NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1301, 1304, 1305, 1306 and 1307

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: This rule extends the present compact over-order price regulation (''price regulation'') for all Class I, fluid milk route distributions in the territorial region of the six New England states beyond its present expiration date of December 31, 1997. The rule extends the price regulation for the period January 1, 1998 through termination of the Compact enabling legislation.[1] The regulation is established in the combined, Federal Milk Market Order #1 and compact over-order, amount of $16.94 (Zone 1).

In so extending the price regulation, the Northeast Dairy Compact Commission (''Compact Commission'') reaffirms and again bases the decision on its findings that such price regulation is necessary to assure the viability of dairy farming in New England, that it is necessary to assure the region's consumers of a continued, adequate, local supply of fresh and wholesome milk, reasonably priced, and that it is otherwise in the public interest. The Compact Commission also establishes the price regulation based on the finding that the regulation has been approved by producer referendum pursuant to Article V, section 13 of the Northeast Interstate Dairy Compact. Notice of approval by referendum is published separately in this **Federal Register**.

This rule also establishes a Task Force under Article VII. D. of the Compact Commission's Bylaws to determine whether it is appropriate to provide similar reimbursement to the region's School Lunch Programs, established under the National School Lunch Act of 1946 and the Child Nutrition Act of 1966 for any adverse financial impact. The Task Force is to report back on its assessment of whether it is appropriate to reimburse the programs and, if so, to recommend a procedure for reimbursement to the Compact Commission at its regularly scheduled meeting for February, 1998.

Finally, the price regulation extends the administrative assessment of 3.2 cents per hundredweight of milk on all route dispositions of Class I, fluid milk in the territorial region of the six New England states. It is noted that the additional, start-up assessment of approximately 1.3 cents per hundredweight presently imposed will expire with final payment in December, 1997.

EFFECTIVE DATE: January 1, 1998.

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:

Background

The Compact 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—Public Law 93–320; Maine—Public Law 89–437, as amended, Public Law 93–274; Massachusetts—Public Law 93–370; New Hampshire—Public Law 93–336; Rhode Island—Public Law 93–106; Vermont—Public Law 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Public Law 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Section 8 of the Compact empowers the Compact Commission to engage in a broad range of activities designed to ''promote regulatory uniformity, simplicity and interstate cooperation.'' For example, the Compact authorizes the Compact Commission to engage in a range of inquiries into the existing milk programs of both the participating states and the federal milk marketing system, to make recommendations to participating states, and to work to improve industry relations as a whole. See Compact, Art. IV, section 8.

In addition to the powers conferred by Section 8, the Compact also authorizes the Compact Commission to consider adopting a compact over-order price regulation. See Compact, Art. IV, section 9. A ''compact over-order price'' is defined as:

> A minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

See Compact, Art. II, section 2(8).

The regulated price authorized by the Compact is actually an incremental amount above, or ''over-order'' the minimum price for the same milk established by Federal Milk Market Order #1. The price regulation establishes the minimum procurement price to be paid by fluid milk processors for milk that is ultimately utilized for fluid milk consumption in the New England region.[2] Price regulation also provides for payment of a uniform ''over-order'' price, out of the proceeds of the price regulation, to all dairy farmers making up the New England milkshed regardless of the utilization of their milk.[3] See Compact, Art. IV, section 9 (''The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area.''.)

Section 11 of the Compact delineates the administrative procedure the Compact Commission must follow in deciding whether to adopt a price regulation:

> Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedures Act, as amended (5 U.S.C. 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

Section 12(a) of the Compact directs the Commission to make four findings of fact before an over-order price

[1] 7 U.S.C. 7256(3) ''Consent for the Northeast Interstate Dairy Compact shall terminate concurrent with the Secretary's implementation of the dairy pricing and Federal milk marketing order consolidation and reforms under section 7203 of this title.''

[2] 7 CFR 1305.2.

[3] 7 CFR 1307.4.

regulation can become effective. Specifically, the Commission shall make findings of fact with respect to:

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

(2) What level of prices will assure that producers 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.[4]

(3) 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.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

Compact, Art. V. Section 12.

Pursuant to Section 11 of the Compact, the Compact Commission initiated a rulemaking procedure in December, 1996.[5] The rulemaking culminated on May 30, 1997 with the issuance of a final rule establishing a compact over-order price regulation for the period July 1–December 31, 1997.[6]

On September 8, 1997, the Compact Commission issued notice of proposed rulemaking to consider whether to extend the price regulation beyond the present December 31, 1997 expiration date.[7] The technical provisions of the price regulation established by final rule of May 30, 1997 and as codified at 7 CFR Chapter 1300, and the summary and analysis of the rule, were issued as a proposed rule in the September 8, 1997 notice of rulemaking, with the further proposals that the regulation be extended for one year and that it be amended generally. Pursuant to Compact, Art. IV, Section 11, the Compact Commission held a public hearing on September 24, 1997 on the proposed rule, and accepted written comment pursuant to its bylaws until October 8, 1997.

Based on the oral and written comment received, and upon the reasoning set forth in its previous proposed and final rules, the Compact Commission hereby extends the present price regulation for the period January 1, 1998 through termination of the Compact enabling legislation. As explained below, the amount of the price regulation remains unchanged at $16.94. As also explained below, the technical regulation, as codified at 7 CFR Chapter 13 [§§ 1301.11(b), 1304.5(a), 1305.1, 1306.1, 1306.2, 1306.3(b) through (f), 1307.1, 1307.2, and 1307.4(f)], is amended in certain instances.

Immediately following is a summary analysis and response to the comment received during the present rulemaking procedure. A more detailed review and response follows, organized around the finding analysis required by Section 12 of the Compact. This analysis also summarizes and incorporates the relevant reasoning developed in the previous rulemaking. The analysis also identifies and describes any amendments to the price regulation made as part of this final rule.

I. Summary Analysis of Comments Received in Response to the Proposed Rule and Compact Commission's Response

Oral and written comment received in the September 24, 1997 hearing and additional written comments received by the Compact Commission's published deadline of October 8, 1997 were duly considered by the Compact Commission. The Compact Commission met on October 23, 1997 to consider and act on the comment received. Public notice of this meeting was published on October 16, 1997 in the **Federal Register**. 62 FR 53769.

Eighty-nine separate comments were received during the hearing and written comment period. Of the total commenters, five expressed opposition to the regulation's extension and eighty-four expressed support for its extension.

The five commenters expressing opposition to the regulation's extension include an economist for Public Voice for Food and Health Policy, a public interest group based in Washington, DC, and four representatives of Massachusetts ACORN, a low income community advocacy group in Dorchester, MA. These commenters expressed concern primarily with the regulation's impact on low income consumers in the New England region.

The Compact Commission recognizes and acknowledges the concerns raised by these opposing commenters. As explained in greater detail in the subsequent analysis, one of the central reasons the Compact Commission adopted its initial regulation for the limited period of six months on May 30, 1997 was to ensure close monitoring of the regulation's impact on consumers, including low income consumers. See 62 FR 29638. This careful scrutiny is derived from the finding analysis and inquiry into the public interest in milk price regulation which the Compact Commission must make under the Compact, and which is concerned with, among other issues, the impact of price regulation upon consumers, including low income consumers.

While accentuating the need for continued, careful scrutiny, the commenters have not established that the price regulation is causing such anomalous market distortions of the retail market as to justify elimination of price regulation. When viewed in the context of, and balanced with, the comments presented in support of continuing the regulation, along with the reasoning derived from the prior rulemaking, the Compact Commission concludes the interests of consumers in a stable milk supply and, ultimately, stabilized prices, will continue to be served by extending the price regulation.

Fifty-four of the eighty-four commenters expressing support for extension of the regulation were dairy farmers. Other commenters expressing support for extension include representatives of dairy farmer cooperatives, farm credit agencies, banks, dairy processors, dairy feed and fertilizer suppliers, Farm Bureaus, farm machinery dealers, New England state WIC Programs, New England state Departments of Agriculture, a state legislator, a large animal veterinarian, and a consumer.

These commenters, farmers and others alike, expressed support for extending the regulation for periods of varying duration. The broad majority supported extension through the termination of the Compact Commission's authority to establish an over-order price regulation under the Congressional Consent to the Compact.[8] The supporting comment also was mixed with regard to whether the amount of the over-order price should be kept at the same rate or increased, and, if increased, at what rate. Most of

[4] The Commission limited its assessment to issues relating to the fluid milk market, given the limitations on its authority to regulate the price of milk used for manufacturing purposes. See Compact, Section 9(a); see also 7 U.S.C. 7256(2).

[5] The Commission issued a notice of Hearing on December 13, 1996 at 61 FR 65604 and held public hearings on December 17 and 19, 1996. The Notice also invited the public to submit written comments through January 2, 1997. Following the close of this comment period, the Commission met on January 16, 1997 and established three working groups to consider the testimony and data submitted. The Commission issued a Notice of Additional Comment Period on March 14, 1997. 62 FR 12252. This comment period closed on March 31, 1997; the reply comment period closed April 9, 1997. Based on the testimony and comment received, the Compact Commission issued a proposed rule on April 28, 1997 to adopt price regulation. 62 FR 23032. As part of the proposed rule, the Commission published for comment technical regulations to be codified at 7 CFR Section 1300, et seq. Minor corrections to the proposed rule were published on May 8, 1997, 62 FR 25140, to provide clarification and to correct errors. The Compact Commission received additional comment in response to the proposed rule issued April 28, 1997.

[6] 62 FR 29626 (May 30, 1997).

[7] 62 FR 47156 (September 8, 1997).

[8] 7 U.S.C. 7256(3).

the comment supported an increase reflecting the increase in the Consumer Price Index. Finally, a number of the commenters recommended certain amendments to the technical codified price regulation.

In view of these amendments suggested by the commenters, the Compact Commission notes that, in addition to allowing for close review of the regulation's impact on the retail market, the limited, six month duration of the initial price regulation was also established to ensure close scrutiny of the regulation's impact on the overall fluid milk marketplace. As with review of the impact on the retail market, this overall assessment is necessary to determine whether the price regulation has caused such market distortions as to require its discontinuation, or whether its extension will continue to serve the public interest.

As explained in detail below, the Compact Commission concludes from this rulemaking process that the public interest is best served by the regulation's extension from January 1, 1998 through termination of the Compact enabling legislation. Accounting for the concerns of the commenters, the Compact Commission concludes the public interest, including those of low income consumers, will be better served by extending the price regulation so as to establish stable prices across the wholesale and retail markets in New England for the continuous period July 1, 1997 through termination of the Compact enabling legislation. The Commission concludes that close scrutiny of the regulation's impact must continue and, accordingly, schedules subsequent rulemaking with review of all relevant issues to be commenced, pursuant to Section 11 of the Compact, no later than July 1, 1998.

The comments received, with regard to the significant concerns and relative positions on the critical issues invoked by the finding analysis mandated by Section 12(a) of the Compact, are now addressed in detail.

II. Summary and Further Explanation of Findings Regarding Adoption of Over-order Price

As noted above, Section 12(a) of the Compact directs the Commission to make four findings of fact before an over-order price regulation can become effective. The issues relating to the first three topics (excluding the referendum procedure) were exhaustively reviewed in the Compact Commission's initial proposed rule. The Compact Commission's findings on these topics, based on that analysis, were reaffirmed with further discussion in the subsequently adopted final rule on May 30, 1997, which rule served as the proposed rule in the present rulemaking process. The analysis of these issues contained in the previous proposed and final rules is again reaffirmed, subject to the further discussion contained here.

As in the previous rulemaking, the second finding required by the Compact (the level of prices needed to assure a sufficient price to producers and an adequate supply of milk) is discussed initially. The Compact Commission finds that a price of $16.94 per hundredweight continues to be needed to achieve these dual goals. The first finding required by the Compact (whether the public interest will be served by the establishment of minimum milk prices) is then discussed. The Compact Commission further finds that the public interest will be served by an over-order price regulation in the amount of $16.94 to extend from January 1, 1998 through termination of the Compact enabling legislation.

