

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 365 Session of 1999

INTRODUCED BY MADIGAN, SLOCUM, HELFRICK, KUKOVICH, COSTA,
ROBBINS, MOWERY, EARLL, KASUNIC, MUSTO, GERLACH, BOSCOLA,
PUNT, WHITE, MELLOW, SCHWARTZ, STOUT, THOMPSON, WOZNIAK,
WAGNER, HART, BELAN, JUBELIRER, BRIGHTBILL, LEMMOND, LAVALLE,
HOLL, CONTI AND DENT, FEBRUARY 11, 1999

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, FEBRUARY 11, 1999

AN ACT

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

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

5 Section 1. Short title.

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

8 Section 2. Conditions imposed by Congress.

9 (a) General rule.--The compact which is set forth and
10 adopted under section 3 shall be subject to the conditions
11 imposed by Congress in section 147 of Title 1 of the Federal
12 Agriculture Improvement and Reform Act of 1996 (Public Law 104-
13 127, 110 Stat. 888), as described in this section.

14 (b) Finding of compelling public interest.--Based upon a
15 finding by the United States Secretary of Agriculture of a
16 compelling public interest in the compact region, the Secretary

1 of Agriculture grants the states that have ratified the
2 Northeast Interstate Dairy Compact the authority to implement
3 the Northeast Interstate Dairy Compact.

4 (c) Limitation on manufacturing price.--The Northeast
5 Interstate Dairy Compact Commissioner shall not regulate Class
6 II, Class III or Class III-A milk used for manufacturing
7 purposes or any other milk, other than Class I (fluid) milk, as
8 defined by a Federal milk marketing order issued under section
9 8c of the Agricultural Adjustment Act (50 Stat. 246 7 U.S.C.
10 608c).

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

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

21 (f) Compensation of Commodity Credit Corporation.--Before
22 the end of each fiscal year that a compact price regulation is
23 in effect, the commission shall compensate the Commodity Credit
24 Corporation for the cost of any purchases of milk and milk
25 products by the corporation that result from the projected rate
26 of increase in milk production for the fiscal year within the
27 compact region in excess of the projected national average rate
28 of the increase in milk production, as determined by the
29 Secretary of Agriculture. At the request of the commission, the
30 administrator of the applicable Federal milk marketing order

1 issued under section 8c of the Agricultural Adjustment Act shall
2 provide technical assistance to the commission and be
3 compensated for the assistance.

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

18 Section 3. Northeast Interstate Dairy Compact.

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

22 NORTHEAST INTERSTATE DAIRY COMPACT

23 Article I. Statement of Purpose, Findings and

24 Declaration of Policy

25 Section 1. Statement of purpose, findings and

26 declaration of policy.

27 Article II. Definitions and Rules of Construction

28 Section 2. Definitions.

29 Section 3. Rules of construction.

30 Article III. Commission Established

1 Section 4. Commission established.
2 Section 5. Voting requirements.
3 Section 6. Administration and management.
4 Section 7. Rulemaking power.
5 Article IV. Powers of the Commission
6 Section 8. Powers to promote regulatory uniformity,
7 simplicity and interstate cooperation.
8 Section 9. Equitable farm prices.
9 Section 10. Optional provisions for pricing order.
10 Article V. Rulemaking Procedure
11 Section 11. Rulemaking procedure.
12 Section 12. Findings and referendum.
13 Section 13. Producer referendum.
14 Section 14. Termination of over-order price or
15 marketing order.
16 Article VI. Enforcement
17 Section 15. Records, reports and access to premises.
18 Section 16. Subpoena, hearings and judicial review.
19 Section 17. Enforcement with respect to handlers.
20 Article VII. Finance
21 Section 18. Finance of start-up and regular costs.
22 Section 19. Audit and accounts.
23 Article VIII. Entry Into Force; Additional Members
24 and Withdrawal
25 Section 20. Entry into force, additional members.
26 Section 21. Withdrawal from compact.
27 Section 22. Severability.
28 Section 23. Reservation of rights.

