

and pork products subject to assessment as published in the **Federal Register** as a final rule May 13, 1997, and effective on June 12, 1997; (62 FR 26205). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1997 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble to the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the

equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from \$52.77 in 1996 to \$51.30 in 1997, a decrease of about 3 percent. This decrease would result in a corresponding decrease in assessments for all HTS numbers listed in the table in § 1230.110, 62 FR 26205; May 13, 1997, of an amount equal to one-hundredth of a cent per pound, or as expressed in cents per kilogram, two-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1997, through September 30, 1997, the proposed decrease in assessment amounts would result in an estimated \$48,000 decrease in assessments over a 12-month period.

This proposed rule provides for a 30-day comment period. This comment period is appropriate because the proposed rule simply provides for an adjustment in the per pound assessment levels on imported pork and pork products to reflect changes in live hog prices which occurred from 1996 to 1997. These live hog prices form the basis for the assessments. This adjustment, if adopted, should be made effective as soon as possible to promote optimum equity.

#### List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

#### PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801–4819.

#### Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

#### § 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 .....	10.45
0103.91.0000 .....	10.45
0103.92.0000 .....	10.45

<sup>1</sup> Percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000 ....	.33	.727518
0203.12.1010 ....	.33	.727518
0203.12.1020 ....	.33	.727518
0203.12.9010 ....	.33	.727518
0203.12.9020 ....	.33	.727518
0203.19.2010 ....	.38	.837748
0203.19.2090 ....	.38	.837748
0203.19.4010 ....	.33	.727518
0203.19.4090 ....	.33	.727518
0203.21.0000 ....	.33	.727518
0203.22.1000 ....	.33	.727518
0203.22.9000 ....	.33	.727518
0203.29.2000 ....	.38	.837748
0203.29.4000 ....	.33	.727518
0206.30.0000 ....	.33	.727518
0206.41.0000 ....	.33	.727518
0206.49.0000 ....	.33	.727518
0210.11.0010 ....	.33	.727518
0210.11.0020 ....	.33	.727518
0210.12.0020 ....	.33	.727518
0210.12.0040 ....	.33	.727518
0210.19.0010 ....	.38	.837748
0210.19.0090 ....	.38	.837748
1601.00.2010 ....	.46	1.014116
1601.00.2090 ....	.46	1.014116
1602.41.2020 ....	.50	1.102300
1602.41.2040 ....	.50	1.102300
1602.41.9000 ....	.33	.727518
1602.42.2020 ....	.50	1.102300
1602.42.2040 ....	.50	1.102300
1602.42.4000 ....	.33	.727518
1602.49.2000 ....	.46	1.014116
1602.49.4000 ....	.38	.837748

Dated: June 8, 1998.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

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#### NORTHEAST DAIRY COMPACT COMMISSION

#### 7 CFR Parts 1301, 1304 and 1306

#### Over-Order Price Regulation

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Northeast Dairy Compact Commission proposes to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or

transferred, in bulk, out of the Compact regulated area. The proposal will limit the payment of the compact over-order producer price to milk disposed of within the Compact regulated area.

The Compact Commission also proposes a new rule to establish a reserve fund for reimbursement to school food authorities. The proposed reserve fund is required to implement the previously issued regulation exempting certain milk sold by school food authorities from the Over-order Price Regulation.

**DATES:** Written comments and exhibits may be submitted until 5:00 PM, July 15, 1998. A public hearing to take testimony and receive documentary evidence relevant to the proposed rules will be held on July 1, 1998 at 9:00 am.

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

The hearing will be held at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, New Hampshire.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Northeast Dairy Compact Commission (the "Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93-320; Maine—Pub. L. 89-437, as amended, Pub. L. 93-274; Massachusetts—Pub. L. 93-370; New Hampshire—Pub. L. 93-336; Rhode Island—Pub. L. 93-106; Vermont—Pub. L. 89-95, as amended, Pub. L. 93-57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104-127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission conducted an informal rulemaking proceeding to adopt a Compact Over-order Price Regulation. See, 62 FR 29626 (May 30, 1997). The Commission amended and extended the Compact Over-order Price Regulation on October 23, 1997. See 62 FR 62810

(November 25, 1997). The Commission further amended the Over-order Price Regulation relative to certain milk sold by school food authorities in New England. See 63 FR 10104 (February 27, 1998).

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission is proposing to amend the current Compact Over-order Price Regulation to exclude milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area and to establish a reserve fund to implement the Commission's regulation relative to certain milk sold by school food authorities. The current Compact Over-order Price Regulation is codified at 7 CFR 1300 through 1308.

##### **Diverted or Transferred Milk**

The current Compact Over-order Price Regulation permits certain milk to be qualified for payment of the compact over-order producer price which is not disposed of in the compact regulated area. In the exercise of its administrative discretion, as a matter of policy, the Compact Commission proposes to amend the rules governing the definitions of "producer milk" and "diverted milk," as well as the rule governing the classification of transfers and diversions to exclude milk, which is transferred or diverted, in bulk, from a pool plant to a plant located outside of the regulated area, from the pool and disqualify it from the compact over-order producer payment. The proposed amendments do not affect milk diverted or transferred to a partially regulated plant having Class 1 disposition in the regulated area.