With respect to both of these findings, the Compact Commission's inquiry has been guided by Section 9(e) of the Compact, which sets forth several factors which the Compact Commission must consider during the hearing process to determine whether to adopt and if so, the amount of, an over-order price:

> In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production, including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and the distributor.

The third finding required by the Compact is then discussed; the Compact Commission concludes that the major provisions of this order, other than those establishing minimum milk prices, are in the public interest and reasonably designed to achieve the purposes of the order.

The fourth required finding is whether the terms of the proposed order have been approved by producer referendum, pursuant to Article IV, section 12 of the Compact. In this final rule, the Compact Commission makes this finding premised upon certification of such approval, published separately in this **Federal Register**. The procedure for such certification is set forth infra in the section of this rule addressing the fourth finding.

A. What Level of Prices Will Assure That Producers Receive a Price Sufficient To Cover Their Costs of Production and Elicit an Adequate Local Supply of Milk

As one of the four underlying findings required for the establishment of price regulation, the Compact Commission must determine:

> (2) What level of prices will assure that producers 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.[9]

Compact Art. V, section 12(a)(2).

As in the prior rulemaking, the Compact Commission's deliberations regarding the level of price required to cover costs of production focused again on the variety of cost inputs identified in Section 9(e) of the Compact. With regard to the price needed to elicit an adequate local supply of milk, the Compact Commission reviewed the nature of the balance of production and consumption in the region, as also called for by Section 9(e) of the Compact.[10] This required review again prompts assessment of the degree to which farm prices have been insufficient to cover costs of production over time (''price insufficiency''), and the degree to which such insufficiency has affected the balance of production and consumption in the region. Assessment of this issue also required consideration of the wide swings over time in farmer pay prices under federal regulation, which have caused farm financial stress and made it difficult for farmers to plan financially (''price instability''), and the failure of farmer pay prices to keep up with inflation.

Farmer Costs of Production

The Compact Commission's inquiry with regard to whether prices are sufficient to cover the cost of production was guided by Section 9(e) of the Compact, which directs the Commission to consider cash costs of production, including feed, machinery expense, labor, and interest, as well as the non-cash costs of value for the farmer's own labor and a reasonable return on the farmer's investment.

With regard to the various specific components of cash and non-cash costs

[9] The Commission limited its assessment to issues relating to the fluid milk market, given the limitations on its authority to regulate the price of milk used for manufacturing purposes. *See* Compact, § 9(a); *see also* 7 U.S.C. section 7256(2). At the same time, for purposes of this analysis, it must be recognized that the present supply needs for manufacturing purposes are not available for fluid usage.

[10] This assessment was presented under the second, broader public interest analysis in the first rulemaking procedure.

reviewed under Section 9(e) of the Compact, the Compact Commission determined in the previous rulemaking that feed costs are a significant production cost component. The Commission found that feed costs can account for as much as 50 percent of a farmer's cost of production. 62 FR 23034. Farmers indicated that feed costs had risen beyond their means. In 1996, in particular, feed costs increased by some 29 percent. 62 FR 29633.[11]

According to the comment received in the present rulemaking, feed costs continue to account for a significant portion of cost of production. A Vermont dairy farmer indicated that the ratio of purchased grain cost to the value of milk produced for his farm has normally been 20% but that, since January of 1997, it has averaged 32%. De Geus and Gillmeister, in their joint submission,[12] report that the Economic Research Service (ERS) of the USDA indicate that feeds account for as much as 50% of the cash expenses for milk production in 1996. They also report that feed prices are down this year relative to 1996 but remain historically high. They rely on the ERS September 1997 Livestock, Dairy, and Poultry Monthly Report,[13] as well as the recent farm experience in New England, to conclude that high grain and high hay prices will raise this year's production costs higher, but not as high as last year's level.

De Geus, in a separate submission,[14] indicates that Vermont feed costs are expected to remain high because of flooding in northern Vermont and drought conditions in southern Vermont, parts of New York, and much of the rest of New England.[15] A dairy farmer from Connecticut reported that, since last September, his grain costs had increased approximately 8%.[16] Other commenters noted that the increase in grain prices they are experiencing is creating an imbalance between their production costs and farm price for milk.[17]

Machinery expense as a factor in the cost of production arises primarily in the context of depreciation; that is, depreciation must be covered by replacing old and worn out equipment. *See* 62 FR 29633. As in the prior rulemaking, farmers again indicated that pay prices are too low to permit them to make these investments.[18] Claude and Jeanne Bourbeau indicated that that ''[their] debt load has increased in the past year due to depreciation of farm equipment. Money is needed to replace equipment and the milk check does not provide adequate funds to replace this equipment.'' [19] Another farmer indicated that it doesn't make sense to invest in new equipment because it would just add to his debt load and increase his monthly payments.[20] Both Wesley Snow of Brookfield, Vermont and Robert Dow of Dover, Maine indicated that the increase in equipment costs since they purchased their current equipment makes replacement impossible, given their current milk price.[21]

Section 9(e) also directs the Compact Commission to consider interest and labor costs in assessing the sufficiency of farmer pay prices. (Measurement of these components of costs of production, in particular, provide for much of the variability in the range of cost of production noted below.) In the previous rulemaking, the Compact Commission determined that both interest and non-family labor expenses constitute a significant proportion of costs of production: from $0.50 to $1.18 per hundredweight for interest expenses, and $1.08 to $1.92 per hundredweight for labor expenses. 62 FR 29633.[22]

Section 9(e) also directs the Compact Commission to consider certain non-cash costs, including a reasonable value for the farmer's own labor and a reasonable return on the farmer's investment. In considering whether pay prices provide a reasonable value for the farmer's labor, the Compact Commission previously determined that dairy farms in New England are still predominately family operated, and, that in light of farmer pay prices, much of this family labor is completely uncompensated, or significantly undercompensated. *Id.* The Commission concluded that this failure to compensate for family labor discourages entry into the dairy industry. See 62 FR at 23035.

Comment received in this rulemaking again supports this determination. A number of commenters indicated that they were experiencing difficulty in hiring labor at rates they were able to pay.[23] One dairy farmer indicated that he must pay his hired help more than he pays himself.[24]

Allaire Palmer reports that his ''family employees have not had a raise in four years and work for six dollars per hour. Rent is furnished because employees are required to be available twenty-four hours per day.'' [25] Two dairy farmers testified that their children and grandchildren were not interested in continuing the family tradition of farming because of the long hours and short profit.[26] On the basis of the record, the Compact Commission finds that current pay prices continue to discourage family entry into dairy farming because they fail to offer reasonable value for the farmer's labor.

With regard to whether pay prices provide a reasonable return on the farmer's investment, the Compact Commission noted several comments received in the previous rulemaking indicating that a reasonable return ranges between 4% and 5%.[27] The Commission determined that, for an extended period of time, pay prices have been insufficient to provide a rate of return on equity that reaches these levels. 62 FR 29633.

Comment received from farmers in the present rulemaking again highlighted the impact of these

[11] In addition, a cost-of-production study conducted by Wackernagel and relied upon by the Commission (62 FR 23034) indicated that feed and crop expenses together can account for some 39% of a farmer's cash operating expenses.

[12] Reenie De Geus and William Gillmeister, Dairy Economists for the Vermont and Massachusetts Departments of Agriculture, Written comment, (''WC''), October 8, 1997.

[13] The Report describes the current national situation to be: ''Forage supplies will be of mediocre quality and high priced, even though the silage crop looks promising in most areas. Milk-feed price ratios will be at levels normally associated with conservative concentrate feeding and below-trend growth in milk per cow.''

[14] Reenie De Geus, WC, October 8, 1997.

[15] Vermont dairy farmers reiterated this point in their submissions. Paul Doten, Harvey T. Smith, WC, October 8, 1997.

[16] David Jaquier, Dairy Farmer, East Canaan, CT, Public Hearing (''PH'') at p.134, September 14, 1997.

[17] Walter Fletcher, Donna Caverly, Richard Woodger, Maine Dairy Farmers, WC, October 8, 1997.

[18] See 62 FR 29633. Economist Reenie De Geus noted in record testimony that expenditures on machinery and other depreciation expenses tend to rise in the good years and are delayed in the bad years. Reenie De Geus, WC 75.

[19] Claude and Jeanne Bourbeau, Dairy Farmers, Swanton, Vermont, WC, October 8, 1997.

[20] David Hinsworth, Dairy Farmer, Royalton, Vermont, WC, October 8, 1997.

[21] WC, October 8, 1997.

[22] See: Wackernagel, which analyzed Agrifax and ELFAC farms over a 3-year period; Maine cost-of-production studies; and Pelsue and ERS-USDA studies submitted by Smith.

[23] Lester Bailey, Robert L. Foster, and Claude and Jeanne Bourbeau, Dairy Farmers, WC, October 8, 1997.

[24] Onan Whitcomb, Williston, Vt., WC, October 8, 1997.

[25] Allaire P. Palmer, Dairy Farmer, Cornish, Maine, WC, October 8, 1997.

[26] Douglas Carlson, Dairy Farmer, Canaan, CT, and Dale Lewis, Dairy Farmer, Haverill, NH, PH at p. 99 and p. 140, respectively, September 24, 1997.

[27] Robert A. Smith of the Yankee Farm Credit System suggested a 4% rate of return was reasonable in his testimony at the September 24, 1997 PH and in his comments submitted in the previous rulemaking in April, 1997. 62 FR 23033. The Maine cost-of-production studies, which analyze southern New England, used a 5% return on equity. *Id.* at 23034. In addition, Michael Sciabarrasi of University of New Hampshire Cooperative Extension Service, suggested that 5% was a minimal rate of return. Id.

expenses upon their costs of production and the failure of pay prices to cover them completely. A number of commenters pointed out that failure of pay prices to cover their costs of production left them with no return on their investment.[28] Douglas Carlson pointed out in his testimony that because of the large number of recent farm foreclosures, auctions are not bringing a reasonable return on the original investment, reflecting a lower general value of farm capital investments.[29] The Compact Commission, therefore, reaffirms the determination that pay prices are insufficient to provide a rate of return on equity that reaches a reasonable range between 4% and 5%.

This survey of various cost inputs of under Section 9(e) of the Compact underscores the pressure farmers operate under with regard to the inability of pay prices to cover costs of production. With regard to identifying overall costs of production, as determined by the previous rulemaking, numerous studies provide a variety of estimates.[30] While based on different methods for determining costs of production, particularly with respect to non-cash costs, these studies provide the basis for making the overall assessment of price needed to cover cost of production, as required by the Compact. In the previous rulemaking, based on a comprehensive assessment of a number of studies, the Compact Commission concluded that the range of the costs of production for New England is somewhere between $14.06 and $16.46. *Id*.

The Compact Commission received additional comment on the measure of overall cost of production in the present rulemaking from a number of commenters. Robert A. Smith of Northeast Farm Credit Associations again reported that, on the basis of a report prepared by Farm Credit Partners surveying farms in New England, New York and Pennsylvania, the costs of production for the region were $14.25/cwt. for 1995 and $15.00/cwt. for 1996. When adjusted for a 4% return on equity, these costs become $15.37/cwt. for 1995 and $16.02/cwt. for 1996.[31] The cost figures for New England were the same as for the larger region as a whole.[32]

Reenie De Geus, Vermont's Department of Agriculture, Food and Market dairy economist, reported that the average costs of production for Vermont farms in the Farm Credit Partners survey was $14.06/cwt. for 1995 and $15.32/cwt. for 1996, up 9%.[33] For that six year period, 1991 to 1996, the average cost of production for these Vermont farms is $14.65/cwt. with only a 3% return on equity.[34] A representative of a dairy processor testified that the cost of production is in the range of $13.50/cwt. to $14.00/cwt.[35] Comment from individual farmers indicated a range for their costs of production from $12.66/cwt. to $17.95/cwt.[36] for an average among them of $14.65/cwt.

