December 31, 1998.

In its November 27, 1998 notice of proposed rulemaking, the Commission specifically solicited comments on four proposals: the Massachusetts Cap Proposal, a Proposal to Cap the Largest Producers, a Split Pool Proposal, and a Refund/Assessment Option.¹² These proposals were developed as a result of the Massachusetts delegation cap proposal and the comments submitted in response to the five regional meetings and the supply management option review.

The Commission's Regulations Administrator, Carmen Ross, prepared several comparison charts of the Massachusetts cap proposal and an additional split pool option, as an alternative method of addressing the concerns expressed by the Massachusetts delegation.¹³ In addition, Mr. Ross included data from the Market Administrator Order #1 regarding the number of farms by size category and year for comparison purposes.¹⁴ Using this data, Mr. Ross compiled another chart summarizing the milk production by farm size.¹⁵

The majority of the commenters addressed the cap proposal and supply management issues. Some commenters addressed the income distribution issues and others offered alternative proposals. A few commenters addressed the split pool and refund/assessment proposals.

1. Cap Proposals

The vast majority of the commenters opposed the cap proposals and a few commenters supported the cap. Other commenters simply recommended that the producer payment regulations should not be changed.

Most of the commenters who opposed a cap proposal were concerned that a cap would not be fair, would create a disincentive, would be divisive, and ultimately would not save the smaller farms, because farms go out of business for many reasons and not because of price in the short term. Many of these commenters emphasized the need for all size farms, that small farms benefit from the larger farms in their area, and the importance for individual farms to be able to decide how large, or small, they need or want to be.

2. Income Distribution

The majority of the commenters opposed changing the basic producer

pay formula and expressed support for the Commission's current methodology. Many of the commenters who opposed a change in the income distribution formula emphasized that many of the so-called larger farms are family farms run by two or more family members and supporting several related families, and gave the same reasons as those opposing a cap proposal for their opposition such as the importance of fairness in the regulation and the concern that divisiveness among farmers would result from changing the income distribution formula.

3. Supply Management

Supply management was also opposed by a great majority of commenters, both at the hearing in Boxborough and at the Committee's hearings in the Spring of 1998. Many of those opposed to supply management also did not believe that the Compact was causing the increase in production in New England, but rather attributed the increase to warm weather and good quality feed at low prices. Others stated that they increased production as part of a long-term plan to expand. Many of the commenters, especially at the Spring 1998 meetings, expressed how helpful the Compact payments have been, but these same commenters also stated unequivocally that the Compact payments did not cause them to increase production. Other commenters questioned why supply management is needed when farms are still going out of business and New England continues to be dependent on milk from other states, primarily New York.

Some commenters did support the Compact Commission instituting some form of supply management. A few commenters did think that the Compact payments are the cause of increased production in New England.

4. Split Pool Proposal and Refund/Assessment Proposal

Few comments were received specifically addressing the split pool proposals or other two-tiered system, and these comments were offered only if the Commission determined that an amendment to the income distribution methodology was required. Similarly, the Refund and Assessment proposal received few comments.

B. Summary of 1999 Rulemaking Proceedings

At the January 13, 1999 Commission deliberative meeting, the December 1998 supply management rulemaking record was referred to the Committee on Regulations and Rulemaking for analysis and review. The Committee

reported its recommendations to the Commission at the April 7, 1999 meeting and the Commission published a proposed rule on April 19, 1999.¹⁶ The proposed rule would have established an assessment/refund program under which the Commission would withhold up to \$3 million dollars per year, at the rate of \$250,000 from each Compact monthly pool. In months without a Compact pool, the assessment would accrue to the next monthly pool. At the end of the calendar year, the Commission would refund the assessed funds to producers who had increased production of 1% or less, as compared to the prior year's production. One-half of the assessment would be refunded at a flat rate to each eligible producer. The remaining half would be refunded only to those producers who decreased production, on a per hundredweight payment based on the volume of reduced production. The Commission held a public hearing on May 5, 1999 in Bedford, New Hampshire and received written comments until May 19, 1999.

The Commission received testimony from its Regulations Administrator, Carmen Ross, and four other witnesses at the May 5, 1999 public hearing on the first proposed assessment/refund rule. Mr. Ross' testimony was an explanation of the Commission's proposed rule.¹⁷

One commenter generally supported the Commission's proposal, but offered an alternative approach involving an individual base for each farmer. Another commenter expressed the view that New England is not the cause of the national oversupply of milk. This commenter opposed a supply management plan, because the only producers to reduce production are those who had a bad year and felt the existing regulation works well. He expressed the view that the 2.8 percent of income that the Compact payments represent, is not enough to make management decisions. He felt that his farm is set up for a certain number of cows, and to reduce the number would start a domino effect of decreased production.

