adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

This request was made to even out DOD's wage survey workload and stems from DOD's recent acquisition of lead agency responsibility for 23 Federal Wage System (FWS) wage areas from the Department of Veterans Affairs. In October 2000 (FY 2001), DOD's Central Regional Office will conduct full-scale wage surveys in the Ft. Wayne-Marion, IN, Indianapolis, IN, and St. Louis, MO, wage areas. In the St. Louis wage area, the same office will also conduct a special printing and lithographic survey. In October 1999 (FY 2000), that office will conduct full-scale wage surveys in the Davenport and Dubuque, IA, wage areas. DOD requested that a full-scale wage survey for the Southwestern Michigan wage area be conducted in October 1999. A wage change survey would be conducted in October 2000. This change will help balance the number of full-scale wage surveys conducted each year. The timing of the Southwestern Michigan wage survey relative to private sector wage adjustments would remain unchanged.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Southwestern Michigan wage area from odd to even-numbered fiscal years.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of the urgent need for administrative procedures and planning to be completed by DOD and the local wage survey committee for the Southwestern Michigan wage area before a full-scale wage survey begins in October 1999 in the Southwestern Michigan wage area. Planning for the full-scale wage survey in the Southwestern Michigan wage area must begin by June 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346, § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

2. Appendix A to Subpart B is amended by revising under the State of Michigan the listing of fiscal year of full-scale survey from ''odd'' to ''even'' for the Southwestern Michigan wage area.

[FR Doc. 99–10959 Filed 4–30–99; 8:45 am]

BILLING CODE 6325–01–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1307 and 1308

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends the method for determining the amount of the administrative assessment charged to milk handlers. The amended rule gives the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current rate of 3.2 cents, or less, per hundredweight of fluid milk. The Commission also promulgates a new rule that requires handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

EFFECTIVE DATES: The amendments to part 1308 are effective July 1, 1999. The amendments to part 1307 are effective May 13, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether the amount of, or method for determining, the administrative assessment should be amended.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether the

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

amount of, or method for determining, the administrative assessment should be amended.[5]

Based on the oral testimony and written comments received in that proceeding, the Commission proposed to amend the method for determining the amount of the administrative assessment charged to milk handlers and also proposed to add a new rule that would require handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.[6] The Commission held a public hearing in Concord, New Hampshire on March 3, 1999 and accepted written comments until March 17, 1999. The Commission held its deliberative meeting on April 7, 1999 to consider all the comments and testimony received regarding the administrative assessment regulation, including all testimony and comments previously received in the December 1998 proceeding.[7] Based on the December 1998 and March 1999 rulemaking records, the Commission amends the administrative assessment regulation, 7 CFR Part 1308, to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk.

In addition to the amendments to the administrative assessment regulation, the Commission also promulgates a new rule at 7 CFR Part 1307, to require milk handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

Article V, Section 11 of the compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act (''APA''), as amended, 5 U.S.C. 553, to provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date,'' subject to several enumerated exceptions, including situations where the agency finds ''good cause'' for dispensing with this requirement. *See,* 5 U.S.C. 553(d)(3).

The Commission finds that there is good cause for dispensing with the 30-day waiting period of § 553(d), with regard to only the new rule at section 1307 requiring payment by electronic funds transfer, because compliance is impracticable, unnecessary, and contrary to the public interest. The Commission emphasizes that the new rule requiring payment by electronic funds transfer was adopted by the Commission after a comprehensive administrative process, including public hearing and notice-and-comment rulemaking.[8] The Commission received no public comments regarding the electronic funds transfer rule. The Commission has provided actual notice of this new rule to all effected milk handlers no later than April 13, 1999 and the first day of required compliance with this new rule will be May 18, 1999.

II. Summary and Analysis of Issues and Comments

Administrative Assessment

The Commission received oral and written testimony and comments from the Commission's Regulations Administrator, Carmen Ross, and eight commenters in the December 1998 subjects and issues rulemaking proceeding, regarding whether the amount of, or method for determining, the administrative assessment should be amended.[9] In the subsequent March 1999 proposed rule proceedings, the Commission received oral testimony from Mr. Ross and written comments from two commenters.[10] The Commission confirms its published analysis of the testimony and written comments received in the December 1998 proceeding.[11] Therefore, the Commission herein supplements that analysis by reviewing the testimony and comments received in the March 1999 proceedings.