Combined with the analysis conducted during the prior rulemaking, the Compact Commission determines in this rule that the cost of production remains in the range of $14.06/cwt. to $16.46/cwt.[37] Acccordingly, the Commission concludes that an overall combined pay price[38] in this range is necessary ''to assure that producers receive a price sufficient to cover their costs of production'' within the meaning of the finding analysis required by Section 12(a) of the Compact.

In the prior rulemaking, the Compact Commission concluded that an over-order pay price in the range of $0.46–$1.90 was necessary to bring farmer pay prices up to the level necessary to cover cost of production. See 62 FR 29633 (Final Rule); 62 FR 23040–41 (Proposed Rule). Assuming Class I utilization of 50 percent, this means that price regulation in the amounts of $0.92–$3.80 would be necessary to achieve the necessary range of over-order payment.

Elicitation of an Adequate Local Supply of Milk

The required finding with regard to pay price accounts for the broader assessment of the level needed to elicit an adequate supply of milk, in addition to the relatively discrete assessment of the level needed to cover cost of production. In the prior rulemaking, the Compact Commission determined that the Compact § 9(e) scrutiny of the balance of production and consumption of fluid, or beverage milk, in the region is critical to this additional assessment. See 62 FR 29634–35.

The Compact Commission determined that production and consumption is presently in balance, but in a balance of pronounced and unsustainable stress that must be alleviated. 62 FR 23040. The Compact Commission concluded that overall milk production was in decline in the New England region and in the portion of New York State which has traditionally been a supplemental part of the New England milkshed. 62 FR 23039–40. The Compact Commission also found that supplies of milk are being transported increasing distances from the region's population centers and associated processing plants. 62 FR 23040. While over fifty percent of the milk produced in the New England milkshed is presently utilized in a variety of manufactured dairy products, the Compact Commission concluded that substitution of such milk cannot be relied upon to provide an alternative supply for fluid utilization purposes. 62 FR 23039. In sum, the Compact Commission concluded that the balance of production and consumption in the region depended on at least stabilizing, if not increasing, the present, local supply through price regulation. 62 FR 23040.

Assessment of how to alleviate the stress on the region's supply of milk through price regulation requires consideration of how best to alleviate the stress under which producers operate. This inquiry naturally reverts back to the issue of the degree to which farmer pay prices are not sufficient to cover costs of production. In addition, as previously determined, the review leads the Compact Commission to conclude that the nature of the persistently unstable farmer pay prices and the degree to which farmer prices have failed to keep pace with inflation are also structural factors of stress.

Price Insufficiency

As noted above, the Compact Commission's comprehensive review in the prior rulemaking of the various cost inputs and the variety of studies of

[28] Allaine Palmer, David Bradshaw, Rosemarie Jeleniewski, Harold Larrabee, and Roger Scott, Dairy Farmers, WC, October 8, 1997.

[29] Douglas Carlson, PH at p. 102.

[30] 62 FR 29632–33.

[31] Robert A. Smith, Manager of Public Affairs and Regional Council Relations, CoBank and Northeast Farm Credit Associations, PH at p. 75, September 24, 1997.

[32] *Id*.

[33] De Geus, WC.

[34] *Id*.

[35] Gary Warren, Vice-President, Fairdale Farms, Bennington, VT, PH at p. 124, September, 24, 1997.

[36] Ivar Green, Allaire Palmer, David Bradshaw, Claude and Jeanne Bourbeau, and Neal Rea, WC, October 8, 1997; Ed Platt, PH, September 24, 1997. It is to be noted that some of their estimates include a return on equity and while others do not.

[37] The Commission notes that it is in process of conducting the comprehensive cost of production study authorized by its previous final rule. See 62 FR29632. One commenter (Gillmeister) argues for a division of the proceeds of price regulation based upon a presentation of varying costs of production among the New England states and New York. The Commission declines to adopt the approach of this commenter as premature, given that the Commission has just undertaken its study process to determine costs of production in the states and the region.

[38] This combined price reflects the federal Market Order #1 blend price plus the Compact over-order producer price. For a more complete discussion of the components of the actual pay or ''mail box'' price paid to farmers see 62 FR 23037.

overall cost of production provided the basis for the Compact Commission to determine the amount and degree to which farmer pay prices were not sufficient to cover costs of production. 62 FR 29633. Based on its review of the studies, overall, the Compact Commission concluded that costs of production have exceeded the farm pay price by an amount in the range of $0.46–$1.90. *Id*.

As also noted above, the newly received data, in combination with the previous analysis, leads the Compact Commission again to conclude that farmer pay prices are failing to cover costs of production and that there is a continuing need for an over-order price that results in farmer pay prices in the range of $0.46 to $1.90.

Failure of Farmer Pay Prices To Keep Up With Inflation

The Compact Commission determined in the prior rulemaking that the failure of farmer pay prices to keep up with inflation was a significant factor contributing to chronic price insufficiency and farm financial stress. 62 FR 29633–64. For this reason, the Compact Commission adopted the joint proposal of Reenie De Geus and William Gillmeister, dairy economists for the Vermont and Massachusetts Departments of Agriculture, respectively, to establish an over-order price regulation based, in part, on an inflation adjustment.[39]

Comment received in the present rulemaking did not focus on the issue of the chronic, structural failure of prices to keep up with inflation to the same degree as in the prior rulemaking. This is perhaps a result of the fact that the price regulation adopted as part of the prior rulemaking was premised, in part, on a structural adjustment for inflation. In any event, the Commission remains mindful that the relationship between farmer pay prices and inflation remains a critical concern. Certainly, the comment received supports this determination.[40]

The Compact Commission also remains mindful, however, of the concern expressed by several commenters in the prior rulemaking (62 FR 29634) and a comment submitted in this rulemaking[41] that an inflation adjustment not be built in as a permanent, automatic adjustment.[42] The Compact Commission's determination of the proper balance between adjustment for inflation and accounting for broader market conditions, in establishing the appropriate level of price regulation, is presented in the summary analysis of this section, below.

Price Instability

The Compact Commission received a wealth of testimony and comment in the prior rulemaking indicating that wide fluctuations in the price of milk are also a primary cause of farm financial stress and, in particular, made it difficult for farmers to plan financially. 62 FR 29633.

The comment received in the present rulemaking accentuates the fact of persistent fluctuations in the pricing structure under federal regulation. The price drop from the Autumn of last year to the present was both precipitous and dramatic. Between October, 1996 and July, 1997, the New England Market Order #1 Blend price fell from $16.84 to $11.97.[43] For October, 1997, the blend price is estimated to be $13.50[44]

Not surprisingly, farmers again expressed their reluctance to make long-term investments in their farming operations, and their concern that when prices dropped precipitously they were unable to meet their most basic obligations. For example, the ability of farmers to pay machinery expenses is further diminished by price instability because farmers are unable to invest (e.g., in new machinery or in upgrading their facilities), given the wide fluctuations in the price of milk.

Of most concern, Leon Berthiaume, General Manager of St. Albans Cooperative Creamery, testified that—

> In May through July, 66 to 100 of our members received a check of less than $1,000.00 for 15 days worth of milk production. We also during [sic] this period of time there was 20 to 50 members that received no check at all for those 15 days of production. We are continuing to experience farm auctions. In the last 2½ weeks, we have lost 12 members from our Cooperative, and in the next week we have three more members that are scheduled to be auctioned off.[45]

Gary Warren, in his testimony at the public hearing, underscored the benefits of price stability across the market, from farmer to consumer.[46] Robert A. Smith pointed out that volatility in milk prices makes it very difficult for farmers to effectively plan and make the type of investments necessary to position themselves for the future.[47]

In addition to testimony of the apparent, continuing, stress on supply, however, the Compact Commission received testimony that production had nonetheless increased by 2.2 percent in 1997.[48] This indicates that, in the short term, despite the persistent failure over time of prices to cover cost of production and the structural conditions of market stress, farmers are still able to produce milk to cover demand. The Compact Commission concludes this is in part because of the presence of a range of cost of production,[49] and in part because of the working dynamic between the fluid and manufactured milk markets under federal regulation. One commenter indicated such increased production may also in part be a function of the cool 1997 summer.[50] In addition, testimony in the record indicates that increased production may be a factor of persistently low farm prices.[51] (The Compact Commission also notes that, in addition to price enhancement under the Compact price regulation for August and September, 1997, according to De Geus, ''last year was an abnormally high year both for price and costs with the result that farmers had a positive return

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[39] Their joint submission in this rulemaking, however, argues against using the Consumer Price Index (CPI) as a structural adjustment to the Compact over-order price because the dairy farmer's costs of production are driven by factors other than those measured by the CPI, such as the cost of grain. The Commission concludes that the CPI is not a perfect fit for systemic cost increases on the farm.

[40] Robert Wellington, Sr. Vice-President, AgriMark Cooperative, WC, October 8, 1997; Lee and Charlotte Bosworth, Auburn, ME; Mary Connolly, Pittsfield, ME; Alaine Palmer, Cornish, ME; Pery and Carol Hogden, Randolph, VT; David Hansen, North Brookfield, MA; Edward A. Ellis, Hebron, CT; Wesley and Brenda Snow, Brookfield, VT; Robert Dow, Dover, ME; Lowell J. Davenport Jr., Ancramdale, NY; Dairy Farmers, WC, October 8, 1997.

[41] See De Geus and Gillmeister, Id. In large part based on their comment, CPI is rejected for automatic adjustment to the Compact over-order price. See below.

[42] Based in part on this concern, the Commission concluded on May 30, 1997 that adoption of a price regulation for the limited duration of six months would allow for continuing evaluation of broader market conditions. *Id.*

[43] Market Order #1 Administrator Statistics.

[44] Wellington, PH at p. 8.

[45] Leon Berthiaume, PH at pp. 57–58. Robert Wellington also testified at the PH at p. 8 that Agri-Mark, the region's largest cooperative, accounting for 1630 of the approximately 3840 pool producers in Federal Market Order #1, indicates a loss of 73 member producers in July, 1997 from the previous July. It also was down 61 members in August compared to the previous August. Agri-Mark also added 10 new New York members in July, 1997 as compared with the previous July, and 17 such new members in August, as compared with the previous year. According to the testimony, ''New York has been the only area available to obtain the additional milk needed for New England consumers.''

[46] Warren, PH at p. 128.

[47] Smith, PH at p. 76.

[48] Leon Graves, Commissioner, Vt. Dept. of Agriculture, Food and Markets, WC, October 8, 1997.

[49] John Schnittker, Public Voice for Food and Health Policy, PH at p. 13, September 24, 1997; Gillmeister, WC, October 8, 1997; De Geus and Gillmeister, WC, October 8, 1997.

[50] Wellington, PH at p. 114.

[51] Wellington, PH at p. 110; Carl Peterson, Dairy Farmer and President, AgriMark, PH at p. 70.

of one cent for the first time in six years.'')[52]

The Compact Commission concludes, accordingly, that the required determination of the amount needed both to cover cost of production and to assure an adequate supply must account simultaneously for both the persistent gap between cost of production and pay prices and the level of supply in the market in spite of that gap. The finding analysis reflects an intended balancing of the basic economic requirement that pay prices cover cost of production to ensure sustainability with a recognition that supply may still be provided despite some gap between cost of production and pay prices.

John Schnittker argues, without supporting evidence, that the price regulation would primarily help the larger and generally more financially healthy dairy producers and would help the smaller and financially stressed producers the least.[53] The commenter made the same argument in the previous rulemaking process, also without supporting evidence. The Compact Commission there concluded that the criticism of the Compact over-order price regulation by Schnittker was incorrect. 62 FR 29634. The assertion assumes that the smaller producer is less efficient than the larger producer. On the basis of the detailed analysis of Professor Wackernagel,[54] the Commission again concludes, however, that the financial viabililty of both 80 cow farms and 350 cow farms will be improved substantially by the Compact over-order price regulation.