One commenter presented testimony on behalf of three farmer cooperatives, in which he generally felt a supply management plan was not necessary, but as an alternative offered a plan to establish a base for each producer. This commenter felt by making Compact payments only up to the prior year's production level would address the incentive aspect of Article IV, Section 9(f) of the Compact. This commenter also opposed making refund payments

¹² 63 FR 65564, November 27, 1998.

¹³ Carmen Ross, Tr. 14 and WC 12/98 at 2-16; 63 FR 65564.

¹⁴ Ross, WC 12/98 at 17-19.

¹⁵ Ross, WC 12/98 at 20.

¹⁶ 64 FR 19084 (April 19, 1999).

¹⁷ Carmen Ross, May 1999 Transcript ("Tr. 5/99") at 4-61.

on the volume of reduced production. This opinion was shared by another commenter.

The Commission also received eighteen written comments. Of these, eleven supported the Commission's actions to address milk supply issues and eight opposed any supply management plan. Of those opposing a supply management plan, the commenters expressed concern for how the plan would affect small or new farms or younger farmers trying to grow their businesses. Others felt that the Commission has already taken sufficient steps to ensure the Compact payments do not create an incentive to generate additional supplies of milk, through the payments to the Commodity Credit Corporation and refunding the balance to farmers who did not increase production, implementation of the diversion and transfer rule and by setting the Compact price at a floor of \$16.94.

Many of the commenters supporting the proposed assessment and refund plan felt that the assessment would have to be higher than four cents, some recommended up to twenty cents or twenty per cent of the monthly Compact producer price, to be effective. Another commenter felt the five cent assessment was adequate, but should be capped at \$2.5 million for the program year.

Several commenters objected to the proposed plan to make part of the refund payment on the reduced volume of milk production, instead of the historical dairy pricing policy of payments based on total milk produced. Many commenters urged the Commission to match the base of comparison, not to the prior year's production volume, but rather to a producers contribution to a milk supply volume balanced to the New England consumer demand. Other commenters objected to the accrual of the assessment obligation to the next pool, in months with no Compact payment.

At its June 2, 1999 meeting, the Commission considered the testimony and comments received and voted to modify the proposed assessment/refund rule and to alternatively propose a base/excess rule.¹⁸ The assessment/refund plan was modified to withhold five cents from each Compact pool, without an assessment accruing in months without a Compact pool. The modified proposal also included a \$12,000 cap on the amount of the refund to be paid out on a per hundredweight basis.¹⁹

The Commission also proposed, as an alternative, a base/excess plan. Under that proposal, all compact qualified producers would be assigned a base production level for each month. The base would be the equivalent of the volume of milk produced in the same month in the prior calendar year. Producers would then receive compact payments on only their base production volume, or actual production volume, whichever is less. Any amount of milk produced in excess of the base would not receive Compact payments. Adjustments to the base would be dependent on the rate of increased production in the Compact region as compared to the national average. The Commission held public hearings on July 7, 1999 in West Springfield, Massachusetts and on August 4, 1999 in White River Junction, Vermont. Both of these public hearings were held in the evening to accommodate summer farm work schedules and to encourage farmers to attend. Comments were received through August 18, 1999.

The Commission received testimony from twenty-seven witnesses in those two public hearings and received eleven additional written comments. Of these commenters, one commenter supported a supply management plan, and suggested that supply be matched to consumer demand and twenty-eight opposed the Commission taking any action regarding supply management, but nine would support the base/excess plan, if the Commission felt it was necessary. The reasons given for opposing a supply management plan included that it is not necessary because milk production is due to weather conditions and feed quality and price, the Commission has already taken sufficient actions and that milk supply is a national problem and the small amount of money represented by the Compact payments to New England milk producers cannot effect the national milk supply.

Two of the witnesses appeared at the request of the Commission. They were David Walker, Federal Order #4 Market Administrator and Eric Rasmussen, Federal Order #1 Market Administrator. These witnesses testified to their administrative experience with plans similar to those proposed by the Commission. Mr. Walker explained the heavy administrative aspect of implementing a base/excess plan and Mr. Rasmussen explained the experience with administering and

auditing functions his office performed for the Commission in the 1999 refund of the balance in the Commodity Credit Corporation escrow account to producers who did not increase their milk production.

The Commission notes that the commenters participating in the rulemaking proceedings described above provided comments of exceptional quality. Many commenters thoroughly analyzed the charts presented by the Commission and of those who presented alternative proposals, many produced their own charts and compared the results to the charts presented by the Commission. The Commission appreciates the thoughtful participation and assistance offered by these commenters and has found the opinions, data and comments of great value.

C. Summary of Current Proceeding

The Commission proposed the instant rule on March 8, 2000.²⁰ The Commission proposed a revised assessment and refund plan that would withhold five cents from the producer price in each Compact monthly pool. The Commission would refund the assessment on an annual basis to those producers who had increased production at a rate of one percent or less, as compared to the prior calendar year's production. One-half of the assessed funds would be distributed to all eligible producers at a flat rate and one-half would be distributed based on the total volume of milk produced for the year, up to a maximum per hundredweight refund of \$12,000. This proposed rule responded to previous comments by deleting the provision that would have the assessment accrue to the next pool, in months without a Compact payment and by paying the per hundredweight refund to all eligible producers, instead of only those who actually decreased production, and by making that payment on the total volume of milk produced, rather than on the volume of reduced production.

