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NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1381

Handler Petition Procedure; Interim Procedural Rule

AGENCY: Northeast Dairy Compact Commission.

ACTION: Interim procedural rule.

SUMMARY: This interim procedural rule implements section 16(b) of the Northeast Interstate Dairy Compact by establishing the procedures by which a milk handler subject to a Compact Over-order price regulation, or other regulatory action of the Northeast Dairy Compact Commission, may petition the Commission for administrative relief.

DATES: Effective date: July 1, 1997.

Comments on this interim procedural rule may be filed with the Commission by July 30, 1997.

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

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

SUPPLEMENTARY INFORMATION:

I. 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, 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 conducted an informal rulemaking proceeding to decide whether to adopt a Compact Over-order price regulation. See 62 FR 23032 (Apr. 28, 1997) (proposed rule). The Commission subsequently adopted a Compact Over-order price regulation, effective July 1, 1997. See 62 FR 29626 (May 30, 1997). Pursuant to Sections 12 and 13 of the Compact, the Commission conducted a producer referendum, which was approved. See 62 FR 29646 (May 30, 1997).

Article VI, section 16(b) of the Compact establishes the right of a milk handler to petition the Commission for administrative relief from operation of any regulatory order of the Commission. It provides that:

[a]ny handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition, which shall be final, if in accordance with law.

Compact, Art. VI, section 16(b).

Accordingly, this interim procedural rule establishes the Commission's regulations for the conduct of such petition proceedings.

List of Subjects in 7 CFR Part 1381

Milk.

For the reasons set forth in the preamble, the Commission adds a new part 1381 to 7 CFR chapter XIII to read as follows:

PART 1381—RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPTED FROM COMPACT OVER-ORDER PRICE REGULATIONS.

Sec.

- 1381.1 Definitions.
- 1381.2 Institution of proceedings.
- 1381.3 Contents of petition.
- 1381.4 Conduct of proceedings.
- 1381.5 Judicial appeal; escrow

Authority: U.S.C. 7256.

§ 1381.1 Definitions.

As used in this part, the terms defined in Article II, section 2 of the Compact shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) *Administrative assessment* shall include the assessment imposed upon Handlers under 7 CFR 1308.1 for their pro rata share of the expense of administering a Compact pricing regulation, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(b) *Chair* shall mean the Chair of the Northeast Dairy Compact Commission.

(c) *Handler* shall mean any person subject to a Compact Over-order price regulation or administrative assessment, or to whom a Compact Over-order price or administrative assessment is sought to be made applicable.

(d) *Compact Over-order price regulation* shall mean the prices regulated under the provisions of 7 CFR parts 1300, 1301, 1303-1307, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(e) *Order* shall include a Compact Over-order price regulation.

§ 1381.2 Institution of Proceedings.

Any handler desiring to complain that any order, Compact over-order price, or administrative assessment, or any provision of such order or assessment, or any obligation imposed in connection therewith is not in accordance with law shall file with the Commission a petition in writing, along with 5 copies of the same.

§ 1381.3 Contents of petition.

A petition shall contain:

(a) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with

the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions, held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner.

(b) Reference to the specific terms or provisions of the regulation, order, or notice of administrative assessment, or the interpretation or application thereof, which are complained of.

(c) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the regulation, order or administrative assessment, or the interpretation or applications thereof, which are complained of.

(d) A statement of the grounds on which the terms or provisions of the regulation, order, or administrative assessment or the interpretation or application thereof, which are complained of are challenged as not being in accordance with law.

(e) Any prayer for specific relief which the petitioner desires the Commission to grant;

(f) An affidavit by the petitioner, or if the petitioner, or if the petitioner is not an individual by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for the purposes of the delay. The affidavit may include a request for an oral hearing on the petition. Such request shall set forth specific grounds demonstrating the need for such a hearing.

(g) Any additional affidavit evidence supporting the petition.