Summary Analysis—Level of Prices Needed to Assure That Producers Receive a Price Sufficient To Cover Their Costs of Production and Elicit an Adequate Local Supply of Milk

As noted above, the Compact Commission has determined that an over-order price in the range of $0.46–$1.90 continues to be needed to assure that farmer costs of production are covered, requiring an over-order price regulation in the range of $0.92–$3.80.[55] With regard to the price needed to elicit an adequate supply of milk for the region, the Compact Commission again notes that such an amount is not necessarily identical with that required to cover costs of production. The Compact Commission further concludes that the analysis of the appropriate level of price regulation must also account for price instability and the failure of producer prices to account for inflation,[56] as well as the regulation's duration.

As noted at the outset, the prior rulemaking resulted in establishment of an over-order price regulation of $16.94 for six months duration. 62 FR 29632. The Compact Commission received numerous comments from farmers on the appropriate level of price and duration for an extension of the price regulation. The majority of these commenters recommended that the price be adjusted by the CPI at 2.2%, with such adjustment to last through the termination of the Compact.[57] Wellington and Berthiaume made a similar recommendation; Beach recommended an adjustment by the CPI at 2.2% for a period of six months.[58] De Geus and Gillmeister recommended that it be raised by 2%.[59] (In his separate comment, Gillmeister proposed a six months' duration; De Geus proposed extension through sunset.) Warren suggested that the price be raised by $1.00.[60]

Viewing the comment in light of all the relevant factors, the Compact Commission finds the argument of De Geus and Gillmeister[61] persuasive for not further adjusting the amount of the Compact over-order price regulation in direct proportion to the Consumer Price Index. The function of the initial regulation was a one-time regulatory adjustment in response to the strikingly apparent, chronic, structural failure of the marketplace to account for inflation. Price regulation forward must be responsive to the variety of market forces at work, including but not limited to inflation, as argued by these commenters.

The Compact Commission further concludes that the present amount of the price regulation at $16.94 is sufficiently responsive to the variety of market forces referred to above. The resulting degree of price enhancement provided by the price regulation still ensures that the net pay price remains within the range, albeit at the low end, of that identified as necessary to provide for covering the costs of production.

The Compact Commission also determines that extension of the $16.94 price regulation for the period January 1, 1998 through termination of the Compact enabling legislation, so as to establish uniform regulation and price for a total period of at least 21 months, will provide critical assurance of continued price stability for producers. Finally, the presence of a regulation of stable, continuous, duration will still allow the Commission to hear and consider the need to make further adjustment to account for increased costs of production and inflation at any time, before farmer pay prices again begin to lag far behind inflation. The Commission will commence rulemaking, pursuant to Section 11 of the Compact, no later than July 1, 1998 to consider whether any further adjustment in the Compact over-order regulation price is necessary and appropriate.

In this regard, the Commission takes official notice of the fact that the first three months of the regulation increased farmer pay prices, on average, by approximately $1.30 per hundredweight, raising the combined, regulated minimum pay price from approximately $12.00 to approximately $13.30 per hundredweight. For the next two months of the regulation, it is projected that the regulation will increase the pay price by approximately $.75 and $.40, respectively, yielding combined pay prices of approximately $13.90—$14.10 per hundredweight. The regulation, accordingly, is providing both price enhancement and stability.

With this background, the response of the Compact Commission to the comments received from farmers and cooperative representatives indicating the need for further price enhancement is to extend the current regulation at the same price. The extension of the regulation serves the essential function of establishing combined price enhancement and price stability in the market for a period of at least 21 consecutive months. At the same time, the extension in no way precludes the Commission from finding that a further adjustment in price is warranted after making an assessment of the costs of production, market prices and production levels during the rulemaking process the Commission will commence no later than July 1, 1998.

In sum, extension of the price regulation in the amount of $16.94 through termination of the Compact enabling legislation is the appropriate ''level of price needed to assure that producers receive a price sufficient to

[52] See footnote 27; 62 FR 29633.

[53] Schnittker, PH at p. 11.

[54] 62 FR 29634 (May 30, 1997).

[55] Assuming Class I utilization of 50 percent, the amount of the over-order regulation price must be twice the over-order producer price to account for the entire, identified, amounts.

[56] The Commission here reaffirms its reliance upon the study by Professor Wackerngel, cited at length in both the previous proposed and final rules, which analyzed in detail the impact of Compact price enhancement and price stabilization upon two different farm sizes—an 80 cow herd and a 350 cow herd. 62 FR 29634 (May 30, 1997).

[57] 7 U.S.C. 7256(3).

[58] Wellington, PH at p. 107; Berthiaume, PH at p. 58; Sally Beach, Independent Dairymen's Coop., PH at p. 82.

[59] De Geus and Gillmeister, WC.

[60] Warren, PH at p. 126.

[61] See: note 34 *supra.*

cover their costs of production and elicit an adequate local supply of milk.''

B. Whether the Public Interest Will Be Served by the Establishment of Minimum Milk Prices to Dairy Farmers

In the prior rulemaking, the Compact Commission first focused specifically on the producer related-inquiry of Section 9(e) in making the finding concerning the appropriate level of price required by the Compact, and then referred to the conclusions there determined in making the broader ''public interest finding'' required by the Compact. 62 FR 29632. This analytical approach is adopted for purposes of extending the rule. This analytical approach is also adopted with regard to the dual findings required for establishment of the proper level of price under the rule.

The Compact Commission also adopts the two-part assessment of the broader ''public interest'' utilized in the prior rulemaking. This assessment is premised first on a review of those components of the public interest specifically identified by section 9(e), followed by consideration of a broader range of subjects and issues drawn from these specific components.

As set forth in section A, above, focusing on the producer/milk supply-related finding inquiry, the Compact Commission found the amount of $16.94 per hundredweight to be the appropriate level of price regulation, extended for the period January 1, 1998 through termination of the Compact enabling legislation. This level of price was determined to be necessary to ''cover * * * costs of production and elicit * * * an adequate supply of milk'' within the meaning of the required finding analysis. The price assures in addition, thereby, that the ''balance between production and consumption of milk productions in the regulated area'' will be maintained within the meaning of Compact, section 9(e).

With regard to the review of ''the purchasing power of the public'' contemplated by Compact, section 9(e), the Compact Commission has again determined that this inquiry is relevant to assessing the impact of price regulation on the consumer market, the ''critical part of the Compact Commission's assessment of the public interest under this finding section.'' 62 FR 23045. This inquiry focuses ''primary concern on the consumer interest because milk is a staple product.'' *Id.*[62]

The Compact Commission determined in the prior rulemaking that the continuing erosion of the region's milkshed has had a direct—and adverse—impact on retail prices, and hence on the purchasing power of the public, in part because of the increased transportation costs associated with an expanding milkshed. 62 FR 29635. The Compact Commission similarly determined that ''farm/wholesale price volatility had also likely had an adverse impact on retail prices over time, and that stabilization of the farm/wholesale price through a compact over-order price regulation, traced through to the endpoint retail market, likely will manifest as a corresponding positive impact on retail prices.''[63] *Id.* Finally, the Compact Commission determined that ''the foregoing analysis supports the conclusion that the purchasing power of the public likely will be enhanced, rather than diminished, as a result of the stabilizing effects of the over-order price regulation.'' *Id.*

Based on the reasoning presented in the proposed and final rules, the Compact Commission reaffirms these determinations.[64]

The detailed data and comment received with regard to the consumer interest focused on prevailing retail prices for Class I fluid milk in the region and the potential and actual impact of the price regulation on the retail market. Adverse comment was also received with regard to retail prices and concerns about the regulation's impact on low income consumers. Comment was also submitted with regard to extension of the State WIC program reimbursement provisions.

Impact on Retail Prices—Data and Analysis

De Geus and Gillmeister submitted joint testimony with regard to the impact of the price regulation on the overall retail market. Data was submitted placing the price regulation's impact within a context of price movements between 1995 and the present. The relationship between the procurement cost for raw milk and the retail price was assessed. According to their testimony,

> The important point to note in the relationship between tables 1 and 2 is that farm prices for Class I milk fell dramatically in January of 1997, while retail price [sic] remained elevated. Then, when the Compact [sic] implemented the Final Rule in July of 1997, the prevailing price jumped 30 cents from their already elevated level. In Figure 1, Vermont shows a 20 cent increase in the price of a gallon of milk. Then in August the prevailing price in Boston fell 10 cents and remained unchanged in September. Expectations are that the prevailing price will fall more over time.

The commenters further indicated that—

> The baseline projections for dairy product prices for 1998 shows a decrease in prices of 0.4%. That is to say, dairy product prices are expected to decline * * *. Overall, we feel that the consumer is doing quite well. While fluid milk prices increased in July, they should decrease some over the next several months as competition for the growing sea of consumer dollars begins to over-ride any over-order price.

TABLE 1: FEDERAL MARKET ORDER #1 (ZONE 1) CLASS I PRICES 1995–1997

[Per cwt][65]

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Average
15.10	14.62	14.59	15.03	15.13	14.47	14.36	14.66	14.47	14.79	15.32	15.85	14.85
16.11	16.15	15.97	15.83	15.94	16.33	17.01	17.16	17.73	18.18	18.61	17.37	16.82
14.85	14.58	15.18	15.69	15.73	14.69	16.94	16.94	16.94	16.94	16.94	16.94	15.54

[65] Source: Gillmeister and DeGeus, infra, (Market Order #1 Administrator Statistics).

[62] With regard to the Compact's emphasis on the ''prevailing price for milk outside the regulated area'' and the first ''public interest'' finding, the Compact Commission again determines this data to be relevant with regard to the retail price of milk outside the region. (It is also relevant to the farm price of milk outside the region.) Based on the comments received in the prior rulemaking, the Commission identified the retail prices in two separate markets outside the Compact region as a benchmark for tracking the impact of price regulation on retail prices in the region, 62 FR 23046–47 (April 28, 1997), and to compare ''the current, relative alignment in prices between the New England and New York regions against the relative alignments once price regulation is in place.'' 62 FR 23048 (April 28, 1997). The comprehensive study to conduct this tracking analysis is currently being developed by the Commission.

[63] As a general manager of a processing facility testified, stable wholesale prices should lead to stable retail prices. Warren, PH at p. 130.

[64] The Commission also concluded that the actual impact on retail prices could only be determined by careful monitoring and tracking over time. 62 FR 23048 (April 28, 1997). The Commission is in process of establishing and implementing the study procedure necessary to accomplish this assessment.

TABLE 2: BOSTON RETAIL PRICES 1995–1997

[Per gallon][66]

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Average
2.59	2.49	2.49	2.59	2.49	2.49	2.49	2.49	2.49	2.49	2.49	2.59	2.52
2.59	2.59	2.69	2.59	2.69	2.59	2.59	2.79	2.59	2.59	2.59	2.59	2.62
2.59	2.59	2.69	2.59	2.59	2.59	2.89	2.79	2.79	....	....	....	2.67

[66] Source: Gillmeister and De Geus, infra, (International Association of Milk Control Agencies).

De Geus submitted additional individual testimony, indicating similar retail price experience in Vermont and Connecticut:

RETAIL PRICE

	Vermont: $/gallon	Connecticut: $/gallon
November 1996	$2.49	$2.67
December	2.53	2.68
January 1997	2.54	2.65
February	2.51	2.62
March	2.48	2.61
April	2.49	2.60
May	2.48	2.65
June	2.49	2.61
July	2.64	2.81
August	2.62	2.83
September	2.62	2.78

As can be seen, prices in Vermont increased by 15 cents after initiation of the price regulation in July, then declined the following month, and held constant in September. In Connecticut, prices were observed to have increased by 20 cents after initiation of the price regulation in July, another 2 cents in August, and then decreased by 5 cents for September.

Despite the apparent initial spike in retail prices,[67] the Compact Commission concludes that the regulation has not affected the retail market so anomalously as to require its elimination. Rather, it is concluded from the data and analysis presented that the retail market can best be understood as in the process of adjustment to the current price regulation. The Commission particularly notes that the average Class I price for 1997 will be 11 cents less than last year, while the retail price for the Boston market is expected to be 5 cents greater. Recognizing that last year's prices were unusually high, and that the retail market usually takes time to adjust to price changes,[68] it is noted that the retail price has increased 15 cents since 1995, while the farm price, including that imposed by the price regulation has increased by only six cents.