29 ARTICLE I

30 STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

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

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

17 (2) The participating states find and declare that the
18 industry is the paramount agricultural activity of the northeast
19 in a region comprising the New England States and the Middle
20 Atlantic States and is a business affecting the public health
21 and welfare of the inhabitants of the northeast; that the
22 production and marketing of milk of the dairy farms of states of
23 the northeast region is of vast economic importance to the
24 region; that compliance with reasonable and consistent
25 requirements for the production and marketing of a safe and high
26 quality milk supply is a matter of great importance both to the
27 welfare of dairy farmers of the northeast and the health and
28 welfare of the consumers of milk and dairy products; that the
29 production conditions in the northeast, including the climate,
30 topography and soils are about the same but marketing conditions

1 are unique as compared to the remainder of the United States and
2 that all the milk in the northeast is produced for fluid markets
3 under conditions highly favorable to a pronounced seasonality of
4 production. The natural marketing area, under modern day
5 conditions of production and marketing, lies within the
6 boundaries of many different northeastern states with widely
7 different laws and regulations which govern the economic climate
8 and sanitary conditions under which milk and dairy products are
9 marketed. Regulatory barriers have contributed significantly to
10 the cost of assembly, processing and distribution of milk with
11 an economic loss to farmers and added costs to consumers. The
12 marketing system for milk and dairy products in the northeast
13 has been and still is fragmented. Assembly, administration,
14 operating and sales costs are excessively high. In some areas
15 costs to consumers may be excessively high. Cooperative
16 membership in this region is much below membership levels in
17 most other regions across the country. A common marketing area
18 in the northeast is necessary if there is to be a prosperous
19 dairy industry and it is in the best interests of consumers. The
20 historical development of the dairy industry from a local
21 business to a regional enterprise has led to a lack of
22 uniformity of laws and regulations involving inspection of farms
23 and plants, sanitary codes, labeling on dairy products and their
24 imitations, standards for dairy products, licensing of milk
25 dealers, economic controls, fair trade laws and the terms of
26 Federal and State milk marketing orders. The lack of uniformity
27 of laws and regulations has interfered with the efficient flow
28 of milk and milk products, reduced the efficiency of
29 distribution, raised the price of milk and dairy products to
30 consumers, weakened the bargaining power of cooperatives and

1 threatened an adequate supply of pure and wholesome milk for
2 consumers.

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

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

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

29 (6) This compact is entered in order to enable the signatory
30 states to act together to achieve uniformity of laws and

1 regulations governing the production and marketing of milk in
2 the northeast, to develop consistent policies and procedures, to
3 eliminate unnecessary duplication of licensing, producer
4 security, reports, audits and inspection, and to establish,
5 after examinations and investigations, what prices, terms and
6 conditions relative to milk in the localities and markets within
7 the northeast will be most beneficial to the public interest and
8 will best promote prosperity in the dairy industry.

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

21 ARTICLE II

22 DEFINITIONS AND RULES OF CONSTRUCTION

23 Section 2. Definitions.

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

27 "Class I milk." Milk disposed of in fluid form or as a fluid
28 milk product, subject to further definition in accordance with
29 the principles expressed in subdivision 2 of section 3 of this
30 compact.

1 "Commission." The commission established by this compact.

2 "Commission marketing order." Regulations adopted by the
3 commission pursuant to sections 9 and 10 of this compact in
4 place of a terminated Federal marketing order or State dairy
5 regulation. Such order may apply throughout the region or in any
6 part or parts thereof as defined in the regulations of the
7 commission. Such order may establish minimum prices for any or
8 all classes of milk.

9 "Compact." This interstate compact.

10 "Compact over-order price." A minimum price required to be
11 paid to producers for Class I milk established by the commission
12 in regulations adopted pursuant to sections 9 and 10 of this
13 compact, which is above the price established in Federal
14 marketing orders or by State farm price regulation in the
15 regulated area. Such price may apply throughout the region or in
16 any part or parts thereof as defined in the regulations of the
17 commission.

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

22 "Partially regulated plant." A milk plant not located in a
23 regulated area but having Class I distribution within such area
24 or receipts from producers located in such area. Commission
25 regulations may exempt plants having such distribution or
26 receipts in amounts less than the limits defined therein.

27 "Participating state." A state which has become a party to
28 this compact by the enactment of concurring legislation.

29 "Pool plant." Any milk plant located in a regulated area.

30 "Region." The territorial limits of the states which are or

1 become parties to this compact.

2 "Regulated area." Any area within the region governed by and
3 defined in regulation establishing a compact over-order price or
4 commission marketing order.

5 "State dairy regulation." Any state regulation of dairy
6 prices and associated assessments, whether by statute, marketing
7 order or otherwise.

8 Section 3. Rules of construction.

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

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

1 ARTICLE III

2 COMMISSION ESTABLISHED

3 Section 4. Commission established.

4 There is hereby created a commission to administer the
5 compact, composed of delegations from each state in the region.

6 A delegation shall include not less than three nor more than
7 five persons. Each delegation shall include at least one dairy
8 farmer who is engaged in the production of milk at the time of
9 appointment or reappointment and one consumer representative.

