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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA-96-06]

Amplified Decision Regarding the Northeast Interstate Dairy Compact

AGENCY: Agricultural Marketing Service.
ACTION: Notice.

SUMMARY: This notice announces the Secretary of Agriculture's amplified decision concerning whether a compelling public interest exists in the Northeast Interstate Dairy Compact Region, and whether implementation of the Compact should be authorized. After review of the record, the Secretary finds that a compelling public interest exists in the Compact region and continues to authorize its implementation. The Compact region consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

EFFECTIVE DATE: March 20, 1997.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Director, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-4392.

PRIOR DOCUMENTS: *Notice Requesting Comments on the Northeast Interstate Dairy Compact:* Issued April 30, 1996; published May 3, 1996 (61 FR 19904).

Notice of Findings and Authority to Implement the Northeast Interstate Dairy Compact: Issued August 22, 1996; published August 28, 1996 (61 FR 44290).

SUPPLEMENTARY INFORMATION: Section 147 of the 1996 Federal Agriculture Improvement and Reform (FAIR) Act (Pub. L. 104-127) establishes Congressional consent for the Northeast Interstate Dairy Compact (the Compact) entered into by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont subject to several conditions.

The FAIR Act provides that "Based upon a finding by the Secretary of a compelling public interest in the Compact region, the Secretary may grant the States that have ratified the Northeast Interstate Dairy Compact, as of the date of enactment of this title, the authority to implement the Northeast Interstate Dairy Compact." On August 8, 1996, the Secretary issued a Finding of a compelling public interest and authorized the Northeast Interstate Dairy Compact.

In complying with a court order, the Secretary on March 20, 1997, issued the following amplified decision concerning his finding that a compelling public interest exists in the Compact Region:

Decision of Secretary Dan Glickman on the Northeast Interstate Dairy Compact

On August 9, 1996, I issued a statement on the Northeast Interstate Dairy Compact (the Compact) in which I found a compelling public interest in the Compact region and authorized implementation of the Compact. Given my concerns about the possible adverse effects of the Compact, I expressed my expectation that the Compact Commission (the Commission) would implement and administer the Compact in a way that would prevent such effects. I indicated my intention to monitor the Commission's implementation of the Compact and to take such steps as necessary, including revocation of my authorization to implement the Compact, if conditions warranted such remedial action.

That decision was challenged by the Milk Industry Foundation in Federal district court for the District of Columbia. In a December 11, 1996, decision denying the plaintiff's request for a preliminary injunction, the court found that my decision failed to explain adequately the basis of the finding that a compelling public interest exists in the Compact region. The court also expressed its view that I lacked the authority to revoke my authorization to implement the Compact.

The Department of Agriculture (the Department) subsequently requested that the court stay further proceedings in the case to allow me to amplify my earlier decision. On February 3, 1997, the court issued an order allowing me 45 days to issue a decision and instructed the Department not to prejudice the outcome of its review or be bound by any prior determinations in this matter.

Following the court's order, the Department reevaluated the record, including comments received in response to a *Federal Register* notice the Department published on May 3, 1996, seeking public comments on the Compact from interested parties. This decision is the outcome of that process.

The evidence in the record regarding the economic condition of dairy farmers in the

Compact region is mixed. Many commenters who support the Compact argued that the Compact is necessary to maintain viable dairy industry in the Compact region. Some commenters also asserted that the Compact is essential to the continued health of the regional economy. They noted that the dairy industry annually contributes \$1.7 billion to the region's economy, and stated that, in Vermont, it represents 70 percent of that state's agricultural economy. They also argued that dairy farmers in the Compact region are going out of business and that they receive lower prices than dairy farmers in other areas of the country.

Commenters who opposed the Compact argued that the decline in the number of dairy farmers in the Compact region has been less than the national average. They also argued that milk prices in the Compact region are more favorable to dairy producers than prices in other regions of the country, and that the Compact is not warranted by supply and demand conditions or any other pertinent economic factors.

The Department's analysis shows that farm-gate milk prices in the Compact region, adjusted for hauling, other charges, and premiums, as well as net returns, average below what producers in many other regions of the country receive. On the other hand, the decline in the number of dairy producers in the Compact region in recent years has been less than the national average. A review of milk production since 1990 indicates that the Compact region has maintained its share of U.S. milk production, even though its dairy producers have not grown in size as fast as producers elsewhere.

One of the primary objectives of the Compact is to help maintain the viability of family-sized dairy farms in the Compact region during the transition period from the current milk marketing order regime to a reformed order system mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Farm Bill). The higher milk prices that would likely result from the Compact would increase the profitability of dairy farming and, in the short term, reduce some of the financial pressure on dairy producers in the Compact region. Thus, while these higher prices may not alter the long-term trend toward larger and probably fewer dairy operations, because all producers would benefit in direct proportion to their size, the higher returns would, I am convinced, provide a short-term benefit to small dairy producers.

I believe that it is important to take reasonable measures to preserve small family farms, and I believe that most Americans, if asked, would agree with this goal. The ideals of family farmers, such as self-sufficiency, independence, and working in balance with nature, are deeply rooted in American history and culture. Regrettably, however, the number of small farms has steadily declined over the years.

To some, the consolidation of agriculture is a benign phenomenon that simply reflects the efforts of farmers expanding their operations to become more efficient and more economically viable. To others, however, the decline in number and increase in size of farm operations reflect a disruption of rural communities and an undesirable concentration of economic power in the hands of fewer producers, presaging the eventual demise of small, independent family farmers.

None of us involved in agricultural policy has at hand a set of easy answers to these vexing questions. During the same time that significant structural changes in the American agricultural system have occurred, the system has continued to produce the safest, most abundant and most affordable food supply in the world. But I do not believe that maintaining this food supply means that agricultural production should or must be dominated by large producers. America wants and still needs the family farm.