The Commission received testimony from three witnesses and three written comments. All those commenting supported a supply management plan. Three commenters felt the assessment should be higher than the proposed five cents, and suggested at least ten cents, and one commenter supported the proposal but only if the assessment is no more than five cents.

D. Analysis of Comments Received

The Commission concludes that the adopted milk supply management plan

¹⁸ 64 FR 33027 (June 21, 1999).

¹⁹ The proposal also indicated the Commission would modify the rule relative to the Commodity Credit Corporation to return remaining funds from

a CCC reserve account to the producer-settlement fund. The current rule requires such funds to be returned to producers who did not increase their milk production and is not changed by this final rule.

²⁰ 65 FR 12146, Mar. 8, 2000.

is both necessary and feasible and is therefore required by Article IV, Section 9(f) of the Compact. The Commission further concludes that its responsibility under that section is met with this program and the other actions previously taken by the Commission to ensure that the over-order price regulation does not create an incentive to producers to generate additional supplies of milk, while assuring the viability of dairy farming in the northeast.

The Commission does not disagree with the many commenters who noted that a national milk supply management program should be considered and not just a program applicable in the northeast. However, the Commission notes its peculiar responsibility relative to milk supply in the northeast under the Compact and concludes that this program is appropriate.

The Commission also does not disagree with the numerous commenters that milk supply is greatly effected by weather conditions and feed quality and cost. Nevertheless, the Commission is charged with taking action that is necessary and feasible relative to milk supply and concludes that the assessment/refund plan adopted by this amendment meets that obligation.

The Commission also recognizes the many statements from producers that the Compact has not caused them to increase their milk production. The Commission does not disagree with their statements that good weather, good quality feed and low feed cost contributed to the milk production increase in the New England states in 1998 and 1999. However, the Commission also defers to the results of its commissioned study that concludes that even taking those factors into account, one percent of the milk production increase between July 1997 and June 1998 is attributable to the Compact payments.²¹

The Commission concludes that the assessment and refund plan is sufficient to meet the requirements of Article IV, Section 9(f) of the Compact. Many commenters suggested that the proposed rate of five cents per hundredweight was insufficient and some suggested up to twenty percent of the Compact producer price be set as the assessed rate. The Commission agrees that five cents may be insufficient, but that ten cents is more than necessary in light of current milk production data that shows

New England production below the national average. Therefore, the Commission concludes that 7.5 cents reduction in the producer price for twelve months is sufficient to result in a supply management refund pool that will encourage producers to stabilize their milk production at one percent or less. A stable milk supply in New England is a goal for the Compact and will assure consumers of an adequate and local supply of milk. Therefore, the Commission adopts an assessment rate of 7.5 cents against the producer price in each month there is a Compact payment.

However, the Commission is concerned that when federal milk prices are high, that is a signal that more milk is needed, and therefore will not impose the 7.5 cents assessments when it would result in a producer pay price of less than 25 cents.

The Commission agrees with the numerous commenters that the refund should be paid on total production, and not on reduced production. The Commission understands the opposition of some commenters to the two-tier refund design of the supply management plan. However, the Commission recognizes the different impacts on different size farms and different pressures on farms in more populated states. The Commission concludes that the two-tier refund design will best assure a local supply of milk throughout New England.

The milk supply management plan implemented by this rule is a voluntary plan. This rule does not require young or new farmers to restrict their business growth plans. However, it does provide an incentive for farmers to stabilize their production.

The Commission has been very cognizant of the repeated requests from those participating in the public meetings and hearings that any plan be equitable and fair to all farmers. The Commission adopts this supply management plan after much careful consideration and deliberation and concludes that this plan allows many factors to be balanced while providing equity and fairness to all farmers through this voluntary supply management plan.

III. Milk Supply Management Plan

The milk supply management plan implemented by this rule is designed to meet the Commission's responsibilities

under Article IV, Section 9(f) of the Compact. That provision provides that "[w]hen establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk."

The supply management plan is relatively straightforward to administer and implement and therefore the Commission concludes that it is a feasible method of addressing supply management. The proposed supply management plan is necessary to ensure that the Compact Over-order price does not create an incentive for producers to generate additional supplies of milk, as required by Article IV, Section 9(f) of the Compact.

