

## No. 1999-26

## AN ACT

SB 365

Providing for the Northeast Interstate Dairy Compact and for its implementation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Northeast Interstate Dairy Compact Law.

Section 2. Conditions imposed by Congress.

(a) General rule.—The compact which is set forth and adopted under section 3 shall be subject to the conditions imposed by Congress in section 147 of Title 1 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127, 110 Stat. 888), as described in this section.

(b) Finding of compelling public interest.—Based upon a finding by the United States Secretary of Agriculture of a compelling public interest in the compact region, the Secretary of Agriculture grants the states that have ratified the Northeast Interstate Dairy Compact the authority to implement the Northeast Interstate Dairy Compact.

(c) Limitation on manufacturing price.—The Northeast Interstate Dairy Compact Commissioner shall not regulate Class II, Class III or Class III-A milk used for manufacturing purposes or any other milk, other than Class I (fluid) milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (50 Stat. 246, 7 U.S.C. § 608c).

(d) Duration.—Consent for the Northeast Interstate Dairy Compact shall terminate concurrently with the implementation by the United States Secretary of Agriculture of the dairy pricing and Federal milk marketing order consolidation and reforms.

(e) Additional states.—Delaware, New Jersey, New York, Pennsylvania, Maryland and Virginia are the only additional states that may join the Northeast Interstate Dairy Compact, individually or otherwise, if upon entry the state is contiguous to a participating state and if the Congress consents to the entry of the state into the compact.

(f) Compensation of Commodity Credit Corporation.—Before the end of each fiscal year that a compact price regulation is in effect, the 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. At the request of the commission, the administrator of the applicable Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act shall provide technical assistance to the commission and be compensated for the assistance.

(g) Further conditions.—The Northeast Interstate Dairy Compact Commission shall not prohibit or in any way limit the marketing in the compact region of any milk or milk product produced in any other production area in the United States. The commission shall respect and abide by the ongoing procedures between Federal milk marketing orders with respect to the sharing of proceeds from sales within the compact region of bulk milk, packaged milk or producer milk originating from outside of the compact region. The commission shall not use compensatory payments under subdivision (6) of section 10 of the compact as a barrier to the entry of milk into the compact region or for any other purpose. Establishment of a compact over-order price in itself shall not be considered a compensatory payment or a limitation or prohibition on the marketing of milk.

### Section 3. Northeast Interstate Dairy Compact.

The Northeast Interstate Dairy Compact as set forth in this section is hereby adopted and entered into with all jurisdiction joining therein. The compact is as follows:

#### NORTHEAST INTERSTATE DAIRY COMPACT

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ARTICLE I  
STATEMENT OF PURPOSE, FINDINGS AND  
DECLARATION OF POLICY

Section 1. Statement of purpose, findings and declaration of policy.

(1) The purpose of this compact is to recognize by constitutional prerequisite the interstate character of the Northeast dairy industry and to form an interstate commission for the northeast region. The mission of the commission is to assist the participating states to modify existing laws and regulations which add to the cost of moving milk among the states or which impede the free flow of milk in the Northeast, to encourage a more efficient assembly and distribution system for the benefit of producers and consumers, to encourage more participation by dairy farmers in cooperative organizations, to take such steps as are necessary to assure the continued viability of dairy farming in the Northeast and to assure consumers of an adequate supply of pure and wholesome Class I milk.

(2) The participating states find and declare that the industry is the paramount agricultural activity of the Northeast in a region comprising the New England States and the Middle Atlantic States and is a business affecting the public health and welfare of the inhabitants of the Northeast; that the production and marketing of milk of the dairy farms of states of the northeast region is of vast economic importance to the region; that compliance with reasonable and consistent requirements for the production and marketing of a safe and high-quality milk supply is a matter of great importance both to the welfare of dairy farmers of the Northeast and the health and welfare of the consumers of milk and dairy products; that the production conditions in the Northeast, including the climate, topography and soils, are about the same but marketing conditions are unique as compared to the remainder of the United States; and that all the milk in the Northeast is produced for fluid markets under conditions highly favorable to a pronounced seasonality of production. The natural marketing area, under modern day conditions of production and marketing, lies within the boundaries of many different northeastern states with widely different laws and regulations which govern the economic climate and sanitary conditions