The Compact Commission also takes note that the over-order price obligation for July, 1997 was $3.00, while for November it will be substantially less, in the amount of $0.91. The impact of having a flat price in the market, resulting from the interplay between the underlying federal, Class I price and the Compact ''over-order'' price, accordingly, thus has yet to be fully assimilated into the pricing dynamic of the market.

The data and analysis presented are not inconsistent with the Compact Commission's prior determination that stabilization of the farm/wholesale price through a compact over-order price regulation, traced through to the endpoint retail market, likely will manifest as a corresponding positive impact on retail prices.'' 62 FR 29635.[69] Indeed, if the commenters cited above are correct in their assessment of the likely trend of retail prices in 1998, it will only require a slight such ''drift downward'' for retail prices to reach their 1995 level.

Comment on the Impact of the Compact Over-order Price Regulation on Low Income Consumers

The Compact Commission received four comments from an organization representing low income consumers[70] who expressed opposition to the extension of the price regulation. Their comments centered on a concern with increased retail prices for fluid milk faced by low income parents and grandparents. Because they attributed recent price increases in their neighborhoods to the Compact Commission's decision to establish the price regulation, they are opposed to its extension.

Another commenter expressed opposition based on his analysis that the regulation was benefiting farmers at the expense of consumers, particularly low income consumers. According to this commenter, the over-order price now in effect could increase consumer cost for milk in the Compact region by as much as $70 million over the next year.[71]

The Compact Commission's response to these commenters flows from its assessment of the actual and potential impact on the retail market described above. As indicated, the Commission determined price regulation would likely have a ''positive impact'' on retail prices over time, though cognizant of the possibility of short-term increases in milk prices at the retail level, when it adopted the regulation. Establishment of a six month regulation ensured either expiration of the regulation in short order or review of the regulation soon after its adoption to determine whether unexpected anomalies were occurring so as to preclude its extension.[72]

Even accounting for these adverse comments, the Compact Commission determines that no such anomalies are occurring in the marketplace. Rather, the market is in process of responding to the imposition of a flat, combined

[67] De Geus indicated that the data gathered for the Connecticut market, identifying a price increase of 20 cents, includes ''Mom and Pop'' stores while the Vermont data, identifying a price increase of 15 cents, does not. According to De Geus, this difference is attributable to the difference in data collection. WC.

[68] Cf. 62 FR 29629 citing Hansen, Hahn, and Weimar, ''Determinants of the Farm-to-Retail Milk Price Spread'', Agriculture Information Bulletin Number 693 (March 1994). See also Kinnucan and Forker, ''Asymmetry in Farm-Retail Price Transmission for Major Dairy Products'', Amer. J. Ag. Econ., 285–292 (May, 1987).

[69] One commenter who is the general manager of a processing facility supported the Commission's analysis with his assessment that stable wholesale prices should lead to stable retail prices. PH at p 130.

[70] Joyce Campbell, Patricia Maben, and Florence Knedsen of Massachusetts ACORN, a low income community advocacy group, PH at pp. 14–25; Felicia Fields, President, Boston ACORN, WC.

[71] John Schnittker, Public Voice for Food and Health, PH at p 9. The Commission notes in response to this comment that, despite the apparent initial spike in prices, the Commission does not determine that the apparent impact of the price regulation is some form of a price increase attributable to a direct ''pass-through'', as apparently inferred by the commenter. As in the previous rulemaking the Commission declines to adopt this approach in view of the lack of explanation, and given that it is directly contrary to the developed literature on this issue which suggests a contrary conclusion. As the Commission determined in its proposed rule, price stabilization eliminates the need for retailers to retain significant margins in order to protect against the uncertainty in wholesale costs that exists when prices are volatile. See 62 FR 23049 (citing Hahn, et al.). Because retailers will not have to engage in this ''risk response'' pricing strategy to ensure cost recovery, the Commission again disagrees with the commenter's conclusory remarks regarding the impact of price regulation on retail prices.

[72] The WIC reimbursement provisions were established in part to cover such a contingency.

Class I price, and the actual impact of the regulation is yet to be determined. The interplay of the underlying federal Class I pricing regulation and the ''over-order'' mechanism, combining to establish the flat, combined price, have yet to work through the asymmetric pricing regimen of retail milk prices. Moreover, while prices may have spiked up in response to initial imposition of the price regulation, according to the received data and analysis, they declined the next month and ''are expected to fall more over time.'' [73]

The Compact Commission notes further that the WIC program,[74] along with the School Lunch Program,[75] provides a buffer to assist low income consumers with increases in the retail cost of milk that might occur.[76] In view of the existence of these programs, and given the current market picture presented by the data and analysis as a whole, the Commission determines that the adverse comment does not establish the need for elimination of the price regulation.

Reasonable Rate of Return to the Distributor

With regard to the ''price necessary to yield a reasonable rate of return to the distributor,'' Compact, Section 9(e), the Compact Commission has previously determined that ''[t]he focus of this inquiry is the determination of a price that ensures a reasonable rate of return,'' and, more specifically, ''whether processing plants are currently covering costs of production,'' including the distributors' rate of return on capital. 62 FR 23045.

Working from this framework, the Compact Commission sought and received comment on wholesale costs and prices. The data received persuaded the Compact Commission to conclude that processors are in fact covering their margins, including a return on capital of $0.06 per gallon.[77] The Compact Commission further determined that ''minimization of such persistent fluctuations in price can only serve as a benefit to stability of firm participants in the wholesale market.'' 62 FR 29635.

The Compact Commission hereby reaffirms the resulting determination that the benefits of price stabilization [78] in the wholesale market parallel the benefits of price stabilization at the farm level, namely, allowing processors to engage in long-term economic planning and investment, and thereby improve their economic efficiency and performance. *Id.*

Broadened Inquiry Under Compact Section 9(e)

As indicated in the introduction to this finding section, the Compact Commission determined under the prior rulemaking that the ultimate finding required by Section 12 of the Compact—whether ''the public interest will be served by the establishment of minimum milk prices to dairy farmers''—necessitated consideration of a broader range of subjects and issues than those specifically delineated by Section 9(e) of the Compact. Accordingly, the Compact Commission sought comment regarding the potential impact of price regulation on each of the farm, wholesale and retail sub-markets which comprise the overall market for fluid milk. 62 FR 23042. These inquiries were broken down further into the individual components of these respective sub-markets, including some of the components specifically listed in Section 9(e) of the Compact, as discussed above. This broad-ranging inquiry, focusing on all phases of the fluid milk market, allowed the Compact Commission to gather substantial data and make an informed determination that an over-order price regulation would be in the public interest, overall, and with regard to its specific impact on each of the three discrete sub-markets—farm, wholesale and retail. 62 FR 23048–50. For purposes of completeness, the Compact Commission's conclusions with regard to the wholesale and retail submarkets are again expressly presented, along with analysis of relevant comment received as part of this rulemaking process.[79]

Wholesale Sub-Market—The Compact Commission assessed the impact of price regulation on the wholesale market by considering the issue of rate of return to processors, as discussed above, (62 FR 23045), and by assessing whether price regulation would result in market distortion with regard to wholesale price and thereby contravene the public interest. 62 FR 23048. In assessing the concern with market distortion, the Compact Commission carefully reviewed present patterns of supply for the region's wholesale needs. The Compact Commission determined that the wholesale market presently is supplied almost totally in the form of raw, bulk product transported from areas of concentration of dairy farms in the rural part of the region to the fluid processing plants located in close proximity to the region's cities. 62 FR 23045. The Compact Commission also determined that the marginal, remainder of the wholesale market is supplied by finished, packaged milk transported from processing plants located some distance away from the region's cities. *Id.*

With regard to the primary bulk supply component of the wholesale market, the Compact Commission determined that there was unlikely to be market distortion caused by price regulation that could adversely affect the wholesale price. According to the comment received in the previous rulemaking, present patterns of raw product supply between processors and independent farmers or cooperative organizations of farmers are relatively stable and are unlikely to be affected by a regulated price increase in the amount and for the duration established by the price regulation. 62 FR 23048.

The Compact Commission also concluded that price regulation was unlikely to cause market distortion with regard to the secondary packaged product component of the market. The concern here is whether price regulation can be administered uniformly with regard to raw product and, as identified and addressed in the current rule, packaged milk supplies. If a significant portion of the packaged milk supplies is left unregulated, this might distort the market by creating a competitive advantage for such packaged products, encouraging their substitution as a source of wholesale supply. 62 FR 23048. Given that packaged milk as

[73] De Geus and Gillmeister, infra.

[74] The WIC reimbursement provisions remain in effect as part of this extended price regulation.

[75] Pub.L. 79–346 and Pub.L. 89–642; see also: 62 FR 29637 (May 30, 1997).

[76] The Commission takes official notice that the Massachusetts WIC Program guidelines show program eligibility at 185% of the federal poverty level. Under the guidelines, a family of four is eligible at an income of $29,639 per annum or $572 monthly.

[77] The comment received and used for this analysis included a study by R. Aplin, E. Erba, M. Stephenson, ''An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants,'' February 1997, R.B. 97–03, Cornell University, and an extract by the same authors, entitled ''Presentation at IDFA Annual Meeting in Dallas, Texas (October 1996). (This extract provides ''estimated costs of marketing 2% lowfat milk through supermarkets, New York Metro Area, $ per gallon, 1995). In comment received on the proposed rule, Professor Aplin indicates that the extract was based on identified costs of the northeast plants that were part of the broader, overall study group. The Commission also relied upon a study by the Economic Research Service (ERS) of the United States Department of Agriculture, Food Cost Review/AER–729. The Commission found the Aplin et al. study more representative, given its identified inclusion of a significant percentage of northeast plants. Moreover, the ERS study incorporated data drawn from vertically integrated, or combined, processing/retailing facilities. The Compact region only includes one such operation.

[78] See: footnote 64, supra.

[79] As in the prior rulemaking, the impact on the farm submarket is presented under the inquiry mandated by the farmer/supply finding.

wholesale supply is more expensive than raw product supply, such substitution resulting from market distortion would increase retail prices and be contrary to the public interest.

The Compact Commission concluded that raw product and packaged product supplies could be regulated uniformly and that such uniform regulation will prevent market distortion, including indirect impact on price. (The basis for this conclusion was presented under the third finding analysis of the prior rulemaking. 62 FR 29637)

The comment received in the present rulemaking initially confirms the Compact Commission's assessment that the price regulation would not adversely affect the relatively stable market patterns of the wholesale sub-market. As presented in the next finding analysis, the Commission received and has responded in detail to comment received indicating the need for marginal adjustment in the operation of the price regulation in the wholesale market. Such comment indicating the need only for marginal adjustment confirms that the regulation has not had such an anomalous impact on the marketplace so as to require its elimination. At the same time, the Compact Commission reaffirms the need to continue to monitor comprehensively the regulation's impact on this sub-market, as detailed in the prior rulemaking. The Commission is in process of implementing the tracking mechanism necessary to conduct the required monitoring established by the prior rulemaking.

Retail Sub-Market—With regard to the retail market, the Compact Commission concluded in the prior rulemaking that price regulation was likely overall to have a positive impact on ''the purchasing power of the public'' within the meaning of Compact Section 9(e), and thereby to be distinctly in the public interest. See 62 FR 23048. (The Commission's underlying conclusion, that stabilizing the milk supply and removing variability in the federally regulated, farm/wholesale, pricing structure would likely combine to have a positive, downward impact on retail prices is explained in further detail at 62 FR 23048–50.) As noted above, the Commission has reaffirmed this conclusion in view of the comment received with regard to retail prices.

