

## Northeast Dairy Compact Commission

## § 1381.4

evidence) upon which the petition is based, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the regulation, order or administrative assessment, or the interpretation or applications thereof, which are complained of.

(d) A statement of the grounds on which the terms or provisions of the regulation, order, or administrative assessment or the interpretation or application thereof, which are complained of are challenged as not being in accordance with law.

(e) Any prayer for specific relief which the petitioner desires the Commission to grant;

(f) An affidavit by the petitioner, or if the petitioner, or if the petitioner is not an individual by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for the purposes of the delay. The affidavit may include a request for an oral hearing on the petition. Such request shall set forth specific grounds demonstrating the need for such a hearing.

(g) Any additional affidavit evidence supporting the petition.

(h) Petitioner's prayer for relief may include a request that payments due or payable during the pendency of the administrative appeal or longer pursuant to §1381.5(b), be placed in an escrow account established by the Commission. If a request for escrow is made, petitioner may make payment into a Commission established escrow account while the Commission rules upon petitioner's request in accordance with §1381.4(b)(5). Any petitioner who refuses to make payment during this period shall be liable for payment of interest on such withheld funds, at the federal statutory rate set forth in 28 U.S.C 1961, plus such additional penalties as are appropriate under Article VI, Section 17 of the Compact.

[62 FR 35065, June 30, 1997; 62 FR 36651, July 9, 1997]

### § 1381.4 Conduct of proceedings.

(a) *Appointment of hearing panel.* Upon receipt of a petition, and as determined appropriate by the Commission's Com-

mittee on Administration, the Chair shall appoint a hearing panel of either one to three Commission members, who are not members of the state delegation in which the Handler is incorporated or has its principal place of business, who have no pecuniary interest in the outcome, and who are otherwise fair and impartial, or an independent hearing officer. The hearing panel shall consider the petition. For hearing panels of Commission members greater than one member, the Chair shall designate a chief hearing officer.

(b) *Preliminary matters.* The panel shall meet within 15 days of their appointment to determine whether to:

(1) Limit the taking of evidence to affidavits, and thereby make their decision solely on the basis of the record before them without an oral hearing. In making this determination, the panel shall consider:

(i) The nature of the petition before them;

(ii) The nature of any facts in dispute that may necessitate an oral hearing; and

(iii) Whether the petitioner will be unduly prejudiced by limiting the taking of evidence to affidavits without benefit of an oral hearing.

(2) Require the production by affidavit or additional information, documents, reports, answers, records, accounts, papers or other data and documentary evidence necessary to the proper resolution of the matter.

(3) Compel the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(4) Consolidate two or more petitions pertaining to the same order or issue and the evidence relied upon under such consolidated proceeding may be embodied in a single decision.

(5) Grant or deny petitioner's request for the establishment of an escrow account, if such request has been made. The panel shall deny such a request only if it has otherwise ensured adequate protection to the handler with respect to the payments of sums due and challenged in the petition.

(c) The panel shall promptly notify petitioner by certified mail of the results of its deliberations under paragraphs (a) and (b) of this section. The

panel's notice shall include a concise statement of the basis for its decisions under those paragraphs. The notice shall include a time and place for an oral hearing, if any, and the deadline for the submission of any additional information required by the panel. The notice shall also set forth the date by which the panel will issue its proposed findings of fact, conclusions and decision, as computed under paragraph (g) of this section. If a request has been made for the establishment of an escrow account and such request has been granted, the notice shall also include a procedure for the making of escrow payments. If such request is denied, any payments made and held in escrow may be released for disbursement by the Commission.

(d) The panel may take official notice of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided*, That interested parties shall be given adequate notice of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(e) The panel shall:

(1) Exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious: *Provided*, That interested parties shall be given adequate notice of such exclusion and an opportunity to show that such evidence has been erroneously excluded.

(2) Not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding.

(f) *Oral hearing.* (1) Any oral hearing shall be conducted at a time and place determined by the panel.

(2) Testimony presented at the hearing shall be:

(i) Upon oath or affirmation administered by the panel and subject to reasonable cross examination; and

(ii) Reported verbatim.

(3) As part of the hearing, the panel may require the appearance of any witness, or the production of additional information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence

necessary to the proper resolution of the matter.

(4) If appropriate, the panel shall compel the appearance of witnesses, the giving of testimony or the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(5) The panel shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(6) The panel shall rule on offers of proof and otherwise reasonably regulate the course of the hearing.

(g) *Proposed findings of fact, conclusions and decision.* (1) Within 45 days of the panel's appointment, or, in the event an oral hearing is held, within 60 days, the panel shall issue proposed findings of fact, conclusions and a decision based upon the evidence in the record. The proposed findings, conclusions and decision shall be served upon the petitioner by certified mail.

(2) Petitioner may submit a response to the panel's proposed findings of fact, conclusions and decision, along with supporting reasons. Such response shall be received by the Commission within 20 days of petitioner's receipt of the panel's proposed findings, conclusions and decision.

(3) The panel may modify, alter or amend its proposed findings, conclusions and decision in accordance with petitioner's response, as it deems appropriate.

(h) *Final ruling by the Commission.* (1) Unless the panel so notifies the Commission of the need for an extension of time, at its first regularly scheduled meeting following the deadline for the receipt of petitioner's response to the panel's proposed findings, conclusions and decision, the Commission shall make a final ruling upon the petition. The Commission's determination shall be based upon the panel's final or modified proposed findings, conclusions and decision. The Commission shall also consider the petitioner's response to the panel's original proposed findings, conclusion and decision. The record shall also be available for review by the Commission.

(2) The Commission's final ruling shall be served by certified mail upon

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the petitioner and be filed in the Commission offices, and be made available for public inspection and copying in accordance with the bylaws.

(3) Any commissioner shall (on either the Commissioner's own motion or on motion of the petitioner) disqualify himself or herself from consideration of the Commission's final ruling on the panel's decision if that commissioner's impartiality might reasonably be questioned.

[62 FR 35065, June 30, 1997, as amended at 64 FR 11756, Mar. 10, 1999]

### § 1381.5 Judicial appeal; escrow.

(a) As set forth in section 16(c) of the Compact, as approved by 7 U.S.C. 7256, the district courts of the United States, in any district in which a handler is an inhabitant or has his prin-

cipal place of business, have jurisdiction to review a final ruling of the Commission made pursuant to §1381.4(h), provided that a complaint is filed within thirty days from the date of the entry of that final ruling.

(b) A petitioner who has been granted the establishment of an escrow account as part of the administrative proceeding and who has timely appealed may request that its payments be placed into escrow pending the appeal. Upon such a request, the Commission shall hold the money in escrow until the date that a timely judicial complaint is filed plus a period of ten days. The Commission may also, for good cause shown, continue to hold the money placed in escrow pending the ultimate resolution of any appeal, or for such other period as the Commission may establish.