information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on November 9, 1999, and the Committee meeting on November 10, 1999, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on January 31, 2000 (65 FR 4583). Copies of the rule were mailed by the Committee's staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 31, 2000. One comment was received.

The commenter supports the change in desirable carryout, but expressed concern over the impact of the change on the Committee's program to promote California raisin sales in foreign markets. The purpose of this rulemaking action is to change the desirable carryout to more accurately reflect actual carryout inventory and early-season shipments. Desirable carryout is the amount of tonnage from a specific crop year needed during the first part of the succeeding crop year to meet market needs. Failure to provide adequate raisins for market needs during the first part of the crop year would likely have a negative impact on prices and sales later in the season. Such an impact would likely be felt in domestic and foreign markets. The increase in desirable carryout would make more raisins available to handlers as free tonnage, and might reduce the amount of reserve raisins handlers purchase to meet their market needs. However, Committee sponsored promotional activities are not expected to be negatively impacted by this action. Those promotional activities are planned and implemented later in the season, when carryin inventories and the size of the new crop are known. Additionally, those promotional activities are planned by the Committee with the most recent information available, and approved by the Department.

Accordingly, no changes will be made to the rule, as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 crop year begins on August 1, 2000, and this rule should be effective promptly because the order provides that the Committee meet on or before August 15 to compute and announce the trade demand, and the desirable carryout level is a necessary item in that calculation; (2) this action is a relaxation in that it will make more raisins available to handlers especially for use early in the season; (3) producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 60-day comment period was provided for in the proposed rule, and the comment received is addressed in this final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is amended by revising paragraph (a) to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage during August, September, and October for each of the past 5 crop years, for each varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

* * * * *

Dated: July 11, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–18073 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. DA–00–06]

Final Rule for Dairy Forward Pricing Pilot Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a pilot program which exempts handlers regulated under the Federal milk order program from paying producers and cooperative associations the minimum Federal order price(s) for that portion of their milk for nonfluid use that is under forward contract. Establishment of the pilot program is required by a November 1999 amendment to the Agricultural Marketing Agreement Act of 1937 (AMAA).

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: This rule implements an amendment to the AMAA which directs the Secretary of Agriculture to establish a temporary pilot program for forward contracting of milk under Federal milk marketing orders. The effect of the amendment is to permit a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract, provided that such milk does not exceed the handler's nonfluid use of milk for the month. The amendment appears in Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536). It was signed into law on November 29, 1999. The

amendment specifies that the pilot program shall only apply to federally regulated milk that is not classified as Class I milk or otherwise intended for fluid use and that is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk. The pilot program expires December 31, 2004.

This pilot program does not invalidate, supersede, or otherwise change existing milk contracts between handlers and dairy farmers. Contracts eligible for this pilot program shall be those contracts beginning no earlier than the effective date of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The pilot program is a voluntary program that does not require extensive preparation for those handlers and dairy farmers who choose to participate in it; and (2) most handlers and farmers desiring to participate in the program are anticipating the publication of this rule and would like to have their contractual transactions under the program effective as soon as possible.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to judicial challenge to the provisions of this rule.

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule is not economically significant for the purposes of Executive Order 12866.

The forward pricing pilot program is a voluntary program that will permit a handler and a producer to negotiate prices that, at times, may be below the minimum order prices that would otherwise apply to such milk. Some producers, proprietary handlers, and cooperative associations now negotiate forward contracts on part or all of their milk. The pilot program will expand the opportunities to engage in forward contracting by exempting participating proprietary handlers from the minimum prices to producers and cooperative associations required under Federal milk marketing orders. These regulations do not affect the ability of cooperative associations to forward contract with their members.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis.

The legal basis for this rule is set forth in an amendment to the AMAA signed into law on November 29, 1999, that directs the Secretary of Agriculture to establish the dairy forward pricing pilot program. The Secretary was directed ''to establish a temporary pilot program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers.''