Since promulgation of the Compact Over-order Price Regulation in 1997, the Commission has closely monitored milk production levels in New England. One of the main goals in initially promulgating the Over-order Price Regulation was to at least stabilize the dairy industry supplying the New England consumer milk markets and to increase the local supply of milk.²²

The Commission received the results of a study, conducted by the University of Vermont, of the milk supply in the first year of the Compact Over-order Price Regulation. The study concluded that the Over-order Price Regulation was meeting its initial goal of stabilizing the milk supply and that one percent of the increase in milk supply between July 1997 and June 1998 was due to the Compact payments.²³ This study analyzed the milk supply in New England and factored in many variables, including weather and feed quality and prices in concluding that the Compact Over-order Price Regulation was increasing milk supply by one percent, a stated goal of the Commission in implementing the price regulation in 1997. The study does not include an analysis of the impact of the price regulation after June 1998.

Table 1 shows the total volume of milk in the Compact pool between July 1997 and December 1999. The volume of milk includes milk produced outside of New England, and distributed within New England, and does not include milk excluded pursuant to the Compact limitations on qualification of diverted and transferred milk.

²¹ Executive Summary, Milk Market Impacts of the Northeast Dairy Compact, Department of Community Development and Applied Economics, University of Vermont November 1999.

²² 62 FR 23039-40, April 28, 1997; 62 FR 29635, May 30, 1997; 62 FR 62814, Nov. 25, 1997.

²³ Impacts of the Northeast Interstate Dairy Compact on New England Milk Supply, Charles F.

Nicholson, Budy Resosudarmo and Rick Wackernagel, Department of Community Development and Applied Economics, The University of Vermont.

TABLE 1.—VOLUME OF MILK IN THE COMPACT POOL JULY 1997 THROUGH DECEMBER 1999
[In million pounds]

Month	1997	1998	1999
Jan		544.2	568.3
Feb		508.1	528.3
Mar		561.2	563.0
Apr		541.8	568.5
May		580.8	599.0
June		552.1	569.2
July	531.0	567.9	564.3
Aug	532.2	551.3	559.8
Sept	503.9	529.5	530.4
Oct	517.3	544.3	545.9
Nov	498.0	527.3	525.3
Dec	535.1	566.0	560.7
Average	519.6	547.9	556.9

Table 2 shows the volume of milk that has been depooled, or excluded from qualification for Compact payments, pursuant to the Compact limitations on diverted and transferred milk.²⁴ The limitations on diverted and transferred milk became effective in January 1999 and applied to the first Compact pool in April 1999. The applicable regulations are codified at 7 CFR 1301.23(d) and 1304.2(c).

TABLE 2.—VOLUME OF DEPOOLED MILK JANUARY 1999 THROUGH DECEMBER 1999
[In million pounds]

Month	Depooled Milk
Jan	
Feb	
Mar	
Apr	4.3
May	1.2
June9
July	1.5
Aug	4.8
Sept	4.7
Oct	2.0
Nov	2.2
Dec	1.4
Total	23.0

Table 3 shows the total volume of milk qualified for Compact payments, after exclusions pursuant to the diverted and transferred milk limitations, by quarter. Table 3 also shows the percent increase in milk volume over the same quarter in the prior year.

TABLE 3.—COMPACT PRODUCER MILK BY QUARTER, JULY 1997 THROUGH DECEMBER 1999

Quarter	1997 million pounds	1998 million pounds	1999 million pounds	1997/1998 (percent)	1998/1999 (percent)
Jan-Mar		1,613.5	1,659.6		2.9
Apr-June		1,674.7	1,736.7		3.7
Jul-Sep	1,567.1	1,648.7	1,654.5	5.2	0.4
Oct-Dec	1,550.4	1,637.6	1,631.9	5.6	-0.4
Average	1,558.75	1,643.6	1,670.7	5.4	1.6

Table 4 shows the federal blend price, the Compact producer price and the percent of total producer price attributed to Compact payments.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	% of total due to compact
July 1997	11.97	1.28	13.25	9.66

²⁴ 63 FR 65517, Nov. 27, 1998.

TABLE 4.—TOTAL PRODUCER PRICE AND PERCENT ATTRIBUTED TO COMPACT PAYMENTS—Continued

Month	Federal blend price (zone 21)	Compact producer price	Total producer price	% of total due to compact
August	12.26	1.31	13.57	9.65
September	12.54	1.36	13.90	9.78
October	13.60	0.81	14.41	5.62
November	14.10	0.44	14.54	3.03
December	14.06	0.40	14.46	2.77
January 1998	14.02	0.34	14.36	2.37
February	14.30	0.04	14.34	0.28
March	14.10	0.16	14.26	1.12
April	13.96	0.14	14.10	1.00
May	13.38	0.33	13.71	2.41
June	13.68	0.71	14.39	2.41
July	13.14	1.02	14.16	7.20
August	15.00	0.24	15.24	1.57
September	16.47	0.00	16.47	0
October	16.76	0.00	16.76	0
November	16.67	0.00	16.67	0
December	17.18	0.00	17.18	0
January 1999	17.29	0.00	17.29	0
February	15.82	0.00	15.82	0
March	15.69	0.00	15.69	0
April	11.76	1.43	13.19	10.8
May	12.42	0.82	13.24	6.2
June	12.79	0.73	13.52	5.4
July	12.97	1.01	13.98	7.22
August	13.64	0.70	14.34	4.88
September	15.34	0.21	15.55	1.35
October	15.47	0.00	15.47	0
November	15.41	0.00	15.41	0
December	12.15	1.00	13.15	7.60
Average	14.26	0.49	14.75	3.32