10 Delegation members shall be residents and voters of, and subject
11 to such confirmation process as is provided for in, the

12 appointing state. Delegation members shall serve no more than
13 three consecutive terms with no single term of more than four

14 years and be subject to removal for cause. In all other

15 respects, delegation members shall serve in accordance with the
16 laws of the state represented. The compensation, if any, of the

17 members of a state delegation shall be determined and paid by

18 each state, but their expenses shall be paid by the commission.

19 Each state delegation shall be entitled to one vote in the

20 conduct of the commission's affairs.

21 Section 5. Voting requirements.

22 All actions taken by the commission, except for the

23 establishment or termination of an over-order price or

24 commission marketing order, and the adoption, amendment or

25 rescission of the commission's by-laws, shall be by majority

26 vote of the delegations present. Establishment or termination of

27 an over-order price or commission marketing order shall require

28 at least a two-thirds vote of the delegations present. The

29 establishment of a regulated area which covers all or part of a

30 participating state shall require also the affirmative vote of

1 that state's delegation. A majority of the delegations from the
2 participating states shall constitute a quorum for the conduct
3 of the commission's business.

4 Section 6. Administration and management.

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

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

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

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

1 (a) to sue and be sued in any state or Federal court;

2 (b) to have a seal and alter the same at pleasure;

3 (c) to acquire, hold and dispose of real and personal
4 property by gift, purchase, lease, license or other similar
5 manner, for its corporate purposes;

6 (d) to borrow money and to issue notes, to provide for
7 the rights of the holders thereof and to pledge the revenue
8 of the commission as security therefor, subject to the
9 provisions of section 18 of this compact;

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

13 (f) create and abolish such offices, employments and
14 positions as it deems necessary for the purposes of the
15 compact and provide for the removal, term, tenure,
16 compensation, fringe benefits, pension and retirement rights
17 of its officers and employees. The commission may also retain
18 personal services on a compact basis.

19 Section 7. Rulemaking power.

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

26 ARTICLE IV

27 POWERS OF THE COMMISSION

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

30 The commission is hereby empowered to:

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

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

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

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

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

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

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

30 (8) Examine current economic forces affecting producers,

1 probable trends in production and consumption, the level of
2 dairy farm prices in relation to costs, the financial conditions
3 of dairy farmers and the need for an emergency order to relieve
4 critical conditions on dairy farms.

5 Section 9. Equitable farm prices.

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

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

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

30 (4) The commission is hereby empowered to establish the

1 minimum price for milk to be paid by pool plants, partially
2 regulated plants and all other handlers receiving milk from
3 producers located in a regulated area. This price shall be
4 established either as a compact over-order price or by one or
5 more commission marketing orders. Whenever such a price has been
6 established by either type of regulation, the legal obligation
7 to pay such price shall be determined solely by the terms and
8 purpose of the regulation without regard to the situs of the
9 transfer of title, possession or any other factors not related
10 to the purposes of the regulation and this compact. Producer-
11 handlers as defined in an applicable Federal market order shall
12 not be subject to a compact over-order price. The commission
13 shall provide for similar treatment of producer-handlers under
14 commission marketing orders.

15 (5) In determining the price, the commission shall consider
16 the balance between production and consumption of milk and milk
17 products in the regulated area, the costs of production,
18 including, but not limited to, the price of feed, the cost of
19 labor, including the reasonable value of the producer's own
20 labor and management, machinery expense and interest expense,
21 the prevailing price for milk outside the regulated area, the
22 purchasing power of the public and the price necessary to yield
23 a reasonable return to the producer and distributor.

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

28 (7) The commission shall whenever possible enter into
29 agreements with Federal or State agencies for exchange of
30 information or services for the purpose of reducing regulatory

1 burden and cost of administering the compact. The commission may
2 reimburse other agencies for the reasonable cost of providing
3 these services.

4 Section 10. Optional provisions for pricing order.

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

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

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

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

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

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

1 the same handler of uniform prices for all milk delivered by
2 them.

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

8 (b) With respect to any commission marketing order, as
9 defined in subdivision 9 section 2 of this compact, which
10 replaces one or more terminated Federal orders or State dairy
11 regulation, the marketing area of now separate Federal or
12 State orders shall not be merged without the affirmative
13 consent of each state, voting through its delegation, which
14 is partly or wholly included within any such new marketing
15 area.