The pilot program will provide the dairy industry, which has experienced substantial price volatility in recent years, with another tool to deal with such volatility. With the phase-down of the dairy price support program to a safety-net program, the prices of dairy products have fluctuated to a much greater extent than they did during the prior 20 years. This price fluctuation has created problems for processors of manufactured dairy products (*e.g.*, butter, nonfat dry milk, and cheese), the dairy farmers who supply these processors, and the retailers, school systems, and other public institutions who provide these products to consumers.

Under the Small Business Administration's definition, a dairy farm is a small business if it has annual gross revenues of less than $500,000 and a handler 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.

Based upon the most current information available, USDA identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that had their milk pooled under a Federal order in January 2000. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there were approximately 1,200 plants associated with Federal orders in January 2000, and of these plants, approximately 720 qualify as ''small businesses,'' representing about 60 percent of the total. At the present time, 142 cooperative associations represent 61,405 dairy farmers under the Federal milk order program. In addition, there were 10,311 dairy farmers who were not affiliated with any cooperative association in January 2000. Of these nonmember producers, 9,559 meet the SBA's definition of a small business.

The recordkeeping and reporting requirements for this rule are minimal. At the present time, any handler that enters into a forward contract with a producer presumably has written proof for such an arrangement. Under the pilot program, a handler will be required to submit a copy of each forward contract with a producer or a cooperative association to the market administrator of the order that regulates the milk. In addition, the handler will be required to attach a specific disclosure statement to each forward contract with each producer under the pilot program. The disclosure statement will have to be signed by each dairy farmer entering into a forward contract. The disclosure statement explains that a dairy farmer entering into a forward contract under the pilot program forfeits his or her right to receive the minimum order price(s) for that portion of their milk that is under contract for the duration of the contract period. These requirements are discussed further in the Paperwork Reduction Act section of this document.

In drafting the rule, the Department considered whether any limit should be established for the amount of milk that a dairy farmer could forward contract. We decided not to impose such a limit because we did not wish to interfere with a dairy farmer's desire to forward contract all of his or her milk. Also, in order to gain as much knowledge as possible about the types of forward contracts that might be offered by handlers, we believe it is beneficial to allow handlers and dairy farmers to decide between themselves how much milk to put under forward contract and how much milk to keep under minimum Federal order pricing.

Comments were specifically requested on the impact of this rule on small businesses. Many comments, particularly from dairy farmers and

cheese plant operators, stated that the pilot program would assist them in running their business. No comments were received from a small business stating that the pilot program would be a burden to them.

The Department does not believe that the forward pricing pilot program will unduly burden small entities or impair their ability to compete in the marketplace. In fact, by providing another tool to reduce price risk, the pilot program may aid small businesses in competing with larger entities that have the ability to use existing futures and options markets, and other means, to reduce their price risks.

Several provisions that were in the proposed rule have been modified or eliminated in response to those commenters who noted that these provisions could limit the ability of small businesses to participate in the pilot program. A provision that would have provided a 3-day period in which a forward contract could be canceled has been removed to facilitate hedging of forward contracts, and a provision limiting initial forward contracts to 6 months has been changed to 12 months to better reflect dairy farmers' budgeting practices. In addition, another change was made so that proprietary handlers that do not operate pool plants can participate in the program. These provisions are discussed in more detail in the discussion of the rules applicable to the pilot program.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) for emergency approval and such approval was granted. A separate 60-day notice seeking public comment on the information collection will be published after this final rule is issued. OMB has assigned this request No. 0581–0190.

Under the pilot program for the forward contracting of milk under Federal milk orders, a one-page disclosure statement was designed so that the Secretary's representatives administering the pilot program can be certain that dairy farmers have entered into the pilot program voluntarily. The disclosure statement is attached to a fact sheet containing general guidelines to help dairy farmers understand the forward contracting process. It also explains to the dairy farmer that the program is voluntary and that by entering into the program with a handler, the dairy farmer will be forfeiting his or her right to the minimum prices provided under the order. The form should take no more than 15 minutes to be read, understood, and signed by a dairy farmer. We estimate that the number of dairy farmers involved would be approximately 8,000, and the total annual time burden would not exceed 2,000 hours.