In addition to the public comment and testimony discussed above, the Commission considered the data shown in Tables 1 through 4, and published as part of the proposed rule, and the data and conclusions provided in the University of Vermont Milk Supply studies, as well as milk production data published by the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) and milk supply and demand data and estimates published by the USDA World Agricultural Outlook Board (WAOB), to design a feasible supply management plan. The supply management plan adopted by the Commission, and approved by producers, is designed (1) to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk, and (2) to be consistent with the Commission's primary responsibility of assuring the viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk. Compact Article I, Section 1 and Article IV, Section 9(f). The Commission concludes that establishing a voluntary supply

management plan, that includes an allowance for an annual increase of one percent, will meet these dual objectives.

In implementing this program the Commission notes that the Compact producer price, since the inception of the price regulation in July 1997, has averaged only 3.3% of the total producer pay price, and therefore the Commission recognizes there are some limitations on the ability to affect producer decisions through the Compact price. The Commission also acknowledges that weather and other circumstances, such as feed quality, that affect milk production and supply, are unaffected by the Compact price.

The Commission finds, based on the University of Vermont studies, that changes in production technology, such as genetic advances and improvements to feeding systems, milking systems and other farm management practices, led to a 2% growth rate in average annual milk production per cow in New England for the ten-year period between 1988 and 1998.²⁵ Those same studies also found

that milk production increased at a rate of 1.3% in the Compact region, between July 1997 and June 1998, of which 1% was attributable to the Compact producer price.

Therefore, the Commission recognizes that milk production is partially determined by price and partially determined by weather and other factors that are uncontrolled by the producer and unaffected by price levels. The Commission intends the supply management plan to affect, through the incentive aspects of the Compact price, the producer decisions regarding milk production that are directly related to the Compact price.

On the demand side, the Commission notes that USDA projects commercial disappearance of dairy products to grow at approximately 1% annually for the next decade.²⁶ The Commission finds that a 1% annual growth in demand justifies the conservative allowance of a 1% annual increase in supply to encourage a stable milk production level

²⁵ Impacts of the Northeast Interstate Dairy Compact on New England Milk Supply, Charles F. Nicholson, Budy Resosudarmo and Rick Wackernagel, Department of Community

Development and Applied Economics, The University of Vermont.

²⁶ "USDA Agricultural Baseline Projections to 2009," Staff Report WAOB-2000-1, Office of the Chief Economist, USDA.

consistent with demand for milk in New England and to accomplish the expressed goals of the Compact.

The Commission also concludes that the 1% allowance is supported by the relative equilibrium between milk supply and demand in New England since the implementation, on January 1, 1999,²⁷ of the rule limiting Compact payments on milk diverted and transferred out of the region. Pursuant to that rule, some milk has been excluded from the monthly Compact pool, as reflected in Table 2. However, the low percentage of depooled milk (e.g. 0.15% in June 1999 and 0.7% in April 1999) indicates a relative equilibrium between supply and demand in the New England milk market.

This demonstrates that since the inception of the compact price regulation in July 1997, including the 1% increase in milk supply in New England attributable to the Compact producer price, as determined by the University of Vermont studies, a relative equilibrium between milk supply and demand in New England has been achieved.

The Commission finds, based on the public comment and testimony in this proceeding and the findings in prior rulemaking proceedings regarding price level, that the established level Compact Class I price of \$16.94 per hundredweight will continue to be sufficient to ensure an adequate supply of milk to New England consumers. The Commission acknowledges that those producers who increase production greater than one percent will receive slightly less compact price at the end of the program year. However, those who maintain a stable level of milk production will receive slightly more. The Commission concludes that the adopted supply management program, as applied to all producers supplying the New England market, will ensure that the Compact producer price does not create an incentive to generate additional supplies of milk.

The supply management plan assesses 7.5 cents per hundredweight from the producer price in each monthly Compact pool. By taking an equal rate from each producer pool, the Commission intends that the impact on the monthly producer pay price will be minimized and predictable, thereby continuing to ensure a sufficient and stable pay price to producers to cover their costs of production. These funds will be accumulated in a separate interest-bearing account throughout the twelve-month plan year in a supply management-settlement fund.

At the conclusion of the plan year, producers will have 45 days to submit an application to the Commission for a refund from the supply management-settlement fund. Producers will be eligible for the refund if they maintained their milk production volume at a rate of increase of 1%, or less, compared to the prior year's production. One-half of the supply management-settlement fund will be distributed to eligible producers on a per producer basis, with each producer receiving an equal payment. The amount of the flat rate refund will be determined by dividing the total number of eligible producers into one-half the value of the supply management-settlement fund.

