

all assessable dried prunes handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 993

Dried prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

#### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 993.347 [Amended]

2. Section 993.347 is amended by removing “August 1, 1996,” and adding in its place “August 1, 1997,” and by removing “\$1.50” and adding in its place “\$1.60.”

Dated: July 29, 1997.

**Ronald L. Cioffi,**

*Acting Director, Fruit and Vegetable Division.*

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 1126

[DA–97–06]

#### Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; suspension.

**SUMMARY:** This document continues the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, requested continuation of the current suspension with a change to the producer diversion provision. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue

to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

**EFFECTIVE DATE:** August 1, 1997, through July 31, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address Clifford—M—Carman@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26255).

Notice of Revised Proposed Suspension: Issued June 23, 1997; published June 27, 1997 (62 FR 34676).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility

Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. For the purposes of determining which dairy farms are “small businesses,” the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 1,805 producers was pooled on the Texas Federal milk order. Of these producers, 1,350 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 24 handlers operating pool plants under the Texas order. Five of these handlers would be considered small businesses.

This rule continues the suspension of segments of the pool plant and producer milk definitions under the Texas order. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. Additionally, this rule will not increase the regulatory burden on handlers since the suspension has been in effect during the prior two-year period. The suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

#### Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 7, 1997 (62 FR 26255), concerning a proposed suspension of certain provisions of the order. A revised proposed suspension was issued on June 23, 1997, and published in the **Federal Register** on June 27, 1997 (62 FR 34676). Interested persons were

afforded opportunity to file written data, views and arguments thereon.

Two comments in opposition to the revised proposed suspension and in support of the continuance of the existing suspension, one comment in opposition to the proposed suspension, and one comment in support of the revised proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1, 1997, through July 31, 1999, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In § 1126.13, paragraph (e)(2).

5. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

#### Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk provisions under the Texas order. This suspension will be in effect from August 1, 1997, through July 31, 1999. The current suspension will expire on July 31, 1997. This rule continues the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be

met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

A comment received from Associated Milk Producers Inc. (AMPI) to the May 7, 1997, proposed suspension supports the continuation of the suspension with a change to the producer milk diversion provision. AMPI, a cooperative association that represents a substantial number of dairy farmers who supply the Texas market, states that the change to the current suspension is necessary to achieve orderly marketing conditions within the Texas marketing area. The suspension currently in effect eliminates any diversion limit on the Texas market. However, according to the cooperative, by modifying the existing suspension as noticed in the revised proposed suspension, cooperative diversions would be limited to an amount equal to deliveries made to pool plants by these associations. The cooperative argues that this assures a more distinct association with the Class I market than the current suspension and limits "pool riding." Furthermore, AMPI states that as the New Mexico/ West Texas and Texas markets coalesce, inter-market movements create the need for pooling requirements that are unrestrictive. However, these requirements must also allow reserve locations to serve their function in the marketplace and also preserve the integrity of the market.

Comments opposing the modification of the current suspension and in support of the existing suspension were submitted by Premier Milk, Inc., and Lone Star Milk Producers, L.C., two small cooperative associations representing producers who pool their milk on the Texas order. The cooperatives state that AMPI's revised proposal increases the difficulty of marketing milk on the Texas order because the proposed diversion limitation would reduce Premier's and Lone Star's opportunities to divert milk. The two cooperatives contend that presently in the Texas order a very limited amount of milk can be sold to pool plants by small cooperatives because the larger cooperatives either own or have full supply contracts with almost all of the pool plants in the Texas order.

A comment submitted by The Kroger Co. (Kroger), a handler operating a pool distributing plant regulated under the Texas order, opposes a continuance of the suspension of the pool plant and producer definitions which are currently in effect. Kroger states that the

current suspension has eliminated the need for producers and pool supply plants to service the fluid milk market and continue to enjoy the benefits of association with the Texas order. Furthermore, the handler contends that current marketing conditions justify the denial of continuation of the suspension. Kroger argues that current supply conditions indicate that local milk supplies will be needed to meet the demand of fluid milk sales and states that the suspended provisions discourage the availability of local milk to meet the needs of fluid milk handlers. Therefore, in order to assure consumers an adequate supply of milk at a reasonable cost, according to the handler, the suspension should not be continued.