Mr. Ross opened his testimony on March 3, 1999 by repeating the main points of his testimony of December 11, 1998. Mr. Ross reiterated that the Compact authorizes the Commission to impose an assessment on milk handlers to cover the costs of the administration and enforcement of the over-order price regulation. He explained the principle of milk market regulation that the milk handlers, not the dairy farmers, are assessed to pay the costs of the administration and enforcement of the milk market regulation and that this assessment is a cost of doing business in the milk market.[12]

Mr. Ross also explained that the Compact requires the Commission to establish a reserve for the ongoing operating expenses.[13] The current administrative assessment is a flat rate of 3.2 cents per hundredweight and results in a variance in income of up to 13% per month.[14] Mr. Ross stated that the Commission regulation is, in all material respects, the same as corresponding provisions of the Federal Order #1 regulations.[15]

Mr. Ross explained that under the Federal Market Order #1 regulation, ''the federal market order [Administrator] can, when conditions warrant it, reduce or even waive the administrative assessment.'' [16] Under Federal Market Administrator Instruction ι207, the United States Department of Agriculture Dairy Division (USDA) recommends that budgeted operating reserves be maintained within a range of 80% to 120% of the designated reserve level.[17]

At the subjects and issues hearing in December 1998, a milk processor testified in support of an amendment to the Commission's administrative assessment regulation that would recognize the Commission's budget process, impose a limitation on the Commission's reserves and provide for an adjustment or waiver of the administrative assessment based on the budget and the reserves.[18] As is explained in more detail below, the Commission adopts this commenter's recommendations in all material respects.

Of the two commenters who participated in the March 1999 public hearing and comment part of this rulemaking proceeding, one commenter supported the proposed rule to allow

[5] 64 FR 533 (Jan. 5, 1999).

[6] 64 FR 4353 (Jan. 28, 1999).

[7] 64 FR 4353, 4355 (Jan. 28, 1999), 64 FR 14943 (March 29, 1999) and Transcript of March 3, 1999 public hearing at 9.

[8] 64 FR 4353 (Jan. 28, 1999).

[9] Carmen L. Ross, Transcript (''Tr.'') at 4; Charles Arbing, Tr. at 30; Diane Bothfeld Tr. at 54 and Written Comment (''WC'') at 32; Leon J. Berthiaume, WC 13 ; Robert D. Wellington, WC 16; Edward W. Gallagher, WC 18; Sally J. Beach, WC 21; Michael L. Altman, WC 25; and Leon Graves, WC 34;

[10] Ross, Record (''R.'') at 9; Michael L. Altman, on behalf of Suiza GTL, LLC, H.P. Hood, Inc. and the Stop & Shop supermarket Companies, Inc., R. at 38–42; Diane Bothfeld, R. 43.

[11] 64 FR 4353 (Jan. 28, 1999).

[12] Ross, R. at 15.

[13] Ross, R. at 10; *See also,* Compact Article IV, Section 10(9) and Article VII, Section 18(a).

[14] Ross, R. at 14–15.

[15] Ross, R. at 11–12.

[16] Ross, R. at 16.

[17] Market Administrator Instruction #207, December 1998 rulemaking record, WC at 3–11, and referenced in March 1999 rulemaking record, R. at 17.

[18] Arbing, Tr. at 53–53 (December 1998 rulemaking record).

the Commission to adjust the administrative assessment rate, upward or downward, as needed.[19]

The other commenter,[20] on behalf of the three major fluid milk handlers in New England, generally supported the Commission's proposal to permit it the discretion to adjust or waive the administrative assessment rate and further reiterated his two main objections (as submitted in the December 1998 subjects and issues proceeding)[21] to the Commission's administrative assessment regulation: (1) That the Commission should not use the funds generated by the administrative assessment for any purpose other than the actual costs of computing, announcing, collecting or distributing the over-order obligation; and (2) that the administrative assessment is an unfair burden on the milk handlers. The Commission has carefully considered these arguments and respectfully disagrees.