(h) Petitioner's prayer for relief must include either payment of all sums due, or a request that payments due or payable during the pendency of the administrative appeal (or longer, see § 1381.5(b)), be placed in an escrow account established by the Commission. If a request for escrow is made, petitioner may make payment into a Commission escrow account established while the Commission rules upon its request in accordance with § 1381.4(b)(5). Any petitioner who refuses to make payment during this period shall be liable for payment of interest on such withheld funds, at the federal statutory rate set forth in 28 U.S.C. 1961, plus such additional penalties as are appropriate under Article VI, section 17 of the Compact.

§ 1381.4 Conduct of proceedings.

(a) *Appointment of Commission hearing panel.* Upon receipt of a petition, the Chair shall appoint from one to three Commission members who shall consider the petition. For panels greater than one member, the Chair shall designate a chief hearing officer. The Commission panel chosen by the Chair shall consist of Commission members who are not members of the state delegation in which the Handler is incorporated or has its principal place of business, who have no pecuniary interest in the outcome, and who are otherwise fair and impartial.

(b) *Preliminary matters.* The panel shall meet within 15 days of their appointment to determine whether to:

(1) Limit the taking of evidence to affidavits, and thereby make their decision solely on the basis of the record before them without an oral hearing. In making this determination, the panel shall consider:

(i) The nature of the petition before them;

(ii) The nature of any facts in dispute that may necessitate an oral hearing; and

(iii) Whether the petitioner will be unduly prejudiced by limiting the taking of evidence to affidavits without benefit of an oral hearing.

(2) Require the production by affidavit or additional information, documents, reports, answers, records, accounts, papers or other data and documentary evidence necessary to the proper resolution of the matter.

(3) Compel the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(4) Consolidate two or more petitions pertaining to the same order or issue and the evidence relied upon under such consolidated proceeding may be embodied in a single decision.

(5) Grant or deny petitioner's request for the establishment of an escrow account, if such request has been made. The panel shall deny such a request only if it has otherwise ensured adequate protection to the handler with respect to the payments of sums due and challenged in the petition.

(c) The panel shall promptly notify petitioner by certified mail of the results of its deliberations under paragraphs (a) and (b) of this section. The panel's notice shall include a concise statement of the basis for its decisions under those paragraphs. The notice shall include a time and place for an oral hearing, if any, and the deadline for the submission of any additional information required by the panel. The notice shall also set forth the date by

which the panel will issue its proposed findings of fact, conclusions and decision, as computed under paragraph (g) of this section. If a request has been made for the establishment of an escrow account and such request has been granted, the notice shall also include a procedure for the making of escrow payments. If such request is denied, any payments made and held in escrow may be released for disbursement by the Commission.

(d) The panel may take official notice of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided*, That interested parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(e) The panel shall:

(1) Exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious: *Provided*, That interested parties shall be given adequate notice of such exclusion and an opportunity to show that such evidence has been erroneously excluded.

(2) Not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding.

(f) Oral Hearing.

(1) Any oral hearing shall be conducted at a time and place determined by the panel.

(2) Testimony presented at the hearing shall be:

(i) Upon oath or affirmation administered by the panel and subject to reasonable cross examination; and

(ii) Reported verbatim.

(3) As part of the hearing, the panel may require the appearance of any witness, or the production of additional information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to the proper resolution of the matter.

(4) If appropriate, the panel shall compel the appearance of witnesses, the giving of testimony or the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(5) The panel shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(6) The panel shall rule on offers of proof and otherwise reasonably regulate the course of the hearing.

(g) Proposed findings of fact, conclusions and decision.

(1) Within 45 days of the panel's appointment, or, in the event an oral hearing is held, within 60 days, the panel shall issue proposed findings of fact, conclusions and a decision based upon the evidence in the record. The proposed findings, conclusions and decision shall be served upon the petitioner by certified mail.

(2) Petitioner may submit a response to the panel's proposed findings of fact, conclusions and decision, along with supporting reasons. Such response shall be received by the Commission within 20 days of petitioner's receipt of the panel's proposed findings, conclusions and decision.

(3) The panel may modify, alter or amend its proposed findings, conclusions and decision in accordance with petitioner's response, as it deems appropriate.

(h) Final ruling by the Commission.