In addition, eligible producers will receive a refund amount based on a price per hundredweight of their total volume of milk produced in the plan year, up to a maximum of \$12,000. The second-half of the supply management-settlement fund will be distributed on the per hundredweight basis. The amount of this half of the refund will be determined by dividing the total volume of milk produced by eligible producers into one-half the value of the supply management-settlement fund to determine the rate per hundredweight each eligible producer will receive.

The assessment/refund program will provide a reward to those producers who stabilize their milk production and will create an incentive for all producers to maintain a stable, local supply of milk for the New England milk market.

All producers will share equally in the burden of funding this program through a reduction in the producer pay price. Only those producers who reduce or maintain their production level at 1% or less will be eligible for a refund. However, the program will not otherwise restrict the milk production of those producers who, for business reasons unrelated to the compact payments, choose to increase their milk production at a rate greater than 1% per year. All producers, and in particular, young and new farmers must be permitted to operate their businesses according to their own plan. With improvements in genetics and farm efficiency, milk production volume on an individual farm will increase even if the same herd size is maintained. Therefore, the Commission has designed this supply management plan to be voluntary in nature.

It is the intention and judgment of the Commission that the combination of this supply management assessment/refund plan and the rules limiting compact payments on diverted and transferred milk will operate in

coordination to regulate the supply of milk in New England relative to the consumer demand and to ensure that the compact payments do not create an incentive to generate supplies of milk in excess of the tolerance levels prescribed for diverted and transferred milk.

IV. Technical Amendments to the Over-Order Price Regulation

The Commission amends section 1306.3 and adds a new Part 1309 to provide the necessary regulations to implement the supply management assessment/refund plan. The Commission also makes corresponding technical changes required by the specific amendments and additions to the current regulations.

The Commission amends section 1306.3, by first redesignating existing paragraphs (e) through (g) as paragraphs (f) through (h) and adding a new paragraph (e). The new paragraph specifies that the Commission will withhold 7.5 cents from each monthly producer pool to fund the supply management-settlement fund, but only if the resultant over-order producer price is at least 25 cents.

A new Part 1309 is added to provide the regulations to implement the supply management plan. Section 1309.1 defines producer qualifications for the refund program and designates the plan year as between July 1 and June 30. Section 1309.2 defines the procedure for computing the refund prices to be paid to qualified producers. Section 1309.3 provides the authority for the establishment of a supply management-settlement fund and specifies that assessed funds will be returned to the producer-settlement fund if the supply management plan year is six months or less. Finally, section 1309.4 would describe the procedure for issuing payments to producers eligible for a refund under the supply management plan.

V. Summary of Required Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-Order Price Regulation can become effective. Each required finding is discussed below.

A. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Over-order Price Regulation serves the public interest. The Commission previously determined that an Over-order Price Regulation

²⁷ 63 FR 65517 (Nov. 27, 1998).

serves the public interest,²⁸ and the Commission reaffirms that determination. The Commission also finds that the public interest will be served by amendment of the Over-order Price Regulation to establish a milk supply management plan to ensure that the price regulation does not create an incentive to generate additional supplies of milk.

The Commission emphasizes that the amendments establishing a milk supply management plan do not impact on the New England milk consumers. The Over-order Price Regulation is structured so that assessments and obligations are based on Class I milk distributed in the New England market. The milk supply management plan affects only the distribution of the obligations collected to milk producers, and is therefore, cost-neutral to New England consumers.

B. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers the impact of the amendments on the level of producer price needed to cover costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area.²⁹

The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.³⁰ In adopting these amendments, the Commission notes that the primary impact of the assessment/refund plan will be to reduce the pay price to those producers whose milk production increased greater than one percent over the prior year's production level by 7.5 cents per hundredweight from the Compact Class I price of \$16.94. Therefore, the Commission concludes that the amendments will not negatively impact on the price level paid to producers that is needed to assure an adequate local supply of milk for New England consumers. The Commission concludes that the over-order price regulation, including these amendments, will assure a sufficient price to producers and an adequate local supply of milk.

In reaching this conclusion, the Commission recognizes the vital role the Compact producer price has made in stabilizing the milk production in the

New England region since implementation in July 1997 and the importance of ensuring that the Compact price does not create an incentive to producers to generate excessive amounts of milk. The Commission also recognizes that the historical supply of milk making up the New England milkshed requires substantial contributions of milk from outside the New England states.

The Commission notes that the Compact payments to producers are intended to assure the continued viability of dairy farming in the northeast. Compact Article 1, Section 1. The Over-order Price Regulation, as amended, balances this purpose with the equally important purpose of assuring an adequate, local supply of pure and wholesome milk for the Compact area consumers. Compact Article 1, Section 1. The Compact specifically charges the Commission to also "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." Compact Article IV, Section 9(f). The Commission concludes that the amended regulation meets all three of these objectives and best preserves the integrity of the Compact by appropriately balancing these objectives.

C. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed To Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendments establish a voluntary milk supply management plan. Therefore, the matter of the public interest is addressed under the first required finding and not under this finding. In any event, the Commission finds that the price regulation, as hereby amended, is in the public interest in the manner contemplated by this finding.

D. Whether the Terms of the Proposed Amendment Are Approved by Producers.

The fourth finding, requiring a determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendments will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this

finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR part 1371.

Pursuant to 7 CFR 1371.3, and the referendum procedure certified by the Commission, a referendum was held during the period of May 12, 2000 through May 22, 2000. All producers who were producing milk pooled in the Federal Order #1, or for consumption in New England during December 1999, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before May 12, 2000 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 5:00 p.m. on May 22, 2000. The ballots were opened and counted in the Commission offices on May 23, 2000 under the direction and supervision of Robert Starr, designated "Referendum Agent."

Ten Cooperative Associations were notified of the procedures necessary to block vote. 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, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on May 22, 2000. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by May 16, 2000 with notice mailed to the Commission offices no later than May 18, 2000.

Notice of Referendum Results

On May 23, 2000 the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 3983 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots.

²⁸ 62 FR 29638, May 30, 1997; 62 FR 62825, Nov. 25, 1997.

²⁹ As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. See e.g., 62 FR 29632, May 30, 1997 and 62 FR 62812, Nov. 25, 1997.

³⁰ See e.g., 62 FR 29632-29637, May 30, 1997 and 62 FR 62812-62817, Nov. 25, 1997.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers, not members of any cooperative association, were then counted.

The referendum agent then certified the following:

A total of 3983 ballots were mailed to eligible producers.

A total of 1700 ballots were returned to the Commission.

A total of 24 ballots were disqualified—late, incomplete or duplicate.

A total of 1648 ballots were verified.

A total of 1513 verified ballots were cast in favor of the price regulation.

A total of 135 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the verified ballots cast, 1648, 91.8%, or 1513, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment are approved by producers.

VI. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of minimum milk price regulation to dairy farmers under Article IV to establish a milk supply management plan through an assessment and refund program.

(2) That a level price of \$16.94 (Class I, Suffolk County, Massachusetts) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, section 13.

List of Subjects in 7 CFR Parts 1306, 1307 and 1309

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR parts 1306 and 1307 and adds a new part 1309 as follows:

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1306.3 redesignate paragraphs (e) through (g) as paragraphs (f) through (h) and add a new paragraph (e) to read as follows:

§ 1306.3 Computation of basic over-order producer price.

* * * * *

(e) Subtract 7.5 cents per hundredweight from the basic over-order producer price computed pursuant to this section and deposit that amount in the supply management-settlement fund, provided that the resultant over-order producer price is at least 25 cents.

* * * * *

PART 1307—PAYMENTS FOR MILK

3. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

4. Section 1307.1 is amended in paragraphs (a), (b) and (c) by removing “1306.3(f)” and adding “1306.3(h)” in its place and by adding in paragraph (c) “1306.3(d)” after “1306.3(c).”.

5. A new part 1309 is added to read as follows:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

Sec.

1309.1 Producer qualification for supply management refund program.

1309.2 Computation of supply management refund prices.

1309.3 Supply management-settlement fund.

1309.4 Payment to producers of supply management refund.

Authority: 7 U.S.C. 7256.

§ 1309.1 Producer qualification for supply management refund program.

A dairy farmer who is a qualified producer pursuant to § 1301.11(a) or (b) of this chapter for the entire refund year, July 1 through June 30, and the dairy

farmer's milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding refund year.

§ 1309.2 Computation of supply management refund prices.

The compact commission shall compute the supply management refund prices applicable to all qualified milk as follows:

(a) Combine into one total the values, including all interest earned, deducted pursuant to § 1306.3(e) of this chapter for the refund year;

(b) Subtract 50% from the total value computed pursuant to paragraph (a) of this section to be used for the per farm payments to producers who submitted documentation pursuant to § 1309.4(a);

(c) Divide the resulting amount by the sum of all milk production reported by producers qualified pursuant to § 1309.1 and who submitted documentation pursuant to § 1309.4(a).

§ 1309.3 Supply management-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the supply management-settlement fund. It shall deposit into the fund all amounts deducted pursuant to § 1306.3(e) of this chapter. It shall pay from the fund all amounts due producers pursuant to § 1309.4;

(b) All amounts subtracted under § 1309.2(c), including interest earned thereon, shall remain in the supply management-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1309.4;

(c) The compact commission shall place all monies subtracted under § 1306.3(e) of this chapter in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities;

(d) If, after payments to producers of supply management refund pursuant to § 1309.4 there is a surplus in the fund, it is to be returned to the producer-settlement fund.

(e) The supply management program will continue through the operation of the compact over-order price regulation. If the refund year is six months or less, the supply management-settlement fund is to be returned to the producer-settlement fund.