In the prior rulemaking, the Compact Commission also made a further determination of the potential, positive impact of price regulation with regard to the broader, consumer-based market. More specifically, the Commission concluded that price regulation will not have a negative impact on government supplemental nutrition programs such as the National School Lunch Program. The Commission made this further determination based on its assessment that the pricing patterns of such programs were premised on essentially the same competitive patterns of the broader, consumer-based market. See 62 FR 23050. Citing a General Accounting Office description of the program, the Commission noted in its proposed rule:

> The National School Lunch Act of 1946 (Pub L. 79–396) and the Child Nutrition Act of 1966 (Pub L. 89–642) authorize USDA to reimburse state and local school authorities—under grant agreements—for some or all of the costs of these programs. Reimbursements are based on either the number of meals served or the number of half pints served. The schools use these funds, as well as state and local funds and moneys collected from students, to purchase food, including milk, for these programs. These purchases are made through either sealed bid or negotiated procurements. USDA's regulations require that these procurements be conducted in a manner that provides for the maximum amount of open and free competition.[80]

The Compact Commission reaffirms this understanding of the expected interplay between the price regulation and the School Lunch Program. Given the critical concern with the potential impact on such supplemental food nutrition programs, and in view of the comment received on this issue, the Commission determines it appropriate to establish a Task Force pursuant to Article VII. D. of the Compact Commission's Bylaws to assess more closely the regulation's actual and potential impact on the School Lunch programs. The Task Force shall report back to the Commission at its regularly scheduled meeting for February, 1998. Based on the Committee's assessment of the impact of the Compact over-order price regulation, it shall make recommendations as to whether the region's School Lunch Programs should receive reimbursement for some or all of any increased costs attributable to the price regulation and, if so, the method for reimbursing the appropriate local authorities.

Price Regulation and the WIC Program

The Compact Commission did determine in the prior rulemaking that pricing and reimbursement patterns for one government supplemental nutrition program, the WIC Program, are not configured according to the same pattern as the broader consumer-based retail market. 62 FR 23050; 29637. Accordingly, the Commission exempted the WIC program from operation of the price regulation. *Id*. at 23050–53; 29637.

Two of the State WIC Program Directors submitted comment in support of extending the provisions in the current rule for reimbursing State WIC Programs for their costs incurred as a result of the Compact over-order price regulation.[81] The current rule includes a formal agreement between the Compact Commission and the six State WIC Programs that governs the terms of the reimbursement program. The Compact Commission herein extends that agreement for the effective period of the rule.

About the WIC Program

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a unique health and nutrition program serving women and children with—or at risk of developing—nutrition-related health problems. WIC provides access to healthcare, free nutritious food, and nutrition information to help keep low to moderate income pregnant women, infants and children under five healthy and strong. The Program provides a monthly ''prescription'' for nutritious foods tailored to supplement the individual dietary needs of each participant. Milk and other dairy products play a large and important role in every participant's food package.

The WIC Program is a Federally funded program carried out according to provisions of the Federal Child Nutrition Act. The Program is funded through the Food and Consumer Service of the United States Department of Agriculture (USDA) and administered on the local level by State WIC Programs in the Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont State Departments of Public Health (the States). Additional state funds are also provided in Massachusetts. Participants are issued WIC checks or vouchers at local agencies for WIC authorized foods. The checks or vouchers—which do not have a predetermined value—are redeemed at authorized retail stores at current store prices in accordance with posted prices. Prepayment edits are performed on each check to ensure that specific food

[80] GAO Report 13–239877 at 2 (October 16, 1992), submitted by Jeffords as Additional Reply Comment, April 9, 1997; See also 62 FR 23050.

The Commission further notes that the purchasing patterns of other institutional buyers such as the military and hospitals, as described in the GAO study similarly mirror the broader, competitive market. The Commission concludes that these institutional buyers will also benefit from the impact of price regulation on the competitive market.

[81] Mary Kelligrew Kassler, Director of the Massachusetts WIC Program, WC; Jadwiga Goclowski, Division Director/State WIC Director, Department of Health, State of Connecticut, WC.

purchasing, pricing and payment requirements are met.

Because WIC is not an entitlement program and has a capped program appropriation, any increase in food costs results in fewer women and children being served. It is imperative, therefore, that WIC's funds be held harmless from any adverse impact due to a Regulation. While the Compact Commission has again concluded that price regulation should have a ''positive impact'' on retail markets, it has also found that the market is presently adjusting to the price regulation with an as-yet indeterminable, overall, actual outcome. In order to ensure that WIC funds are held harmless, it is necessary to extend the reimbursement procedure during the effective period of the Compact over-order price regulation.

Continuing Assessment of Impact

The Compact Commission, in its current rule, provides for continuous monitoring and analysis of Class I fluid milk retail price data in order to accurately assess and evaluate any regulation-related adverse or beneficial impact on costs to consumers and WIC, and to make related adjustments to assure that the public interest is served and consumers and the WIC Program and its participants are protected. The Compact Commission, under this rule, will continue to monitor and analyze information at both the New England Regional and individual State levels—including each State's WIC programs—comprising representative samples of market areas and retail store types, proportion of sales by package size, and degree to which retail price fluctuations differ for package sizes in relation to each other.

WIC Reimbursement System

Given that State WIC Programs have a September 30th fiscal year end, the Compact Commission can not make the Program whole after the fact. WIC must operate in a funding ''limbo'' between October and January when its State Program grants are announced. Uncertainty regarding the potential effect of price regulation, or reimbursements to States made by the Compact Commission at a later date, would force State WIC managers to lower first quarter participation levels. The State WIC Programs have proposed and the Commission has agreed to a method by which the WIC Program will be held harmless from any impact related to a demonstration of a Compact Over-Order Price Regulation for Class 1 fluid milk. The Commission will reimburse each respective State WIC Program. The amount of reimbursement will be based on a formal agreement to be entered into by the Compact Commission and the six New England State WIC Program Directors, as approved by the Food and Consumer Service of the USDA. Under the agreement, the reimbursement amounts will be based on: (1) The quantities of milk purchased with WIC checks and (2) the amount of any Compact Over-Order Price Regulation.

The Compact Commission has also made provision for continuing monitoring and analysis of retail and wholesale prices for fluid milk. Should there be continuing adverse impacts on consumers, in general, and low income consumers, in particular, the Commission will be able to react.

Impact on Retailers

Finally, the Compact Commission reaffirms its prior determination that price regulation does not and will not likely have an adverse impact on the retailers, themselves. In summary: in similar manner as with its assessment of the wholesale market in the prior rulemaking, the Commission reviewed retail costs and prices to determine if retailers are covering costs, including return on capital, under present market conditions. 62 FR 23045, 23046–48. The Compact Commission concluded that such margins are presently being covered, and that price regulation will not adversely affect the ability of retail outlets to continue to cover their margins. *Id*. at 23048.[82]

Public Interest Finding—Summary Analysis

Based on this analysis under Compact section 9(e) and the broader market-wide analysis, the Compact Commission concludes that continuing the price regulation in the amount of $16.94 for the period January 1, 1998 through termination of the Compact enabling legislation will ensure the ''public interest'' is served in the manner contemplated by the finding analysis under Compact section 12(a)(2). The Compact Commission concludes the current price regulation has begun to achieve its intended purposes of price stabilization and limited price enhancement for producers without distortion of downstream wholesale and retail markets. While the actual impact on the downstream markets cannot yet be determined comprehensively, the data and comment presented indicate that at worst only marginal adjustments are necessary and that at best the regulation may be serving its intended purpose of having a positive, downward pressure on retail prices. Extension of the regulation in substantially similar form will continue its function as a limited market adjustment which again accounts for its potential impact on all levels of the market, from farm to retail, including the benefits of market stability.

As noted throughout the analysis under this and the previous finding section, the Compact Commission has again considered and accounted for the variety of potential market impacts in fashioning this extension of the price regulation. The Commission remains concerned with its potential, adverse impact on the wholesale market, as well as with regard to unanticipated impacts on consumer prices.

While the Compact Commission has concluded that the regulation has not and is not likely to adversely affect the wholesale market and may well, indeed, have a positive impact on retail prices, the Commission will ensure comprehensive monitoring of these market functions. The Commission has also determined that it will commence a rulemaking proceeding, pursuant to section 11 of the Compact, no later than July 1, 1998 during which it will make an assessment of, among other issues, the data and analysis received as a result of its tracking analysis.

As a final safeguard against unanticipated, adverse consequences, the Commission has again acted to ''hold harmless'' the WIC Program by reestablishing the reimbursement provisions for all New England State WIC Programs, despite the Commission's conclusion of the remoteness of there occurring unanticipated, adverse consequences in the retail market. Finally, as a new element of this monitoring procedure adopted under the previous rulemaking, the Commission will establish a Task Force to assess the specific impact of the regulation on the region's School Lunch Programs and to determine whether it is appropriate to establish some form of reimbursement for these programs.

[82] The comment received and used for the cost analysis relied upon the study by Aplin et al, ''An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants'', February 1997, R.B. 97–03, Cornell University and the extract by the same authors, entitled ''Presentation at IDFA Annual Meeting in Dallas, Texas (October 1996). (This extract provides ''estimated costs of marketing 2% lowfat milk through supermarkets, New York Metro Area, $ per gallon, 1995). In comment received on the proposed rule, Professor Aplin indicates that the represented supermarket costs were representative of New England supermarkets, as well. The Commission notes that these studies focus on supermarket costs. Supermarkets represent the primary retail outlet for fluid milk in the marketplace. According to the Aplin study, retail cost, with return is $2.12 per gallon.

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

The third provision of section 12(a) of the Compact requires that the Compact Commission determine whether the non-price provisions of the proposed rule would also be in the public interest, and, based on the record before it, the Commission so finds. The Commission's assessment focuses on two conditions: assurance that the regulation does not create an incentive for dairy farmers to produce additional, surplus supplies of milk, and second, the Commission's regulation is uniform and equitable and does not unduly distort traditional markets and marketing channels. The Compact Commission finds that both conditions are met by the final rule, as amended from the proposed rule.

Based on their individual farm or cooperative experience with production over the period January through August, 1997, several commenters [83] indicated that the price regulation had not created an incentive for dairy farmers to produce additional, surplus supplies of milk. They indicated that production for either their farm or their cooperative was roughly the same in 1997 for the 8 month period as for the same period in 1996.[84] One dairy farmer indicated that in his experience, it is low prices that cause the farmer to produce more milk in order to meet the monthly fixed commitments for farm expenses.[85] Similarly, another commenter indicated that the over-order producer price would likely not be an incentive for increased production because the farmer will have a better cash flow under the regulation and can avoid the extra costs of increasing production with additional cows or other strategies.[86]

Two commenters [87] based their opinion that the regulation will not elicit increased production on an analysis of the interactive effect of the compact over-order price when applied in complement to the Basic Formula Price (BFP) of the federal Milk Market Order #1. Because the current compact over-order price of $16.94 establishes a partial floor price to the producer, the supply and demand in the New England milkshed, the farmer receives appropriate economic signals about the amount of production called for by the market. They independently conclude that this mechanism provides a more stable price for the producer while allowing the natural mechanisms of the marketplace to influence supply and demand.

The joint submission of Renee De Gues and William Gillmeister, both dairy economists for the Vermont and Massachusetts Departments of Agriculture, respectively, indicates that, based on reported data, production levels in the region have not changed dramatically since the Final Rule was implemented on July 1, 1997. Based on the data they submitted, they conclude that ''the Compact is not stimulating production in New York and Pennsylvania because from July through September, milk production in those states seems to have matched milk production patterns for the U.S.'', as a whole. Receipts for New York and New England, while up over the same period in 1996, were normal when compared to 1994 and 1995. In their joint submission, they report that receipts from New York, Vermont and Connecticut increased by 0.6%, 0.17%, and 3.5%, respectively, from July to August, 1997. Receipts from Maine, Massachusetts, New Hampshire, and Rhode Island fell by 1.6%, 2.1%, 1.4%, and 2.4%, respectively, from July to August, 1997. Moreover, production levels were considerably below the average increase in the national production.[88]

The Compact Commission notes that the Commodity Credit Corporation (CCC) made no purchases of surplus milk in the region during fiscal year 1996 or 1997.[89] The Commission established a monitoring plan in the May 30, 1997 Final Rule that will track regional and national rates of production to determine whether the regional rate of increased production is within 0.25% of the national rate of increased production. If New England production levels do increase within this range, then for each such month, the Commission will estimate the potential cost of CCC surplus purchases of surplus which might occur should the rate of regional increased production exceed the national rate. The Commission will retain a portion of the proceeds of the price regulation sufficient to cover such estimated costs, as necessary. See 62 FR 23054. In this rulemaking, the Commission determines that the tracking procedure and the plan for paying CCC for any surplus purchases are still the most viable and reasonable method for dealing with any increased production in the region.