under which milk and dairy products are marketed. Regulatory barriers have contributed significantly to the cost of assembly, processing and distribution of milk with an economic loss to farmers and added costs to consumers. The marketing system for milk and dairy products in the Northeast has been and still is fragmented. Assembly, administration, operating and sales costs are excessively high. In some areas, costs to consumers may be excessively high. Cooperative membership in this region is much below membership levels in most other regions across the country. A common marketing area in the Northeast is necessary if there is to be a prosperous dairy industry and it is in the best interests of consumers. The historical development of the dairy industry from a local business to a regional enterprise has led to a lack of uniformity of laws and regulations involving inspection of farms and plants, sanitary codes, labeling on dairy products and their imitations, standards for dairy products, licensing of milk dealers, economic controls, fair trade laws and the terms of Federal and state milk marketing orders. The lack of uniformity of laws and regulations has interfered with the efficient flow of milk and milk products, reduced the efficiency of distribution, raised the price of milk and dairy products to consumers, weakened the bargaining power of cooperatives and threatened an adequate supply of pure and wholesome milk for consumers.

(3) The Federal milk marketing orders promulgated under the Agricultural Marketing Agreement Act of 1937 establish only minimum prices to farmers. The Agricultural Marketing Agreement Act of 1937 does not preempt the power of the states to establish prices above the level established under Federal marketing orders.

(4) The need to balance the Federal budget has required drastic reduction in the Federal support price for milk. The production of milk in the Northeast has decreased significantly in response to lower prices and to the Federal Dairy Termination Program, but milk production has nevertheless continued to increase in other regions of the country. As a result, there remains a surplus of milk nationally which continues to trigger reduction in the Federal Price Support Program.

(5) As a result of declining farm prices, a seasonal shortage of milk has developed in the Northeast. Dairy farmers in the region face a critical economic crisis if the price received for milk is not increased. Ultimately, this agricultural crisis will have a depressing effect upon the general economy of the Northeast and result in a serious shortage of pure and wholesome fluid milk for consumers throughout the Northeast. If current efforts by dairy farmers to obtain a higher price for fluid milk do not succeed, emergency conditions will require the existence of a readily available mechanism to establish higher Class I prices throughout the region.

(6) This compact is entered in order to enable the signatory states to act together to achieve uniformity of laws and regulations governing the production and marketing of milk in the Northeast, to develop consistent policies and procedures, to eliminate unnecessary duplication of licensing,

producer security, reports, audits and inspection and to establish, after examinations and investigations, what prices, terms and conditions relative to milk in the localities and markets within the Northeast will be most beneficial to the public interest and will best promote prosperity in the dairy industry.

(7) The failure of dairy farmers to receive a reasonable return for their labor and investment will seriously impair their ability to produce, under proper sanitary conditions, a supply of pure and wholesome milk which is adequate for the needs of the inhabitants of the participating states, as well as negatively impact the general economy of both participating states and the associated local government subdivisions. The regulation of the dairy industry as herein provided is essential for the public interest, and such oversight shall be deemed to be an exercise of the police power of the participating states for the protection of the public safety, welfare, prosperity, health and living conditions of the people thereof.

## ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

### Section 2. Definitions.

For the purposes of this compact and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

“Class I milk.” Milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subdivision (2) of section 3 of this compact.

“Commission.” The commission established by this compact.

“Commission marketing order.” Regulations adopted by the commission pursuant to sections 9 and 10 of this compact in place of a terminated Federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

“Compact.” This interstate compact.

“Compact over-order price.” A minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to sections 9 and 10 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.

“Milk.” The lacteal secretion of cows, and includes all skim, butterfat or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

“Partially regulated plant.” A milk plant not located in a regulated area but having Class I distribution within such area or receipts from producers

located in such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

“Participating state.” A state which has become a party to this compact by the enactment of concurring legislation.

“Pool plant.” Any milk plant located in a regulated area.

“Region.” The territorial limits of the states which are or become parties to this compact.

“Regulated area.” Any area within the region governed by and defined in regulation establishing a compact over-order price or commission marketing order.

“State dairy regulation.” Any state regulation of dairy prices and associated assessments, whether by statute, marketing order or otherwise.

### Section 3. Rules of construction.

(1) This compact shall not be construed to displace existing Federal milk marketing orders nor state dairy regulation in the region but to supplement them. In the event some or all Federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(2) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in section 1 of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein, but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

## ARTICLE III COMMISSION ESTABLISHED

### Section 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the

state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission. Each state delegation shall be entitled to one vote in the conduct of the commission's affairs.