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to

the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding calendar year. Such documentation shall be filed with the commission not later than 45 days after the end of the refund year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(e) by the producer's milk pounds, not to exceed \$12,000.

Dated: May 24, 2000.

Kenneth M. Becker,
Executive Director.

[FR Doc. 00-13507 Filed 5-30-00; 8:45 am]

BILLING CODE 1650-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 714

Leasing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final leasing rule updates and redesignates NCUA's long-standing policy statement on leasing, Interpretive Ruling and Policy Statement (IRPS) 83-3, as an NCUA regulation. IRPS 83-3 authorizes federal credit unions (FCUs) to engage in either direct or indirect leasing and either open-end or closed-end leasing of personal property to their members if such leasing arrangements are the functional equivalent of secured loans. In addition, the final rule formalizes NCUA's position, set forth in legal opinion letters, that FCUs do not have to own the leased property in an indirect leasing arrangement if certain requirements are satisfied.

DATES: This rule is effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Division of Operations, Office of the General Counsel, (703) 518-6555.

SUPPLEMENTARY INFORMATION:

A. Background

In 1983, the NCUA Board issued Interpretive Ruling and Policy

Statement (IRPS) 83-3, Federal Credit Union Leasing of Personal Property to Members, 48 FR 52560 (November 21, 1983), stating that FCUs may lease personal property to their members if the leasing of the personal property is the functional equivalent of secured lending. In 1997, the NCUA Board determined that IRPS 83-3 would be better suited as a regulation. 62 FR 11773 (March 13, 1997). In 1998, the Board issued a notice of proposed rulemaking (NPRM) and request for comment on leasing. 63 FR 57950 (October 29, 1998). The Board evaluated the comments received and incorporated many of the suggested changes. Due to these changes to the original proposed leasing regulation, the Board issued a second NPRM and request for comment. 64 FR 55866 (October 15, 1999). The comment period for the second NPRM expired on December 17, 1999.

B. Comments

NCUA received twelve comments on the second proposed leasing regulation. Comments were received from three federal credit unions, two credit union trade associations, four credit union leagues, one bank trade association, one insurance company, and one leasing company. In general, the commenters support the rule, although most commenters suggest modifications. Those commenters who compared the second proposed rule to the first think the second proposal is an improvement. Specific comments are addressed in the section-by-section analysis below.

C. Format

In drafting the proposed leasing regulation, the NCUA Board chose to use a plain English, question and answer format. The Board supports plain English as a means to increase regulatory comprehension and improve compliance among those affected by the regulation. Plain English drafting emphasizes the use of informative headings (often written as a question), lists and charts where appropriate, non-technical language, and sentences in the active voice. The NCUA wrote this proposed regulation as a series of questions and answers. The word "you" in an answer refers to an FCU.

D. Section-by-Section Analysis

This analysis contains a section-by-section summary of the second proposed rule; discusses the comments received on each section, if any; and describes any changes made as a result of those comments. The phrase "proposed section" as used below refers to draft language in the second NPRM.

Section 714.1—What Does This Part Cover?

Proposed § 714.1 stated that part 714 covers the standards and requirements that an FCU must follow when engaged in the lease financing of personal property. We received no comments and made no changes in the final rule.

Section 714.2—What are the Permissible Leasing Arrangements?

Proposed § 714.2 stated that FCUs may engage in direct or indirect leasing, and closed-end or open-end leasing.

Proposed § 714.2(c) provides "[i]n an open-end lease, your member assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end." Proposed § 714.2(d) provides that for a closed-end lease the FCU assumes the risk and responsibility for that same difference. Two commenters note that any excessive wear and tear on the leased property will be included in the difference between the estimated residual value and the actual value of the property at lease end so that the proposed rule apparently assigns the responsibility for excessive wear and tear differently depending on whether the lease is open-end or closed-end. One of these commenters suggests that § 714.2 be modified to place the risk and responsibility for excess wear and tear on the lessor FCU, regardless of the form of leasing. The other commenter suggests that the responsibility for excess wear and tear should always be with the member lessee.

As stated in the preamble to IRPS 83-3, the lessee is always responsible for a decrease in value due to excessive wear and tear. The lessee, with possession of the leased property, is in the best position to protect the property from excess wear and tear regardless of whether the lease is open-end or closed end. Accordingly, the Board amends § 714.2(d) to clarify that, in closed-end leasing, the member lessee will be responsible for excessive wear and tear and the FCU will be responsible for the remainder of the difference between the estimated residual value and the actual value. Proposed § 714.2(c) on open-end leasing already places the responsibility for excessive wear and tear on the member lessee and needs no modification in the final rule.

The following example illustrates the allocation of risks in closed-end leasing. Assume you, an FCU, lease a \$12,000 car under a closed-end leasing arrangement. At lease inception, the car has an estimated residual value of \$3,000. The lease is not covered by any