

## Northeast Dairy Compact Commission

## § 1361.5

do not require publication of notice in a newspaper of general circulation within that state, the Compact Commission shall provide for such publication; and

(3) By correspondence to interested persons in accordance with a list of such persons compiled by the Compact Commission. Any interested person may have his or her name added to the list by making a written request to the Compact Commission.

(e) Notice may also be provided by:

(1) Forwarding copies of the notice to the governors of such other states as the Chair determines should be notified; or

(2) At the discretion of the Compact Commission, by issuance of a press release containing the contents of the notice or a summary of the contents of the notice to those newspapers in the area proposed to be subjected to regulation as will reasonably tend to bring the notice to the attention of interested persons; or

(3) Such other notice as directed by the Compact Commission.

### § 1361.4 Submission of written comment and exhibits independent of the hearing.

Any person may submit to the Compact Commission written comment and exhibits independent of the hearing. Comment and exhibits may be submitted at any time until the closing date of the post-hearing comment period established under § 1361.7. The comment and exhibits shall be made part of the record of the rulemaking proceeding if they identify the author's name, address and occupation and if they include a sworn, notarized statement indicating that the comment is presented based upon the author's personal knowledge or belief.

### § 1361.5 Conduct of the hearing.

(a) *Presiding officer.* The Chair of the Commission shall be the presiding officer, or in his or her absence, the Vice-Chair. In the absence of either officer, the Compact Commission shall elect a presiding officer from those members present at the hearing or retain a qualified member of the public to serve as presiding officer.

(b) *Authority of the presiding officer.* The presiding officer shall have the authority to:

(1) Regulate the course of the hearing;

(2) Administer oaths and affirmations;

(3) Rule upon issues of evidence and procedure and receive affidavits; and

(4) Present questions to the Compact Commission for its determination.

(c) *Recording of notice.* At the opening of the hearing, the presiding officer shall certify for the record the provision of notice under § 1361.3.

(d) *Transcript.* The Secretary of the Compact Commission shall cause a complete transcript to be kept of the hearing proceeding. The Secretary shall certify a true copy of the record of all testimony and exhibits entered into evidence.

(e) *Appearance; right to appear.* Any person shall be given an opportunity to appear, either in person or through a representative, subject to reasonable procedures (*e.g.*, regarding time allowed for testimony) established by the presiding officer. Witnesses shall provide their names, addresses and occupations for the record before proceeding to testify. A person acting as representative on behalf of another shall so identify himself or herself, provide his or her name, address and occupation for the record, and shall provide any other information as required by the presiding officer.

(f) *Testimony.* Persons shall be sworn or make affirmation before testifying. Any member of the Compact Commission or designated staff may ask questions of a person giving testimony.

(g) *Evidence.* To the degree possible, evidence shall be presented in a form consistent with the provisions of section 9(e) of the Compact. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons shall be admissible. Evidence that is irrelevant, immaterial or unduly repetitious shall be excluded. As possible, the relevancy of evidence shall be determined by reference to the provisions of section 9(e) of the Compact.

(1) *Exclusion of evidence; objections and offers of proof.* The presiding officer

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may act to exclude evidence on his or her own or upon a request by any Compact Commission member. The person testifying may object to a ruling to exclude evidence. The person shall state the reasons for the objection, and provide an offer of proof, consisting of a statement of the substance of the testimony or that which is expected to be shown by the answer; provided that the presiding officer may limit the length of time allowed for the offer of proof. The record shall reflect the objection, the stated basis for the objection and the offer of proof. The presiding officer shall either overrule the objection, and exclude the evidence from the record, or stay a ruling on the objection to permit action by the Compact Commission at a future time. If the Compact Commission, upon consideration of the objection and offer of proof, permits the evidence, it shall reopen the record and allow the testimony to be entered. Only evidence so received by proper objection and offer of proof may be the subject of future consideration. The person testifying shall be notified within three days of the Compact Commission's ruling on the objection.

(2) *Exhibits, documentary and real evidence.* All written statements, charts, tabulations or similar data offered in evidence at the hearing shall be made part of the record upon identification by the witness and upon satisfactory showing of its authenticity, relevance and materiality. At the discretion of the presiding officer, any part of an exhibit that is irrelevant or immaterial may be excluded and the remainder admitted.

(3) *Cost conclusions.* Conclusory statements regarding costs shall be admissible only if supported by actual cost data based on actual operations of producers, handlers or retailers, as appropriate. Projections or estimates of costs shall be considered only where the actual costs or other data upon which such projections or estimates are provided as part of the analysis.

(4) *Commission evidence.* The Compact Commission may introduce the results and data of any inquiry or investigation conducted by the Commission, or any other evidence it deems appropriate. The Commission may also designate as evidence all or part of the

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record of prior hearings before the Commission.

(5) *Official notice.* The Compact Commission may take official notice of such matters as are judicially noticed by the courts of the United States and any other matter of technical, scientific or commercial fact of established character. Matters taken by official notice shall be so designated in the record. Interested persons shall be given adequate notice of this action, at the hearing or afterward, and opportunity to demonstrate that the facts are inaccurate or were erroneously noticed.

### § 1361.6 Availability of the transcript.

(a) *Availability.* A copy of the hearing transcript shall be available for review at the Compact Commission place of business during its official business hours, within 48 hours of the completion of the hearing, unless otherwise specified by the presiding officer at the close of the hearing.

(b) *Copies.* A copy of the transcript may be obtained upon written request and payment of reasonable cost per page.

### § 1361.7 Additional comment and proposed findings by interested persons.

At the conclusion of the hearing, the presiding officer shall announce that persons who have participated in the hearing may submit comment and proposed findings of fact. The comment or findings, or both, shall be received within fourteen calendar days of the conclusion of the hearing, unless otherwise specified in the published notice of proposed rulemaking. Any proposed findings shall be presented in a form consistent with the finding requirements of § 1361.8, and shall be based solely on evidence included in the record. Page numbers of the transcript, where supporting evidence appears, shall be cited whenever possible.

### § 1361.8 Commission deliberation and decision; proposed regulation; proposed findings.

(a) *Commission deliberation and decision.* The Compact Commission shall