On the basis of this record, the Compact Commission concludes that neither additional supplies nor surplus production has occurred to date nor does it expect any to occur under an extension of the Compact over-order price regulation. The Commission will continue the tracking procedures established under the current regulation to monitor production, so as to allow appropriate action should an unanticipated change in production patterns occur. 62 FR 23054. Pursuant to section 9(f) [90] of the Compact, the Commission finds that it is not now necessary to take any action to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk. If the monitoring procedures indicate the need for such action, the Commission will take the necessary and feasible action, as appropriate, to reimburse the Commodity Credit Corporation for any purchases of resulting surplus supplies.[91]

One commenter [92] suggested an amendment to the codified regulations that would establish a method for assessing pro rata all pooled producers for a three month period for the purpose of any retroactive payment to the Commodity Credit Corporation for surplus purchases. The Commission's response is that, should payments at the end of the fiscal year to the commodity Credit Corporation be necessary and appropriate, the entire producer pool ought to bear those costs, when incurred. This mechanism provides an added disincentive for over-production

[83] Leon Berthiaume, St. Albans Coop., PH at p. 63 and WC; Sally Beach, IDA, PH at p. 85; Douglas Carlson, dairy farmer, PH at p. 102; David Jaquier, dairy farmer, PH at p. 137; Norma O'Leary, Ct. Farm Bureau, WC; Carl Peterson, dairy farmer, PH at p. 70; Robert Wellington, AgriMark Coop., PH at p. 111 and WC.

[84] Berthiaume indicated in his testimony, PH at p. 59–64 that production for St. Albans Cooperative was the same for January through June, 1997 as it was for the same period in 1996. It increased 1% in July, 1997 and 2.3% in August, 1997, well below the average increase in the 20 largest dairy states which was 5% and 4.4%, respectively.

[85] Peterson. PH, p. 70.

[86] Wellington, WC. In his written comment, he also made the point that farm prices regularly below the costs of production will not themselves generate any long-term additional supplies of milk.

[87] Smith and Wellington. *op. cit.*

[88] Leon Graves, Commissioner, Vt. Dept. of Agriculture, Food and Markets, WC.

[89] Wellington, WC.

[90] When establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the price does not create an incentive for producers to generate additional supplies of milk.'' Compact. section 9(f).

[91] ''Before the end of each fiscal year that a Compact price regulation is in effect, the Northeast Interstate Dairy Compact Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the projected rate of increase in milk production for the fiscal year within the Compact region in excess of the projected national average rate of the increase in milk production, as determined by the Secretary [of Agriculture].'' 7 U.S.C. 7256(6).

[92] Leon Berthiaume, WC.

by the pool producers appropriate under Section 9(e) of the Compact.

The inquiry on the second condition centers on the technical provisions, currently codified in 7 CFR parts 1300, 1301, and 1303–1307. These provisions establish the definitions and procedures for the assessment of price regulation collection from processors and disbursements to producers. The Commission finds, generally, that these provisions continue to ensure uniform and equitable administration of the price regulation. The provisions continue to be patterned closely upon the underlying federal Milk Market Order #1, as they were when adopted on May 30, 1997. 62 FR 29637. They are designed to and have, in fact, worked since July 1, 1997 in complement to the Market Order with the direct, technical assistance of the Market Order #1 Administrator's office.

In response to the Compact Commission's proposal to extend and amend generally the current provisions of the regulation, a number of comments were received at both the public hearing and in later written submissions. To allow later written comment on a number of technical administrative issues, the Compact Regulation Administrator[93] suggested in his testimony at the September 24, 1997 public hearing, that an additional criteria be added to 7 CFR 1301.11(b), relating to qualifying as a producer under the regulation, to include having moved milk into the regulated area for more than half the days during December of 1997. The current rule provides that any dairy farmer who moved milk into New England in December of 1996 for over half of the days on which he or she shipped milk qualified for the over-order producer price. This reflects the traditional parallel provision of the federal Milk Market Order for qualifying for pooling during a specific time period of each year.[94] Those who qualify during this specific period have demonstrated that they are traditionally associated the regional milkshed. The Commission finds it reasonable and consistent to provide a parallel one month qualifying period for December of 1997 added to December of 1996. It, therefore, amends 7 CFR 1301.11(b) to insert ''and December 1997'' after December, 1996 in the current regulation.

The same commenter also suggested that 7 CFR 1301.11(b) be further amended by adding a provision that would limit the total amount of milk at a pool plant eligible to qualify out of region producers to the total bulk receipts of fluid milk products less the total bulk transfers of fluid milk products (not including bulk transfers of skimmed milk and condensed milk).

The principal criterion for qualifying a producer for the over-order producer price is whether the farmer has committed to supply the Compact area milkshed. Out of area producer milk being shipped into a Compact area pool plant and then transferred out of the plant for distribution outside of the regulated area does not meet that criteria. The commenter noted that, under the current version of this section, milk could be shipped into a pool plant only to qualify the producer for the Compact over-order producer price. The Commission finds that the suggestion deals adequately with this problem and is consistent with the principal criteria for producer qualification of a demonstrated commitment to supply the New England milkshed. There are, however, additional problems associated with this suggested provision.

Another commenter[95] advocated that the current rule not be amended and that the current treatment of plant diversions be left in place, to parallel the treatment under the federal Milk Market Order. He pointed out that plant diversions are part of everyday life in all regions of the country and that these diversions are required by a variety of circumstances. A third commenter[96] pointed out that it would be unfair to penalize the out of area producers and prevent their qualification because business necessity at the plant required that producer's milk be transferred on any particular day. He suggested that ''reloading'' occurs for a variety of reasons, among which are varying seasonal demand and supply in the milkshed, and that a percentage limit on bulk milk transfers for purposes of qualifying out of region producers could solve the problem while not distorting normal business practice.

A dairy processor from New York[97] identified a somewhat related concern with regard to the current rules for qualified out of region producers whose milk is shipped to a pool plant in the regulated area with sales outside the regulated area in competition with the New York processor. According to the commenter, the New York processing facility must match the over-order producer price paid by the New England-based pool plant to qualified New York producers in order to assure maintenance of raw product supply. According to the commenter, this payment raises the New York processor's costs compared with the New England processing facility's costs.

This comment raises a similar concern to that presented with regard to bulk transfers, in that new milk is being pooled which is not traditionally associated with the pool for the regulated New England area. The Commission responds to this comment by amending the regulation to limit producer qualification in some instances with regard to milk utilized for sales outside the region. All out of region producers historically associated with the milkshed for the region, or those providing supply in December 1996 and 1997, will qualify on that basis. Newly supplying producers, however, will qualify only to the extent that their receiving plant has sales in the regulated region attributable to such new, additional, supply.

In recognition of the problem to which Ross's suggested amendment is addressed, to reflect the need to accommodate reloading as a current business practice for balancing milk supplies to fit consumer needs and available plant capacity, and to correct the problem pointed out by the New York processor, the Compact Commission adopts two new provisions in § 1301.11(b) which will:

(a) restrict a handler's ability to increase its out of region producer supply not traditionally associated with regulated area, by limiting the out of region producer qualification to only 10% of the milk received from those producers but subsequently reloaded and transferred in bulk for disposition out of the region; and will:

(b) provide for minimization or elimination of qualification of out of region producers whose milk is shipped to a pool plant that packages the milk for sale outside of the regulated area, solely for such sales.

To reflect the decisions of the Compact Commission to include these new provisions, 7 CFR 1301.11 (b) is amended as indicated *infra* in ''Codification in Code of Federal Regulations''.

One commenter[98] suggested that the five month qualifying period be reduced to 3 months to allow more out of region producers to take advantage of the over-order producer price. Another

[93] Carmen L. Ross, Compact Regulation Administrator, PH at pp. 44–55.

[94] Under the federal Milk Market Order #1 regulatory provisions, producers qualify who ship milk for over half of the days in July through August each year.

[95] Eugene Madill, CEO, Dairylea Coop., PH at p. 37.

[96] Wellington, PH at p. 109 and WC.

[97] Gary Dake, Vice-President, Stewart's Processing Corp., Saratoga Springs, NY, WC.

[98] Garry Warren, PH at p.126.

commenter,[99] however, advocated that the qualifying period remain at the five months required by the current provision. The Compact Commission's response to these comments is that the five month period is a reasonable measure of a producer's initial commitment to supply the New England milk pool. The Commission concludes that the current provision with the suggested amendments adopted above ensures equitable and uniform treatment of out of region producers. The Commission, therefore, will continue the current five month requirement in 7 CFR 1301.11(b).

A previous commenter [100] suggested another amendment to clarify the current regulation in 7 CFR 1304.5 dealing with the classification of milk. He suggested deleting the current provision at § 1304.5(a) and adding a new subsection (a) to clarify that fluid milk products which had been pooled at a New England pool plant and shipped to a partially regulated plant will be attributed only to the pool plant. This suggestion ensures that milk already subject to the Compact over-order obligation at the pool plant will not again be subject to the obligation at a partially regulated plant to which it is later shipped.

Although no double billing has occurred under the current provision, this clarification will ensure that it cannot happen. There was no comment opposing this suggestion.

The Compact Commission agrees that the current provision should be clarified to ensure uniform and equitable administration of the regulation. The Commission, therefore, adopts the amendment to delete the current language at 7 CFR 1304.5(a) and to replace it with a new subsection (a) as is indicated *infra* in ''Codification in Code of Federal Regulations.''

The Commission notes that the current codified provision at § 1305.1 establishing the Compact over-order Class I price does not include the dollar amount adopted by the Commission on May 30, 1997. Because of the need for clarity in the codified regulations, the Compact Commission amends that section to include reference to the new Compact over-order price of $16.94, as indicated *infra* in ''Codification in Code of Federal Regulations.''

The same commenter suggested that 7 CFR 1306.1 and 1306.2 be amended to establish a parallel exemption from regulation with that of the federal Milk Market Order #1 for any dairy processor who handles less than an average of 300 quarts per day. He points out that these limited amounts of milk should be excluded from the Compact pool as a *de minimus* exemption because of the relatively small amounts of the Compact over-order obligation and consequent producer price distribution. There was no further comment received on this suggestion.

The Compact Commission finds merit in the suggestion as a way to simplify administration of the regulation and to reflect the practice under the federal Milk Market Order system. The Commission, therefore, amends 7 CFR 1306.1 and 1306.2 as is indicated *infra*. ''Codification in Code of Federal Regulations.''

The same commenter pointed out that, in the notice of final rule,[101] the Compact Commission adopted the requirement of a formal agreement for a reimbursement system between the Commission and the State WIC Program directors, to be approved by the Food and Consumer Service of the USDA, that will ensure reimbursement of any additional costs incurred by those programs because of the over-order price regulation, the requirement was inadvertently omitted from the codification. In the same final rule notice, the Commission had also approved the establishment of a Commission reserve account for reimbursement of anticipated WIC Program costs.

As explained in the prior finding analysis, the Commission has reestablished and extended the WIC reimbursement system.[102] The Commission, therefore, amends 7 CFR 1306.3 to add a new subsection (b).

In addition, the Compact Commission notes that, although it adopted a mechanism for reserving funds to cover any costs to be reimbursed to the Commodity Credit Corporation for surplus purchases in its Proposed and Final Rule,[103] it did not include any provision in the codified regulations. To address that omission, the Commission amends 7 CFR 1306.3 further to add a new subsection (c) and to redesignate the remaining subsections to be (d) through (f), as indicated *infra* in ''Codification in Code of Federal Regulations.''