16 (6) Provisions requiring persons who bring Class I milk into
17 the regulated area to make compensatory payments with respect to
18 all such milk to the extent necessary to equalize the cost of
19 milk purchased by handlers subject to a compact over-order price
20 or commission marketing order. No such provisions shall
21 discriminate against milk producers outside the regulated area.
22 The provisions for compensatory payments may require payment of
23 the difference between the Class I price required to be paid for
24 such milk in the state of production by a federal milk marketing
25 order or State dairy regulation and the Class I price
26 established by the compact over-order price or commission
27 marketing order.

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

30 (8) Provisions requiring that the account of any person

1 regulated under a compact over-order price shall be adjusted for
2 any payment made to or received by such persons with respect to
3 a producer settlement fund of any Federal or State milk
4 marketing order or other State producer price regulation within
5 the regulated area.

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

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

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

17 ARTICLE V

18 RULEMAKING PROCEDURE

19 Section 11. Rulemaking procedure.

20 Before promulgation of any regulations establishing a compact
21 over-order price or commission marketing order, including any
22 provision with respect to milk supply under subdivision 6 of
23 section 9 of this compact, or amendment thereof, as provided in
24 Article IV of this compact, the commission shall conduct an
25 informal rulemaking proceeding to provide interested persons
26 with an opportunity to present data and views. Such rulemaking
27 proceeding shall be governed by section 4 of the Federal
28 Administrative Procedure Act, as amended (5 U.S.C. § 553). In
29 addition, the commission shall, to the extent practicable,
30 publish notice of rulemaking proceedings in the official

1 register of each affected state. Before the initial adoption of
2 regulations establishing a compact over-order price or a
3 commission marketing order and thereafter before any amendment
4 with regard to prices or assessments, the commission shall hold
5 a public hearing. The commission may commence a rulemaking
6 proceeding on its own initiative or may in its sole discretion
7 act upon the petition of any person, including individual milk
8 producers, any organizations, consumer or public interest groups
9 and Federal, State or local officials.

10 Section 12. Findings and referendum.

11 In addition to the concise general statement of basis and
12 purpose required by section 4(b) of the Federal Administrative
13 Procedure Act (5 U.S.C. § 553(c) as amended, the commission
14 shall make findings of fact with respect to:

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

18 (2) What level of prices will assure that producers receive
19 a price sufficient to cover their costs of production and will
20 elicit an adequate supply of milk for the inhabitants of the
21 regulated area and for manufacturing purposes.

22 (3) Whether the major provisions of the order, other than
23 those fixing minimum milk prices, are in the public interest and
24 are reasonably designed to achieve the purpose of the order.

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

28 Section 13. Producer referendum.

29 (1) For the purpose of ascertaining whether the issuance or
30 amendment of regulations establishing a compact over-order price

1 or a commission marketing order, including any provision with
2 respect to milk supply pursuant to subdivision 6 of section 9 of
3 this compact, is approved by producers, the commission shall
4 conduct a referendum among producers. The referendum shall be
5 held in a timely manner, as determined by regulation of the
6 commission. The terms and conditions of the proposed order or
7 amendment shall be described by the commission in the ballot
8 used in the conduct of the referendum, but the nature, content
9 or extent of such description shall not be a basis for attacking
10 the legality of the order or any action relating thereto.

11 (2) An order or amendment shall be deemed approved by
12 producers if the commission determines that it is approved by at
13 least two-thirds of the voting procedures who, during a
14 representative period determined by the commission, have been
15 engaged in the production of milk the price of which would be
16 regulated under the proposed order or amendment.

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

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

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

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

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

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

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

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

30 (2) The commission shall terminate any regulations

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

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

15 ARTICLE VI

16 ENFORCEMENT

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

18 (1) The commission may by rule and regulation prescribe
19 recordkeeping and reporting requirements for all regulated
20 persons. For purposes of the administration and enforcement of
21 this compact, the commission is authorized to examine the books
22 and records of any regulated person relating to his or her milk
23 business, and, for that purpose, the commission's properly
24 designated officers, employees or agents shall have full access
25 during normal business hours to the premises and records of all
26 regulated persons.

27 (2) Information furnished to or acquired by the commission
28 officers, employees or its agents pursuant to this section shall
29 be confidential and not subject to disclosure except to the
30 extent that the commission deems disclosure to be necessary in

1 any administrative or judicial proceeding involving the
2 administration or enforcement of this compact, an over-order
3 price, a compact marketing order or other regulation of the
4 commission. The commission may promulgate regulations further
5 defining the confidentiality of information pursuant to this
6 section. Nothing in this section shall be deemed to prohibit:

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

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

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

23 Section 16. Subpoena, hearings and judicial review.

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

29 (2) Any handler subject to an order may file a written
30 petition with the commission stating that any such order or any

1 provision of any such order or any obligation imposed in
2 connection therewith is not in accordance with law and praying
3 for a modification thereof or to be exempted therefrom. He or
4 she shall thereupon be given an opportunity for a hearing upon
5 such petition, in accordance with regulations made by the
6 commission. After such hearing, the commission shall make a
7 ruling upon the prayer of such petition which shall be final, if
8 in accordance with law.