This belief is obviously strongly held by the people of the Compact region. Numerous commenters argued that small dairy farms are an important part of the character and culture of their communities, and they have united to take steps to preserve these farms by approving the Compact. Commenters also noted that the success of the Compact would help to limit the continued conversion of farmland to non-farm uses which threatens the unique characteristics of New England rural scenery.

I am convinced that small dairy farms are an essential part of the character and culture in the Compact region. These farms preserve open spaces, sculpt the landscape, and provide the land base for a wide diversity of recreational pursuits. There is clearly widespread support throughout the Compact region to help prevent additional dairy farmers from going out of business. I believe that the Compact represents a cooperative effort by consumers, processors, and government representatives that will help address this concern during the transition to a reform milk marketing order system as mandated by the 1996 Farm Bill.

However, I also share with all Americans a commitment to helping those who are less fortunate. In fact, some commenters opposed the Compact because it could have adverse effects on low-income people and could increase the costs of government food assistance programs. Indeed, in my earlier decision, I specifically raised, concerns about the effect of the Compact on consumers, particularly low-income families, in the Compact region.

I sought to address those concerns by laying out my expectations regarding implementation of the Compact, particularly my insistence that the Commission provide assistance to offset any increased burden on low income families in the Compact region. I also insisted that the Commission exercise its authority to reimburse participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and fulfill its obligation to reimburse the Commodity Credit Corporation (CCC) for purchases under the dairy price support program, if warranted. At the time I

authorized the Compact, I indicated clearly that I would closely monitor Compact implementation. More importantly, I stated that, if conditions indicated that a compelling public interest in the region no longer existed, I would revoke my authorization.

I continue to be concerned about the potential effect that imprudent Compact implementation may have on low-income families in the Compact region and it would be wrong for me to ignore this issue. Assisting dairy farmers in the Compact region should not and need not come at the expense of low-income people in the region.

I also expressed concerns about the potential adverse effect of the Compact on other dairy-producing regions, concerns which were shared by a number of commenters opposed to the Compact. However, the Department's analysis concludes that milk production in the Compact region is a small percentage of overall national production, and that potential adverse effects on milk prices outside the Compact region, if any, are likely to be very small. The Department has concluded that the Compact can be implemented so that it does not measurably affect milk prices in other dairy producing regions.

Commenters opposed to the Compact also argued that it represents a form of regional protectionism inconsistent with the more market-oriented direction of other Federal farm policies and inconsistent with the current milk marketing order structure. However, while the Compact may not move in the direction of some other Federal farm policies, it is consistent with efforts to encourage more regional and local responsibility for issues previously addressed at the Federal level.

In addition, the Compact is a short-term measure specifically confined by statute to the transitional period during which the Department will be moving to reform and restructure milk marketing orders through a rulemaking process. The Department began this process last summer and is firmly committed to meeting the deadline of April 4, 1999, contained in the 1996 Farm Bill. For example, on March 7, 1997, the Department released for public comment several proposals regarding the fluid milk pricing and other key provisions of milk marketing orders, and additional proposals will be issued in the near future.

Dairy policy is one of the most complex areas of Federal agricultural policy. Changes are regularly made to Federal policies and programs to ensure that they reflect the latest developments and appropriately balance all of the various factors that must be considered. The Compact can and should be implemented with flexibility and careful planning. Implementation that fails to reflect the changing supply, demand, price and competitive nature of the dairy industry would not be in the public interest.

The Congress left to the Department's expertise and discretion the determination of what might constitute a compelling public interest in the Compact region. The Department has concluded that such a finding and authorization to implement the

Compact cannot be viewed as a one time event based on a single snapshot in time. Rather, the Department strongly believes that the assessment of a compelling public interest in the Compact region may well change over time.

This Compact creates a policy-setting Commission whose authorities are not merely ministerial. Compact implementation is a dynamic, on-going process, and the Commission will function in a constantly changing economic and sociological environment. It is impossible to foresee how the Commission will exercise its power carrying out its broad responsibilities, or to predict how conditions in the Compact region will evolve. Facts and circumstances that may currently justify authorization may subsequently change to the extent that a compelling public interest no longer exists in the Compact region.

Given the shifting nature of the compelling public interest test, the Department strongly believes that the authority to withdraw or revoke its authorization is an essential element of any decision which finds that a compelling public interest exists. While the Department recognizes the court's view that I do not have the authority to revoke authorization to implement the Compact, this issue was neither thoroughly briefed nor argued to the court, and the Department respectfully disagrees.

For the foregoing reasons, I find that there is a compelling public interest in the Compact region and authorize implementation of the Northeast Interstate Dairy Compact. In authorizing the Compact's implementation, I have concluded that the balance has been properly struck, given current conditions. The Compact is a short-term measure that, if implemented with common-sense and sensitivity to the needs of all affected persons and interests, can benefit the dairy producers and all citizens in the Compact region without producing adverse side effects.

I recognize, however, that balancing all of the factors involved here may not be an easy task for the Commission. Therefore, the Department is ready to assist the Commission in implementing the Compact to achieve these goals. In addition, I encourage the elected officials of the Compact region to work with the Commission to ensure that low income people, the American taxpayers, and other U.S. dairy producers are not adversely affected by the implementation of the Compact.

To ensure successful implementation of the Compact in accordance with my decision, the Department will continue to monitor the Commission and will take all necessary steps within its authority, including revocation, to achieve these objectives. Additionally, as the court observed, the Department may raise concerns regarding the operation of the Commission with Congress and, if necessary, request that it revoke its consent to the Compact.

Dated: March 24, 1997.

Shirley D. Watkins,
Acting Assistant Secretary, Marketing and Regulatory Programs.

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