*Producer milk* is currently defined to mean milk that the handler has received from producers. The proposed amendment would add to this definition the requirement that such milk is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(c).

The proposed regulation amends the definition of *diverted milk*, at § 1301.23(c), to exclude that volume of milk from the definition of *producer milk* that is moved from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area.

The proposed amendment also adds a provision regarding the classification of transfers and diversions of milk. This proposed amendment excludes from the definition of *producer milk* that volume of fluid milk (not including bulk transfers of skimmed milk and condensed milk) that is transferred or diverted, in bulk, from a pool plant to

a plant located outside of the regulated area, except a partially regulated plant having Class 1 disposition in the regulated area. The proposed amendment further requires that all milk excluded under this provision shall be prorated to all sources of milk received at this plant.

##### **Reserve Fund for School Milk Program**

The Compact Commission proposes to establish a reserve fund in order to implement the Commission's regulation at § 1301.13(e). Pursuant to that regulation, the Commission has entered into a Memorandum of Understanding with each of the six New England states regarding the school milk reimbursement program. Through the Memorandum of Understanding, the Commission has created a school milk reimbursement program for the 1998-1999 school year which will permit the Commission to reimburse school food authorities, as defined by 7 CFR 210.2, to the extent that the school food authorities can demonstrate and document that the costs of eight-ounce cartons of milk have been increased by operation of the Compact Over-order Price Regulation. The proposed regulation authorizes the Commission to establish the reserve fund necessary to process any qualified reimbursement claims that are submitted by school food authorities.

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

The Northeast Dairy Compact Commission will hold a public hearing at 9:00 AM on July 1, 1998 at the Capitol Center for the Arts, Governor's Hall, 44 South Main Street, Concord, New Hampshire.

##### **Request for Written Comments**

Pursuant to Article VI(D) of the Commission's Bylaws, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 PM on July 15, 1998. Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 PM deadline but the original must then be sent by ordinary mail.

Comments and exhibits should be sent to: Northeast Dairy Compact

Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601, (802) 229-2028 (fax).

For more information contact the Compact Commission offices.

### List of Subjects in 7 CFR Parts 1301, 1304 and 1306

Milk.

### Codification in Code of Federal Regulations

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

#### PART 1301—DEFINITIONS

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

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

2. Section 1301.12 is revised to read as follows:

#### § 1301.12 Producer milk.

*Producer milk* means milk that the handler has received from producers and is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(c). The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1301.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

3. In § 1301.23, paragraph (c) is revised to read as follows:

#### § 1301.23 Diverted milk.

\* \* \* \* \*

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to partially regulated plants having Class I distribution in the regulated area in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted

milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. Milk moved, as described in paragraph (a) and (b) of this section, from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, that volume of milk shall be excluded from producer milk.

#### PART 1304—CLASSIFICATION OF MILK

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

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

2. Section 1304.2 is amended by adding paragraph (c) to read as follows:

#### § 1304.2 Classification of transfers and diversions.

\* \* \* \* \*

(c) Fluid milk products (not including bulk transfers of skimmed milk and condensed milk) transferred or diverted in bulk from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, that volume shall be excluded from producer milk. The milk excluded pursuant to this paragraph shall be prorated to all sources of milk received at this plant.

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

#### § 1306.3 Computation of basic over-order producer price

\* \* \* \* \*

(d) Beginning with the August 1998 pool, subtract from the total value computed pursuant to paragraph (a) of this section, an amount estimated by the Commission for the purpose of retaining a reserve for payment of obligations pursuant to § 1301.13(e) of this chapter. Surplus funds from this reserve shall be returned to the producer-settlement fund.

\* \* \* \* \*

Dated: June 5, 1998.

**Kenneth M. Becker,**

*Executive Director.*

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### DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 208

[INS Order No. 1865-97; AG Order No. 2164-98]

RIN 1115-AE93

#### Executive Office for Immigration Review; New Rules Regarding Procedures for Asylum and Withholding of Removal

**AGENCY:** Immigration and Naturalization Service; Executive Office for Immigration Review, Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Department regulations that govern asylum and withholding of removal. The amendments focus on portions of the regulations that deal with cases where an applicant has established past persecution or where the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. In the current regulation, these portions set out restrictive guidelines about how the Attorney General's discretion should be exercised in cases where past persecution is established and about what kind of relevant evidence can be considered in determining whether an applicant has a well-founded fear of future persecution. This rule is intended to establish new guidelines about these issues. The rule continues to provide that, in cases where the applicant has established past persecution, the Attorney General may deny asylum in the exercise of discretion if it is established by a preponderance of the evidence that the applicant does not face a reasonable possibility of future persecution in the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence. In this regard, however, the rule has been changed to make clear that the asylum officer or immigration judge may rely on any evidence relating to the likelihood of future persecution. The rule makes similar changes to regulations regarding withholding of deportation. The rule also identifies new factors that may be considered in the exercise of discretion in asylum cases where the alien has established past persecution but may not have a