Continuation of the current suspension is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition, the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Marketing conditions have not significantly changed since 1995 when the current suspension was issued. There is no indication that adequate local fluid milk supplies will not be available to service the needs of handlers in the Texas marketing area. Although the Class I utilization of producer milk has increased to 51.73% for the July 1996 through June 1997 period as compared to 45.38% in the previous July through June period, this Class I utilization has not increased to the level where it is difficult to obtain an adequate supply of milk.

Currently the Federal milk marketing order program is undergoing an extensive review as mandated by the Federal Agriculture Improvement and Reform Act of 1996. All provisions of milk orders, including the producer and pool plant definitions, are being examined as part of Federal order reform. However, while this process is underway, marketing conditions in the Texas order warrant the continuance of the existing suspension to ensure the orderly marketing of milk.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning August 1, 1997, through July 31, 1999.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments supporting the current suspension and opposing the revised proposed suspension, one comment supporting the revised proposed suspension, and one comment opposing the proposed suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

#### **List of Subjects in 7 CFR Part 1126**

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1126 is amended as follows:

#### **PART 1126—MILK IN THE TEXAS MARKETING AREA**

1. The authority citation for 7 CFR part 1126 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### **§ 1126.7 [Suspended in part]**

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

#### **§ 1126.13 [Suspended in part]**

4. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.

5. Section 1126.13(e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" is suspended.

Dated: July 29, 1997.

**Michael V. Dunn,**

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 97-20458 Filed 8-1-97; 8:45 am]

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### **FEDERAL HOUSING FINANCE BOARD**

#### **12 CFR Part 960**

[No. 97-44]

RIN 3069-AA28

#### **Amendment of Affordable Housing Program Regulation**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP or Program). Among the significant changes made by the final rule are: transfer of approval authority for AHP applications from the Finance Board to the Federal Home Loan Banks (Banks); modification of the competitive scoring process under which AHP subsidies are allocated among housing projects; establishment of specific standards and retention periods for monitoring of AHP-assisted housing projects; and clarification and expansion of the types of remedies available in the event of noncompliance with AHP requirements.

The final rule is in furtherance of the Finance Board's continuing effort to devolve management and governance authority to the Banks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

**DATES:** The final rule is effective on January 1, 1998. Compliance with § 960.3(b) shall begin on September 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Tucker, Deputy Director,

Compliance Assistance Division, (202) 408-2848, or Diane E. Dorius, Associate Director, Program Development Division, (202) 408-2576, Office of Policy; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, or Brandon B. Straus, Senior Attorney-Advisor, (202) 408-2589, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Statutory and Regulatory Background**

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. See 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the Program. See *id.* The Finance Board's existing regulation governing the operation of the Program is set forth in part 960 of the Finance Board's regulations. See 12 CFR part 960. The Program has been operating successfully for approximately seven years.

As a result of the Finance Board's and the Banks' experience in administering the Program, on January 10, 1994, the Finance Board issued a notice of proposed rulemaking, which was published in the **Federal Register**, that proposed changes to improve operation of the Program. See 59 FR 1323 (Jan. 10, 1994). The Finance Board received over 100 comment letters. During the following 18-month period, the Finance Board was without a quorum and was unable to take action on the proposed rule.

On September 25, 1995, the Finance Board published a final rule amending the AHP regulation to permit the Banks to set aside of portion of their required annual AHP contributions to fund homeownership set-aside programs to provide downpayment and closing cost assistance to low- and moderate-income homebuyers. See 60 FR 49327 (Sept. 25, 1995). On November 1, 1995, the Finance Board published for comment a proposal to amend the existing AHP regulation to authorize the Banks, in their discretion, to establish limits on the maximum amount of AHP subsidy that may be requested per member, per project application, or per project unit, for a given funding period. See 60 FR 55487 (Nov. 1, 1995) (Subsidy Limits Proposal). The Finance Board received