(1) Unless the panel so notifies the Commission of the need for an extension of time, at its first regularly scheduled meeting following the deadline for the receipt of petitioner's response to the panel's proposed findings, conclusions and decision, the Commission shall make a final ruling upon the petition. The Commission's determination shall be based upon the panel's final or modified proposed findings, conclusions and decision. The Commission shall also consider the petitioner's response to the panel's original proposed findings, conclusion and decision. The record shall also be available for review by the Commission.

(2) The Commission's final ruling shall be served by certified mail upon the petitioner and be filed in the Commission offices, and be made available for public inspection and copying in accordance with the bylaws.

(3) Any commissioner shall (on either the Commissioner's own motion or on motion of the petitioner) disqualify himself or herself from consideration of the Commission's final ruling on the panel's decision if that commissioner's impartiality might reasonably be questioned.

§ 1381.5 Judicial appeal; escrow.

(a) As set forth in section 16(c) of the Compact, as approved by 7 U.S.C. 7256, the district courts of the United States, in any district in which a handler is an inhabitant or has his principal place of business, have jurisdiction to review a final ruling of the Commission made pursuant to § 1381.4(h), provided that a complaint is filed within thirty days from the date of the entry of that final ruling.

(b) A petitioner who has been granted the establishment of an escrow account

as part of the administrative proceeding and who has timely appealed may request that its payments be placed into escrow pending the appeal. Upon such a request, the Commission shall hold the money in escrow until the date that a timely judicial complaint is filed plus a period of ten days. The Commission may also, for good cause shown, continue to hold the money placed in escrow pending the ultimate resolution of any appeal, or for such other period as the Commission may establish.

Daniel Smith,

Executive Director.

[FR Doc. 97-16674 Filed 6-27-97; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM-220-IF]

RIN: 1904-AA61

Energy Conservation Program for Consumer Products; Fluorescent and Incandescent Lamp Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Final rule; delay of effective date.

SUMMARY: This notice delays the effective date of the Final Rule for the Energy Conservation Program for Consumer Products; Fluorescent and Incandescent Lamp Test Procedures, published May 29, 1997 (62 FR 29222).

DATES: The effective date of the final rule published at 62 FR 29222 is delayed from June 30, 1997 to October 18, 1997. The incorporation by reference of certain publications listed in the regulations and approved by the Director of the Federal Register as of June 30, 1997 has been conformed to the same date.

FOR FURTHER INFORMATION CONTACT: Mr. Terrence L. Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-1689, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0103, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Discussion

Part B of Title III of the Energy Policy and Conservation Act, as amended (EPCA or the Act), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles.¹ The consumer and commercial products currently subject to this program (covered products) include fluorescent and incandescent reflector lamps, the subjects of today's notice.

Today's notice delays the effective date for the Final Rule (62 FR 29222, May 29, 1997) from June 30, 1997 to October 18, 1997 (180 days from the date of issue, April 21, 1997) and the incorporation by reference of certain publications listed in the regulations and approved by the Director of the Federal Register as of June 30, 1997 has been conformed to the same date. The statute states that effective 180 days after a test procedure is amended no manufacturer, distributor, retailer, or private labeler may make any representation in writing (including labels) or in advertising with respect to energy efficiency, energy used or the cost of energy consumed unless the product is tested with the revised test procedure and the representation fairly discloses the results of such testing. Section 323(c)(2), 42 U.S.C. 6291(c)(2). The Final Rule published on May 29, 1997, is an amendment to the Interim Final Rule, and it includes test procedures for some lamps which were not subject to testing under the Interim Final Rule. Therefore, the delay of the effective date from June 30, 1997 to October 18, 1997, will allow manufacturers adequate time to change advertising and make new labels that correctly state the energy used by these lamps.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Fluorescent and incandescent lamps.

Issued in Washington, DC, on July 25, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97-17025 Filed 6-27-97; 8:45 am]

BILLING CODE 6450-01-P

¹ Part B of Title III of EPCA, as amended, is referred to in this Final Rule as the "Act", and provisions of the Act are referred to either as "Section _____ of the Act" or as "Section _____." Part B of Title III is codified at 42 U.S.C. 6291-6309.