In making his first main objection, this commenter relies on a narrow, and inaccurate, reading of the language of the Compact to argue the Commission must only use the assessment to administer the over-order obligation provisions of the Compact Over-order Price Regulation. The commenter asserts that the Compact restricts the administrative assessment provision of Article VII, Section 18(a) to the administration of the over-order *obligation* only.[22] However, the full sentence, of which the commenter quotes only a portion, plainly and clearly references the over-order *price regulation*. The section of the Compact in question provides, in relevant part, as follows: ''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.'' The Commission concludes that the language of the Compact itself is clear and for this reason respectfully rejects the commenter's suggested interpretation.

In addition to the plain language of the Compact, accepted principles of statutory interpretation also compel rejection of this commenter's suggested reading of Section 18(a), because to do so would render other provisions of the Compact meaningless. The commenter's restrictive interpretation of the language of the Compact would, for example, render meaningless the provisions of Article IV, Section 10. That section provides eleven separate paragraphs of provisions that the Commission is specifically authorized to include in a compact over-order price.[23] Those provisions are not restricted to the physical activities of computing, announcing, collecting or distributing the over-order obligation, as the commenter's narrow interpretation of Section 18(a) would require. ''[L]egislative enactments should not be construed to render their provisions mere surplusage.'' *Dunn* v. *Commodity Futures Trading Comm'n,* 117 S.Ct. 913, 917 (1997). In light of the plain language of the Compact, reinforced by application of accepted principles of statutory construction, the Commission respectfully rejects this commenter's interpretation of the Compact.

The Commission also declines to accept the narrow interpretation of Section 18(a) of the Compact advanced by the commenter because his interpretation would lead to such illogical results as to leave the Commission without the funds to carry out its obligations and responsibilities under the Compact and the Over-order Price Regulation as a whole.[24] For example, the commenter's suggestion that the administrative assessment be used only for the direct costs associated with the actual computing, announcing, collecting or distributing the over-order obligation,[25] would leave the Commission without funds for amending the over-order price regulation, as authorized by Compact Article V, for providing handler exemption petition proceedings, as required by Compact Article VI, Section 16, or for conducting and administering the activities authorized, or required by, Articles I, II, IV, or VII of the Compact.[26] Furthermore, as explained below, the Compact is designed to have the administration and enforcement activities of the Commission supported by assessments on handlers. Article VII, Section 18(b) specifically prohibits the Commission from pledging the credit of any participating state, or the United States. Although the Commission may, at times, obtain funding from other sources, such funds cannot be obtained with any predictability, and Section 18 does not compel any state to contribute funds to support the activities of the Commission. However, if the receipt of such unanticipated funds are sufficient, the amendments to the administrative assessment rule will allow the Commission to reduce or waive the assessment on handlers.

Therefore, the Commission reaffirms its interpretation of its authority under the Compact that the administrative assessment may be used to fund all administration and enforcement activities to implement the entire over-order price regulation and to effectuate its obligations and responsibilities under the Compact.[27]

The core of this commenter's second main argument is that the administrative assessment places an unfair burden on milk handlers. The commenter suggests that the Commission should fund its statutory and regulatory activities through voluntary contributions of states, cooperatives and handlers. However, that interpretation is contrary to the underlying principles of milk market regulation, which establishes the handler's cost of raw milk, including the amount that must be paid to producers and the cost of administration of the federal regulation, the compact regulation and even the cost of fluid milk promotion.[28] The interpretation is also contrary to the design of the Compact, which specifies that the Commission should fund its administration and enforcement costs through an administrative assessment on milk handlers. Compact Article IV, Section 10(9) and Article VII, Section 18(a). Carmen Ross explained the ''regulatory techniques historically associated with milk marketing,''[29] as they specifically relate to the administrative assessment component of the milk regulation principle, as follows:

As I just stated, the Compact administration assessment regulation is consistent with the Federal Market Order #1 regulation in its applicability to fluid milk

[19] Bothfeld, R. at 43.

[20] Altman, R. at 38–42.

[21] Altman, December 1998 rulemaking record, WC at 26–30; See also, Commission analysis of these comments at 64 FR 4354–4355 (Jan. 28, 1999).

[22] Altman, R. at 41.

[23] In authorizing the Compact, Congress specifically prohibited the Commission from including a provision in the over-order price regulation for compensatory payments, as included in Section 10(6). 7 U.S.C. 7256(7).