The same commenter also suggested changes needed to 7 CFR 1307.1 both to accommodate new references required by the above amendments and to correct the language. There was no additional comment on these suggestions. The Commission adopts these suggestions and amends 7 CFR 1307.1, as indicated *infra* in ''Codification in Code of Federal Regulations.''

The same commenter suggested changes to 7 CFR 1307.2 to clarify the intent and to delete subsection (c) which is not needed. There were no additional comments on this suggestion. The Compact Commission agrees with the comments and amends 7 CFR 1307.2 by deleting (c) in its entirety and amending (b) (1) and (2), as indicated *infra* in ''Codification in Code of Federal Regulations.''

This same commenter's last suggestion for changes to the codified provisions of the regulation was to amend 7 CFR 1307.4 to exclude milk at a partially regulated plant that was diverted from a pool plant, where it was already pooled for purposes of the Compact over-order price obligation. There was no additional comment on this suggestion. Because this amendment will ensure that the price obligation not be assessed twice on the same milk, the Commission adopts the suggestion and amends 7 CFR 1307.4(f), as indicated *infra* in ''Codification in Code of Federal Regulations.''

Another commenter [104] suggested an amendment to 7 CFR 1304.4(a)(ii) to avoid the assessment of the over-order obligation on a cooperative for bulk milk which the cooperative ships to other pool or partially regulated plants. He points out that under the current regulation the cooperative and its membership are financially responsible for the assessment for which the receiving plant is billed by the cooperative and which will ultimately be paid by the receiving plant. He suggests that it is more appropriate that the second processing plant be financially responsible than the farmer cooperative.

The Compact Commission's response is that the over-order price obligation is imposed on this particular cooperative as a processor operating a compact pool plant. It is a traditional technique of milk market regulation to impose the obligation on the pool plant that receives the milk from the producer. It is, therefore, appropriate that the cooperative continue to be responsible for the obligation as the operator of the receiving pool plant.

With these amendments to the current codified provisions of the price regulation, the Commission finds that the major provisions of the order, other than those fixing minimum prices, are reasonably designed to achieve the purposes of the order.

[99] Wellington, WC.

[100] Carmen L. Ross, Id.

[101] 62 FR 29630.

[102] See: Discussion of the WIC Programs, supra.

[103] 62 FR 23054 and 29638.

[104] Leon J. Berthiaume, WC.

Finally, the Compact Commission concludes that the administrative assessment of $0.032 per hundredweight of milk on all route dispositions of class I fluid milk in the territorial region of the six New England states should be extended in order to finance the budgeted costs for administration of the Compact Commission's regulations through the effective period of the rule. The Commission notes that the additional, start-up assessment of approximately $0.013 per hundredweight presently imposed will expire with final payment in December of 1997.

III. 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 continuation of minimum prices in the amount of $16.94 (Zone 1) to dairy farmers under Article IV for the period January 1, 1998 through termination of the Compact enabling legislation.

(2) That a level price of $16.94 (Zone 1) will assure that producers 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 price regulation were approved by producers by referendum.[105]

[105] Section 13 of the Compact requires that the Commission conduct a referendum among producers and that, at least, two-thirds of the voting producers approved the regulation. A separate notice in the **Federal Register** certifies the results of the referendum pursuant to the following Referendum Approval Certification Procedure:

The Compact Commission resolves and adopts this procedure for certifying whether the price regulation adopted by this final rule has been duly approved by producer referendum in accordance with Compact Article V, section 12.

_______ is hereby designated as ''Referendum Agent'' and authorized to administer this procedure.

The designated Referendum Agent shall:

1. Verify all ballots with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots. Verification of ballots shall include those cast individually by block vote. Ballots determined by the Referendum Agent to be invalid shall be marked ''disqualified'' with a notation of the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

2. Compute and certify the following:

A. The total number of ballots cast.

B. The total number of ballots disqualified.

C. The total number of verified ballots cast in favor of the price.

D. The total number of verified ballots cast in opposition to the price regulation.

E. Whether two-thirds of all verified ballots were cast in the affirmative.

3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2.

4. At the completion of his or her work, seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

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

The Executive Director shall publish the certified results of the referendum in the **Federal Register**.

List of Subjects in 7 CFR Parts 1300, 1301, 1303–1307

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Compact Commission amends title 7, chapter XIII, as follows:

PART 1301—DEFINITIONS

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

Authority: 7 U.S.C. 7256

2. In § 1301.11, paragraph (b) is revised to read as follows:

§ 1301.11 Producer.

* * * * *

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

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

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

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

* * * * *

PART 1304—CLASSIFICATION OF MILK

1. The authority for part 1304 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1304.5, paragraph (a) is revised to read as follows:

§ 1304.5 Classification of producer milk at a partially regulated plant.

* * * * *

(a) Subtract from the total pounds of fluid milk products in Class I the pounds of fluid milk products in:

(1) Receipts of Class I fluid milk products from pool plants if reported and classified Class I by the pool plant;

(2) Disposition of Class I fluid milk products outside of the regulated area;

(3) Receipts of exempt fluid milk products pursuant to Section 1301.13 (a), (b), and (c) of this Chapter.

* * * * *

PART 1305—CLASS PRICE

1. The authority citation for part 1305 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1305.1 is revised to read as follows:

§ 1305.1 Compact over-order class I price and compact over-order obligation.

The compact over-order Class I price per hundredweight of milk shall be as follows:

(a) The class I price shall be $16.94 per hundredweight.

(b) The compact over-order obligation shall be computed as follows:

(1) The compact Class I price ($16.94);

(2) Deduct Federal Order #1 Zone 1, Class I price;

(3) The remainder shall be the compact over-order obligation.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

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

Authority: 7 U.S.C. 7256.

2. Sections 1306.1, 1306.2, and 1306.3 are revised to read as follows:

§ 1306.1 Handler's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1301.9 (d) of the chapter with respect to milk that was not received at a pool plant, as directed in this section. Any pool plant that does not exceed a daily average of 300 quarts of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1 (a) by the compact over-order obligation.

§ 1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk disposition in the regulated area by the operator of a partially regulated plant as directed in this section. Any partially regulated plant that does not exceed a daily average of 300 quarts of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1 (a) of this chapter by the compact over-order obligation.

§ 1306.3 Computation of basic over-order producer price.

The compact commission shall compute the basic over-order producer price per hundredweight applicable to milk received at plants as follows:

(a) Combine into one total the values computed pursuant to § 1306.1 and § 1306.2 of this chapter for all handlers from whom the compact commission has received at the Compact Commission's office prior to the 9th day after the end of the month the reports for the month prescribed in § 1303.1 and the payments for the preceding month required under § 1307.3 (a) of this chapter.

(b) Subtract 3% of the total value computed pursuant to paragraph (a) above for the purpose of retaining a reserve for WIC pursuant to the Formal Agreement for reimbursement of WIC Program costs entered into between the Commission and the six New England State WIC Program Directors, as approved by the Food and Consumer Service of the United States Department of Agriculture (USDA);

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) above, for the purpose of retaining a reserve, an amount estimated by the Commission in consultation with the USDA for anticipated costs to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year, it is to be disbursed as follows:

(1) Any producer who has received payment from a handler pursuant to § 1307.4 shall become eligible to receive a pro rata disbursement by submitting to the Commission documentation that the producer did not increase production of milk during and after the month on which the regional rate of production increase met or exceeded the national rate of production increase, as compared to the same period in the preceeding year. Such documentation shall be filed with the Commission not later than 45 days after the end of the fiscal year.

(2) The Commission shall calculate the amount of refund to be provided to each eligible producer by taking into account the total amount of retained proceeds, the total production of milk by all producers eligible for refunds, and the total amount of production by each eligible producer.

(d) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 8th day after the end of the month;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1306.2(a); and

(f) Subtract not less than four (4) cents nor more than five (5) cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic over-order producer price for the month.

PART 1307—PAYMENTS FOR MILK

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

Authority: 7 U.S.C. 7256.

2. Sections 1307.1 and 1307.2 are revised to read as follows:

§ 1307.1 Producer-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the *producer-settlement fund*. It shall deposit into the fund all amounts received from handlers under § 1307.3, § 1307.7, and § 1307.8 of this Chapter and the amount subtracted under § 1306.3(f). It shall pay from the fund all amounts due handlers under § 1307.3, § 1307.7, and § 1307.8 and the amount added under § 1306.3(d) subject to their right to offset any amounts due from the handler under these sections and under § 1308.1 of this chapter.

(b) All amounts subtracted under § 1306.3(f), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1306.3(d).

(c) The compact commission shall place all monies subtracted under § 1306.3(b), 1306.3(c), and 1306.3(f) 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.

§ 1307.2 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the compact commission shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) of this chapter shall be the value computed pursuant to §§ 1306.1 and 1306.2.

(b) The producer-settlement fund credit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of producer milk that were reported by pool plants pursuant to § 1303.1 and the quantities or route disposition in the marketing area by partially regulated plants for which a value was determined pursuant to § 1306.2(a) by the basic over-order producer price computed under § 1306.3.

(2) For any cooperative association in its capacity as a handler under § 1301.9 (d), multiply the quantities of all producer milk reported pursuant to § 1303.1(c) by the basic over-order producer price computed under § 1306.3.

3. In § 1307.4, paragraph (f) is revised to read as follows:

§ 1307.4 Payments to producers.

* * * * *

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

Daniel Smith,

Executive Director.

[FR Doc. 97–30602 Filed 11–24–97; 8:45 am]

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NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Results of Producer Referendum

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of referendum results.

SUMMARY: On October 23, 1997, the Northeast Dairy Compact Commission adopted, by final rule, an extension of the current over-order price regulation through the termination of the Compact enabling legislation,[1] which is published elsewhere in this issue of the **Federal Register.** To become effective, the extension of a price regulation must be approved by at least two-thirds of all producers voting by referendum. A producer referendum was held during the period of October 24 through November 12, 1997. The extension of the Commission's price regulation through termination of the Compact enabling legislation was approved by more than two-thirds of all producers voting in the referendum. This document discusses the referendum on the final rule and gives notice of the results.

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

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

SUPPLEMENTARY INFORMATION: The Compact Commission was established under the authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in 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.

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

By Final Rule, published in this **Federal Register**, the Commission adopted an extension of the over-order price regulation through termination of the Compact enabling legislation on October 23, 1997. The Final Rule includes specific findings of fact required under Section 12(a)(1)–(4) of the Compact. The following notice provides certification of the finding required under Section 12(a)(4), specifically: ''Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13.''

The Commission adopted the following resolution for certifying a referendum vote at its October 23, 1997 meeting:

Referendum Approval Certification Procedure

The Compact Commission resolves and adopts this procedure for certifying whether the Price Regulation adopted on October 23 has been duly approved by producer referendum in accordance with Article V, § 12 of the Northeast Interstate Dairy Compact.

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

1. Verify all ballots in accordance with Commission's requirements with respect to timeliness, Cooperative identification, producer eligibility, appearance of authenticity and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid shall be marked ''disqualified'' with a notation of the reason for the disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation. Verification of ballots shall include those cast individually and by block vote.
2. Certify the following:
   a. The total number of ballots cast.
   b. The total number of ballots disqualified.
   c. The total number of verified ballots cast in favor of the price.
   d. The total number of verified ballots cast in opposition to the price regulation.
   e. Whether two-thirds of all verified ballots were cast in the affirmative.
3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2, who shall publish such results in the **Federal Register**.
4. At the completion of his or her work, shall seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

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

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

The Commission appointed Ms. Mae Schmidle, the Commission's Vice Chair as Referendum Agent. A referendum was held during the period of October 24 through November 12, 1997. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during August of 1997, the representative period determined by the Commission were deemed eligible to vote. The mailing of ballots to eligible producers was completed on October 30, 1997 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 PM on November 12, 1997.

Eleven Cooperative Associations were notified of the procedures necessary to

[1] U.S.C. 7256(3).