9 (3) The district courts of the United States in any district
10 in which such handler is an inhabitant, or has his or her
11 principal place of business, are hereby vested with jurisdiction
12 in equity to review such ruling, provided a bill in equity for
13 that purpose is filed within 30 days from the date of the entry
14 of such ruling. Service of process in such proceedings may be
15 had upon the commission by delivering to it a copy of the bill
16 of complaint. If the court determines that such ruling is not in
17 accordance with law, it shall remand such proceedings to the
18 commission with directions either:

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

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

1 section.

2 Section 17. Enforcement with respect to handlers.

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

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

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

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

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

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

27 (3) With respect to handlers, the commission may bring an
28 action for injunction to enforce the provisions of this compact
29 or the order or regulation adopted thereunder without being
30 compelled to allege or prove that an adequate remedy of law does

1 not exist.

2 ARTICLE VII

3 FINANCE

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

5 (1) To provide for its start-up costs, the commission may
6 borrow money pursuant to its general power under paragraph (d)
7 of subdivision 4 of section 6 of this compact. In order to
8 finance the costs of administration and enforcement of this
9 compact, including payback of start-up costs, the commission is
10 hereby empowered to collect an assessment from each handler who
11 purchases milk from producers within the region. If imposed,
12 this assessment shall be collected on a monthly basis for up to
13 one year from the date the commission convenes, in an amount not
14 to exceed one-tenth of 1% of the applicable Federal market order
15 blend price per hundred weight of milk purchased from producers
16 during the period of the assessment. The initial assessment may
17 apply to the projected purchase of handlers for the two-month
18 period following the date the commission convenes. In addition,
19 if regulations establishing an over-order price or a compact
20 marketing order are adopted, they may include an assessment for
21 the specific purpose of their administration. These regulations
22 shall provide for establishment of a reserve for the
23 commission's ongoing operating expenses.

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

29 Section 19. Audit and accounts.

30 (1) The commission shall keep accurate accounts of all

1 receipts and disbursements, which shall be subject to the audit
2 and accounting procedures established under its rules. In
3 addition, all receipts and disbursements of funds handled by the
4 commission shall be audited yearly by a qualified public
5 accountant and the report of the audit shall be included in and
6 become part of the annual report of the commission.

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

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

15 ARTICLE VIII

16 ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

17 Section 20. Entry into force; additional members.

18 This compact shall enter into force when enacted into law by
19 any three states of the group of states composed of Connecticut,
20 Delaware, Maine, Maryland, Massachusetts, New Hampshire, New
21 Jersey, New York, Pennsylvania, Rhode Island, Vermont and
22 Virginia, and when the consent of Congress has been obtained.

23 This compact shall also be open to states which are contiguous
24 to any of the named states and open to states which are
25 contiguous to participating states.

26 Section 21. Withdrawal from compact.

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

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

4 Section 22. Severability.

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

12 Section 23. Reservation of rights.

13 (1) In general.--The right to alter, amend or repeal this
14 compact is expressly reserved by Congress.

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

22 Section 4. Pennsylvania Delegation.

23 (a) Appointment.--The Pennsylvania Delegation to the
24 Northeast Interstate Compact Commission shall consist of five
25 persons, at least one of whom shall be a dairy farmer who is
26 engaged in the production of milk at the time of appointment or
27 reappointment and one of whom shall be representative of
28 consumers' interests. One member shall be appointed by the
29 Governor, one by the President pro tempore of the Senate, one by
30 the minority leader of the Senate, one by the Speaker of the

1 House of Representatives and one by the minority leader of the
2 House of Representatives.

3 (b) Terms.--Members shall serve for a term of three years,
4 except that the members first appointed by the President pro
5 tempore of the Senate and the Speaker of the House of
6 Representatives shall serve for a term of two years and the
7 members first appointed by the minority leader of the Senate and
8 the minority leader of the House of Representatives shall serve
9 for a term of one year.

10 (c) Compensation.--The members of the delegation shall
11 receive compensation for their services of \$300 per diem.

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

15 Section 5. Compact order violations.

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

21 Section 6. Effective date.

22 This act shall take effect immediately.