[24] *See, e.g. Green* v. *Bock Laundry Machine Co.,* 490 U.S. 504, 509–10 (1989); *In re Pacific-Atlantic Trading Co.,* 64 F.3d 1292, 1303 (9th Cir. 1995) (''Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust or capricious.'') (internal citations omitted). In addition, for the reasons discussed more fully below, the Compact producer-settlement funds are not used for administrative purposes and principles of milk market regulation assess the costs of the administration of milk price regulation to handlers, as a cost of doing business in the milk marketplace, not to farmers or to cooperatives, as suggested by the commenter.

[25] Altman, R. at 42.

[26] See also, 64 FR 4354–55 (Jan. 28, 1999).

[27] 64 FR 4354–4355 (Jan. 28, 1999); See also, Ross, R. at 12–14.

[28] Ross, R. at 15–16, 27–29.

[29] Compact Article II, Section 3(b).

handlers. The principle is that the milk handlers, not the dairy farmer, pay for the administration and enforcement of the milk price regulation. This is a cost of doing business in the milk market. The same as all other costs associated with the assembly and receipts of milk at the plant.

The cost of milk includes the announced Federal Order Class I price, Federal Order Administrative Assessment, Federal Order Processor Assessment, Federal Order differential, Federal Order plant zone, hauling, handling, farmer or cooperative premiums, plant loss and the Compact over-order obligation and the Compact administrative assessment.

The total of all the above is the handler's cost of raw milk. To this cost, a handler will add the processing cost, container cost, delivery cost and margins to arrive at the handler's sale price. The Compact assessment is only one of the many components that is included to arrive at the sale price of milk. The Compact administrative assessment, like all other costs, are ultimately paid by the market, the consumer, not the handler.[30]

The Federal Market Administrator announces the raw milk price on the fifth day of the month preceding the month the announced price will be applied. This advance price announcement allows the milk handlers to set their prices accordingly and to recover those costs from the milk marketplace. If, after receiving advance notice of the price, a handler does not choose to include a particular component in his selling price, that is the handler's decision and not within the control of either the Federal Market Order Administrator or the Compact Commission. Therefore, the administrative assessment, as well as all other costs associated with milk market regulation, is a cost of doing business in the milk market.[31] The regulation does not require the assessment to come from the handler's profit line and the advance price announcement allows the handlers the opportunity to pass the costs on in setting their sale price for the milk. Therefore, the consumer, and not the milk handler, is paying the incremental cost of administering the Compact Over-order Price Regulation.[32] Accordingly, the Commission respectfully disagrees with the commenter's assertion that the Compact administrative assessment portion of the regulated milk price places an unfair burden on milk handlers.

Contrary to this commenter's [33] broad complaints, the Commission seeks to, and indeed does, incorporate the interests of all the affected constituencies in its regulatory decisions. The Commission is itself made up of state officials, consumers, producers and processors. The delegation members to the Commission are appointed, as provided in the Compact, as passed by all six participating states and approved by Congress. Compact, Article III, Section 4. Two of the states specifically require processors to be a part of the state delegation. Vermont, 6 V.S.A. 1823 (''A fourth voting member shall be a milk handler'') and New Hampshire, RSA 184-A:2 (''One owner or officer of a fluid milk processing or distribution plant.'') Two other states have appointed members to the delegation who are associated with fluid milk processors. Therefore, the interests of milk processors are clearly, and actively, represented and protected through membership in the state delegations to the Compact Commission.

In addition, the Commission always provides the opportunity for regulated handlers to participate in each of its rulemaking proceedings through attending and testifying at the public hearings and/or submitting written comments and testimony.[34]

After careful review of both the December 1998 and March 1999 rulemaking records relating to the administrative assessment regulation, the Commission concludes that the model used by the USDA is an appropriate standard for the Commission to use in the establishment of its administrative assessment rate. Therefore, the Commission amends the administrative assessment provision of the over-order price regulation to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk. In establishing this rate-setting flexibility, the Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. This range is not binding on the Commission and the Commission at all times retains the discretion whether to waive or adjust the rate of the administrative assessment.