#### Section 5. Voting requirements.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission's bylaws shall be by majority vote of the delegations present. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

#### Section 6. Administration and management.

(1) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(2) The commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(3) The commission shall file an annual report with the Secretary of Agriculture of the United States and with each of the participating states by submitting copies to the Governor, both Houses of the Legislature and the head of the state department having responsibilities for agriculture.

(4) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

- (a) to sue and be sued in any state or Federal court;
- (b) to have a seal and alter the same at pleasure;
- (c) to acquire, hold and dispose of real and personal property by gift, purchase, lease, license or other similar manner for its corporate purposes;
- (d) to borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of section 18 of this compact;

(e) to appoint such officers, agents and employees as it may deem necessary and prescribe their powers, duties and qualifications; and

(f) to create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension and retirement rights of its officers and employees.

The commission may also retain personal services on a compact basis.

#### Section 7. Rulemaking power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact or to effectuate in any other respect the purposes of this compact.

### ARTICLE IV POWERS OF THE COMMISSION

#### Section 8. Powers to promote regulatory uniformity, simplicity and interstate cooperation.

The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs and to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Prepare and transmit to the participating states model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for dairy products and their imitations, standards for dairy products, license standards, producer security programs and fair trade laws.

(3) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(4) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems and conduct symposiums or conferences designed to improve industry relations or a better understanding of problems.

(5) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(6) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

(7) Investigate costs and charges for producing, hauling, handling, processing, distributing and selling and for all other services performed with respect to milk.



(8) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers and the need for an emergency order to relieve critical conditions on dairy farms.

Section 9. Equitable farm prices.

(1) The powers granted in this section and section 10 of this compact shall apply only to the establishment of a compact over-order price so long as Federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(2) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such over-order price shall not exceed \$1.50 per gallon. Beginning in 1990 and using that year as a base, the foregoing \$1.50 per gallon maximum shall be adjusted annually by the rate of change in the consumer price index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable Federal order or state dairy regulation, and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(3) A commission marketing order shall apply to all classes and uses of milk.

(4) 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. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable Federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(5) 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 distributor.

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

(7) The commission shall whenever possible enter into agreements with Federal or state agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

Section 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices, including flat pricing and formula pricing. Provision may also be made for location adjustments, for zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(a) With respect to regulations establishing a compact over-order price, the commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(b) With respect to any commission marketing order, as defined in section 2 of this compact, which replaces one or more terminated Federal orders or state dairy regulations, the marketing area of now separate Federal or state orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject

to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a Federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under a compact over-order price shall be adjusted for any payment made to or received by such persons with respect to a producer settlement fund of any Federal or state milk marketing order or other state producer price regulation within the regulated area.

(9) Provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subdivision (1) of section 18 of this compact.

(10) Provisions for reimbursement to participants of the women, infants and children special supplemental food program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

## ARTICLE V RULEMAKING PROCEDURE

### Section 11. Rulemaking procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subdivision (6) of section 9 of this compact, or amendment thereof, as provided in Article IV of this compact, 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 4 of the Federal Administrative Procedure 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 affected 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 organizations, consumer or public interest groups and Federal, state or local officials.

## Section 12. Findings and referendum.

In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553(c)), 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 of this compact.

(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.

(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 purpose of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13 of this compact.

## Section 13. Producer referendum.

(1) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply pursuant to subdivision (6) of section 9 of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(2) An order or amendment 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 determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(3) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity as the approval or disapproval of the producers who are members or stockholders in or under contract with such cooperative association of producers, except as provided in paragraph (a) of this subdivision and subject to the provisions of paragraphs (b) through (e) of this subdivision.

(a) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(b) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established and in the form prescribed by the commission.

(c) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(d) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(e) In order to insure that all milk producers are informed regarding a proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the commission either directly or through his or her cooperative.

#### Section 14. Termination of over-order price or marketing order.

(1) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(2) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(3) The termination or suspension of any order or provision thereof shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

### ARTICLE VI ENFORCEMENT

#### Section 15. Records, reports and access to premises.

(1) The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or

her milk business, and for that purpose the commission's properly designated officers, employees or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(2) Information furnished to or acquired by the commission officers, employees or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order or other regulation of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers which do not identify the information furnished by any person.

(b) The publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(3) No officer, employee or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

Section 16. Subpoena, hearings and judicial review.