The Commission also sought testimony and comment on whether the administrative assessment regulation should be amended to permit the Commission to adjust the rate upward, from the current rate of 3.2 cents, in exceptional circumstances. The Commission's Regulations Administrator, Carmen Ross, testified that there may be times that the Commission needs to increase the assessment rate to ''cover operating expenses because of unknown extraordinary or exceptional circumstances.'' [35] One commenter supported the proposal to allow the Commission the flexibility to increase the administrative assessment rate ''to maintain the solvency of the Compact so it can maintain its operations and fulfill the responsibilities as established under the law.'' [36]

The Commission carefully considered this option and concluded that it is not necessary at this time to amend the administrative assessment rule to permit an increase over the current rate of 3.2 cents. The Commission income from the administrative assessment is sufficient to cover the anticipated and budgeted expenses. Although, as explained above, the Commission disagrees with some processors' assertions that the administrative assessment constitutes an unfair burden on milk handlers, the Commission is nevertheless sensitive to the concerns of these processors. Accordingly, the Commission chooses not to add a rate increase provision to the regulation in cognizance of some processors' perception of the Commission's administrative assessment.

Method of Payment

The Commission also promulgates a new regulation which requires milk handlers to make payment of the over-order obligation and administrative assessment to the Commission by electronic transfer of funds if the aggregate total due for the month is greater than $25,000. The Commission adds this rule in order to best ensure the efficient and timely transfer of funds into the producer-settlement fund and the corresponding timely distribution of funds from the producer-settlement

[30] Ross, R. at 15–16.

[31] Ross, R. at 15–16 and 28–29.

[32] Ross, R. at 16 and 28–29.

[33] Altman, R. at 39–42.

[34] As always, the Commission encourages and welcomes full participation by all those affected by the Commission's regulations. The Commission notes, however, that although this commenter has submitted written arguments, he has not availed himself of the opportunity to attend either of the public hearings held in December 1998 or March 1999 by the full Commission regarding the administrative assessment regulation. The opportunity for interactive discourse with the full Commission, offered in the public hearing forum, is very beneficial to and instructive for the Commission and such participation significantly advances the rulemaking proceeding. Indeed, as discussed above, the final rule adopted by the Commission includes major elements proposed in the testimony of one commenter, a processor, in the December 1998 hearing. Arbing, Tr. at 53–54 (December 1998 rulemaking record).

[35] Ross, R. at 18–19.

[36] Bothfeld, R. at 43.

fund.[37] Based on the experience of the Commission in administering the producer-settlement fund, most handlers already use electronic transfer of funds. The Commission also uses electronic transfer of funds for distribution to handlers of monies from the producer-settlement fund.[38] The Commission received no comments on this proposed rule.

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments to the Over-Order Price Regulation

The first finding considers whether the amendments to the Compact Over-order Price Regulation serves the public interest. The Commission determines that the public interest is served by allowing the Commission discretion to waive entirely or set the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk, in any given month, to support the Commission's administration and enforcement of the Over-order Price Regulation, as authorized by Article VII, Section 18(a) of the Compact.

The Commission also determines that the public interest is served by requiring all regulated milk handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000. This rule ensures the Commission's timely processing of the monthly pool, when payments are received and distributed within two business days.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The amendments to the Compact Over-order Price Regulation adopted in this rulemaking proceeding are related to the administration of the Over-order Price Regulation and do not affect the local supply of milk or price received by producers, other than through ensuring timely receipt of payment by adoption of the electronic funds transfer rule.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonable Designed To Achieve the Purposes of the Order

The Commission concludes that, for the same reasons identified in the first finding, the amendments adopted in this rulemaking proceeding are in the public interest. The Commission further concludes that the Over-order Price Regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendments Are Approved by Producers

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of April 16 through April 26, 1999. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during December 1998, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before April 16, 1999 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on April 26, 1999. The ballots were opened and counted in the Commission offices on April 27, 1999 under the direction and supervision of Commission Chair Mae S. Schmidle, designated ''Referendum Agent.''

Twelve Cooperative Associations were notified of the procedures necessary to block vote by letter dated April 9, 1999. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on April 26, 1999. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by April 20, 1999 with notice mailed to the Commission offices no later than April 22, 1999.

Notice

On April 27, 1999, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. The ballots cast on the administrative assessment amendment and the electronic funds transfer amendment were separately reviewed and counted. A total of 3987 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked ''disqualified'' with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following for the ballot on the administrative assessment amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 34 ballots were disqualified—late, incomplete or duplicate.

A total of 2,976 ballots were verified.

A total of 2,960 verified ballots were cast in favor of the administrative assessment amendment.

[37] Ross, R. at 19–26.

[38] Ross, R. at 24–25.

A total of 16 verified ballots were cast in opposition to the administrative assessment amendment.

Accordingly, notice is hereby provided that of the 2,976 verified ballots cast, 2,960, 99.5 %, or, a minimum of two-thirds were in the affirmative.

The referendum agent then certified the following for the ballot on the electronic funds transfer amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 35 ballots were disqualified—late, incomplete or duplicate.

A total of 2,975 ballots were verified.

A total of 2,967 verified ballots were cast in favor of the electronic funds transfer amendment.

A total of 8 verified ballots were cast in opposition to the electronic funds transfer amendment.

Accordingly, notice is hereby provided that of the 2,975 verified ballots cast, 2,967, 99.7%, or, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the administrative assessment and electronic funds transfer amendments are approved by producers.

IV. Good Cause for Effective Date Within 30 Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective date, except that this time period is not required for a substantive rule as otherwise provided by the agency for good cause found and published with the rule. The Commission concludes that, to the extent that the electronic funds transfer rule is a substantive rule, the Commission nevertheless finds that there is good cause for non-compliance with the 30-day advance publication provision of 553(d) and publishes this final rule on May 3, 1999, with an effective date of May 13, 1999.

In promulgating this new regulation, the Commission specifically finds good cause to set an effective date within thirty days of publication in the **Federal Register**. As described by Carmen Ross, the Commission's Regulations Administrator, the time line for the Commission to receive funds from milk handlers on the 18th of the month and make payments from the producer-settlement fund on the 20th of the month places a tremendous burden on the Commission to clear the pool in two business days.[39] If a handler makes payment by check, the funds, although received by the Commission on the 18th of the month, are not always available to be paid out on the 20th of the month.[40] The Commission disburses funds through electronic transfer and must have the funds available to make the payments out of the producer settlement fund.[41]

If the payments received from handlers by check exceed the Commission's reserve amount in the producer-settlement account, the Commission can uniformly reduce payments back to handlers or establish a line of credit with the bank.[42] As Mr. Ross stated in his testimony: ''Reducing payments to the handlers would create havoc since all handlers would have already included the anticipated amount due from the Commission on their payroll and handlers would face a shortage of funds.'' [43] Alternatively, either the producer-settlement fund or the Commission administrative fund would have to incur the cost of establishing a line of credit.[44] Based on the price announcement on March 5, 1999 for April milk, the Commission will be faced with the possibility of confronting this problem during the pool to be run on May 18 through 20. In order to ensure timely receipt of available funds to the producer-settlement fund, and the timely distribution from that fund, the Commission finds good cause, to the extent necessary, to set an effective date of this new regulation of May 13, 1999.

The Commission determines that, in promulgating the electronic funds transfer rule, compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1) impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g., Service Employees Intern Union, Local 102* v. *County of San Diego,* 60 F.3rd 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann* v. *Schweiker,* 676 F. 2d 352 (9th Cir. 1982) (same).

1. It would be impracticable to provide the thirty-day interval because, based on the April price of milk announced by the Federal Market Administrator on March 5, 1999, the Commission will run its largest pool ever on May 18 through 20, and the anticipated over-order obligation of several handlers will exceed the Commission's reserve fund. The Commission must have access to the handlers' payments by May 20 in order to distribute the funds for payment to producers. Although the Commission began this proceeding by published notice on January 28, 1999, and voted to adopt the rule on April 7, 1999, Article V, Section 21 requires the Commission to conduct a producer referendum before issuing the final rule. Based on the Commission's producer referendum procedure, the earliest publication date is May 3, 1999. Therefore, the thirty-day notice interval is impracticable and compliance with that rule would impair the Commission's ability to clear the pool on May 20, 1999.

2. The full thirty-day post-publication notice period is unnecessary because the Commission provided actual notice, by certified mail, return receipt, to all affected handlers no later than April 13, 1999.