(1) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

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

(3) The district courts of the United States in any district in which such handler is an inhabitant or has his or her principal place of business are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within 30 days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the bill of complaint. If the court

determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either:

(a) To make such ruling as the court shall determine to be in accordance with law.

(b) To take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder or delay the commission from obtaining relief pursuant to section 17 of this compact. Any proceedings brought pursuant to section 17 of this compact, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

Section 17. Enforcement with respect to handlers.

(1) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order or other regulations adopted pursuant to this compact shall:

(a) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any Federal or state court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(b) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(2) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(a) commencing an action for legal or equitable relief brought in the name of the commission in any Federal or state court of competent jurisdiction; or

(b) with the agreement of the appropriate state agency of a participating state, by referral to the state agency for enforcement by judicial or administrative remedy.

(3) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulation adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

## ARTICLE VII FINANCE

Section 18. Finance of start-up and regular costs.

(1) To provide for its start-up costs, the commission may borrow money pursuant to its general power under paragraph (d) of subdivision (4) of section 6 of this compact. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the

commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed one-tenth of 1% of the applicable Federal market order blend price per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchase of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(2) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it shall be its sole responsibility, and no participating state or the United States shall be liable therefor.

#### Section 19. Audit and accounts.

(1) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(2) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(3) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

### ARTICLE VIII ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

#### Section 20. Entry into force; additional members.

This compact shall enter into force when enacted into law by any three states of the group of states composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia and when the consent of Congress has been obtained. This compact shall also be open to states which are contiguous to any of the named states and open to states which are contiguous to participating states.

#### Section 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and



the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### Section 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. Congress reserves the right to amend or rescind this interstate compact at any time.

#### Section 23. Reservation of rights.

(1) The right to alter, amend or repeal this compact is expressly reserved by Congress.

(2) When an over-order price is in effect, the commission established in this compact shall compensate the Commodity Credit Corporation before the end of the fiscal year for the cost of any increased Commodity Credit Corporation dairy purchases that result from projected increased fluid milk production for that fiscal year within the compact region in excess of the national average rate of increase.

#### Section 4. Pennsylvania Delegation.

(a) Appointment.—The Pennsylvania Delegation to the Northeast Interstate Dairy<sup>1</sup> Compact Commission shall consist of:

(1) The chairman of the Milk Marketing Board.

(2) A consumer appointed by the Governor who shall not be, nor at any time have been, associated with or otherwise engaged in the business, practice or profession of farming in this Commonwealth and is not, nor has ever been, associated or otherwise engaged in any business associated with the production, processing, marketing or manufacture of milk or other dairy products in this Commonwealth.

(3) An individual appointed by the Governor from a list of no more than three individuals nominated by dairy cooperatives doing business in this Commonwealth.

(4) An individual appointed by the Governor from a list of no more than three individuals nominated by the Statewide general farm organizations.

(5) An individual appointed by the Governor from a list of no more than three individuals nominated by associations of milk dealers in this Commonwealth.

(b) Terms.—Members shall serve for a term of three years except that the chairman of the Milk Marketing Board shall serve a term concurrent with that position; the consumer first appointed by the Governor shall serve for a term of one year and the individual first selected by the Governor from nominees

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<sup>1</sup>"Dairy" omitted in enrolled bill.

submitted by associations of milk dealers shall serve a term of two years. Each appointee, with the exception of the chairman of the Milk Marketing Board, must receive majority approval of the Senate.

(c) Compensation.—The members of the delegation shall receive compensation for their services of \$250 per diem and other reasonable and necessary travel expenses.

(d) Cooperation with commission.—All departments and agencies of the Commonwealth shall, when called upon, provide the members with cooperation, information and staff support.

(e) Impact minimization.—The members of the delegation shall take all reasonable steps necessary to minimize the economic and administrative burdens imposed by the compact on all of the following:

(1) Schools.

(2) Participants in the Federal Supplemental Food Program for Women, Infants and Children.

Section 5. Compact order violations.

Any violation of the regulations adopted by the Northeast Interstate Dairy Compact establishing an over-order price, a commission marketing order or any other regulation shall constitute a violation of this act. Any such violation shall be subject to a civil penalty of \$5,000 per occurrence.

Section 6. Expiration.

This act shall expire on June 30, 2002, or three years from the effective date of this act, whichever is later.

Section 7. Effective date.

This act shall take effect immediately.

APPROVED—The 25th day of June, A.D. 1999.

THOMAS J. RIDGE