3. In this instance, the full thirty-day notice requirement is contrary to the public interest. Based on the anticipated volume of milk in the pool to be run on May 18 through 20, several handlers will owe sums in excess of the reserve balance in the producer-settlement fund. If just one of those handlers makes payment by check that does not clear by May 20, the Commission will be forced to uniformly reduce payments out of the producer-settlement fund to all handlers, thereby interfering with those handlers already prepared payments to producers. The public interest requires that producers receive their payments in a timely manner. Most of the handlers already make payment by electronic funds transfer, and the Commission disburses funds by electronic transfer. This rule will only affect a few handlers, but failure to implement this rule prior to May 18, 1999 could result in an otherwise unnecessary reduction in the producer payments to all producers supplying the New England milk market. The Commission emphasizes that it received no comments opposing promulgation of this requirement. Therefore, the Commission concludes that the thirty-day notice period is not in the public interest.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. As noted above, all affected handlers have received actual notice of the action required by the rule in excess of thirty

[39] Ross, R. at 20.
[40] Ross, R. at 21.
[41] Ross, R. at 24–25.
[42] Ross, R. at 25.
[43] Ross, R. at 25.
[44] Ross, R. at 26.

days of the date the action is first required, May 18, 1999.

Accordingly, for all the reasons described above, the Commission concludes that the full thirty-day post-publication notice period is not required.

V. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

1. That the public interest continues to be served by establishment of minimum milk prices to dairy farmers under Article IV, as amended to: (1) permit the Commission discretion, in any given month, to waive entirely or to set the rate of the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk; and (2) require handlers make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.

2. That the previously established level price of $16.94 (Zone 1) to dairy farmers under Article IV, is unaffected by these amendments, and will continue to assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

3. That the major provisions of the order, other than those fixing minimum milk prices, are and continue to be in the public interest and are reasonably designed to achieve the purposes of the order.

4. That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, Section 13.

List of Subjects in 7 CFR Parts 1307 and 1308

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR parts 1307 and 1308 as follows:

PART 1307—PAYMENTS FOR MILK

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

Authority: 7 U.S.C. 7256.

§ 1307.4 [Redesignated]

2. Section 1307.4 is redesignated as § 1307.5.

3. A new § 1307.4 is added to read as follows:

§ 1307.4 Method of payment.

If the combined total of the handler's producer-settlement fund debit for the month as determined under § 1307.2(a) and the handler's obligation for the month as determined under § 1308.1 of this chapter is greater than $25,000, then the handler must make payment to the compact commission by electronic transfer of funds on or before the 18th day after the end of the month.

PART 1308—ADMINISTRATIVE ASSESSMENT

1. The authority citation for part 1308 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1308.1 is amended by revising the introductory text to read as follows:

§ 1308.1 Assessment for pricing regulations administration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The compact commission may waive, or set the rate at an amount less than 3.2 cents, pursuant to § 1308.2. The payment shall apply to:

* * * * *

3. A new § 1308.2 is added to read as follows:

§ 1308.2 Method to waive or change the administrative assessment.

The compact commission may waive or change the assessment for pricing regulation administration to maintain the operating reserve in the range of 80% to 120% of four months operating expenses, as determined in the budget approved by the compact commission. The compact commission will announce, pursuant to § 1305.2 of this chapter, the waiver or change in rate of assessment.

Dated: April 27, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–10967 Filed 4–30–99; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–3]

Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the spelling of the name of the municipality and the abbreviation of the navigation aid reference point in the airspace description of a final rule that was published in the **Federal Register** on April 5, 1999, (64 FR 16343), Airspace Docket No. 99–ASO–3.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr05ap99–5, Airspace Docket No. 99–ASO–3, published on April 5, 1999, (64 FR 16343), revised the description of the Class E airspace area at Toccoa, GA. Errors were discovered in the spelling of the municipality and the abbreviation of the navigation aid reference point in the airspace description. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the municipality spelling and the abbreviation of the navigation aid reference point in the airspace description for the Class E airspace area at Toccoa, GA, as published in the **Federal Register** on April 5, 1999, (64 FR 16343), (Federal Register Document DOCID: fr05ap99–5), page 16343, third column, lines 3 and 16 from the bottom, are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO GA E Toccoa, GA [Corrected]

By removing ''Toccoca'' and substituting ''Toccoa'' and by removing ''VOR'' and substituting ''VORTAC''

* * * * *