Handlers will be required to submit their forward contracts under the pilot program to their respective market administrator's office. There are 2 reasons for this. First, the market administrator must be able to review the contract to ensure it is signed and to verify that it complies with the regulations provided here. Second, the Department is required to conduct a study of forward contracting under the pilot program to determine the impact on milk prices paid to producers in the United States. This study must be submitted to Congress no later than April 30, 2002. In order to do such a study, the Secretary will have to review, summarize, and evaluate the different types of contracts that were written under the pilot program.

The time required for handlers to prepare and submit copies of contracts would approximate 30 minutes per contract. If all of the nearly 1200 plants associated with Federal orders decide to forward contract under the pilot program, the total annual burden to submit these contracts would be 600 hours.

In the proposed rule, and as continued in this final rule, the disclosure statement described above must be submitted each time that a dairy farmer enters into a forward contract under the pilot program. Several commenters stated that this requirement was redundant and resulted in unnecessary paperwork. They suggested that the disclosure statement should only be required to be submitted the first time that a dairy farmer enters into a forward contract under the pilot program. Except for these comments with respect to the disclosure statement, no other comments were received that relate to paperwork reduction or information collection.

While we are concerned about burdening handlers with unnecessary paperwork, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. Furthermore, we are not convinced by the argument that producers need be told only once that entering into a forward contract precludes them from receiving the order minimum prices for their milk. Forward contracting by producers is a significant departure from the historical regulatory environment. As such, it is essential that producers fully understand the consequences of entering into a voluntary contract that forfeits their right to receive minimum order prices for milk. By signing a disclosure statement for each contract, producers will be certifying that they have been given the opportunity to review the Forward Pricing Pilot Program Fact Sheet that describes the program, provides some advice, and cautions the producer to fully understand the terms and conditions of each contract.

Public Comments

A proposed rule was issued on February 25, 2000 (44 FR 10981). Interested parties were given 15 days to file written comments concerning the proposed rule. These comments were accepted by regular mail, e-mail, and by fax. A total of 97 comments were received. These comments came from—in order from most to least—dairy farmers, handlers, federal and state legislators, futures industry representatives, banking industry representatives, and other interested parties. All of the comments are available for viewing on our web site: www.ams.usda.gov/dairy/for_contr_pilot.htm.

Discussion of Rules Applicable to Pilot Program

Under the rules adopted here to administer the pilot program, producer milk under forward contract with a handler in compliance with the rules will not be subject to a Federal milk order's minimum price requirements provided that such milk does not exceed the handler's Class II, III, and IV utilization of milk for the month in the market that regulates the milk. This rule contains a clarification in § 1140.2(a) to make it clear that in order to be eligible for exemption from minimum order pricing under this pilot program handlers must be in compliance with the program rules.

For convenience, a handler's combined Class II, III, and IV utilization is defined as the handler's eligible milk. In the case of a multi-plant handler, the handler's Class II, III, and IV utilization will be combined together for all of the handler's milk regulated under one order. A handler will only be exempt from paying the order's minimum price(s) on its quantity of eligible milk.

The determination of which producers' milk is over-contracted is left to the handler. If the handler fails to make this determination, the market administrator will prorate the over-contract milk to each producer and cooperative association having a contract with the handler.

Although handlers participating in the pilot program will not be required to pay producers and cooperative associations the order's minimum uniform or component prices for contract milk, they will still be required to account to the pool for all milk they receive at the respective order's minimum class prices. In the case of milk received by transfer from a cooperative association's pool plant, a handler may forward contract for all such transferred milk that is not used in Class I and will be exempt from paying the cooperative the minimum class prices for contract milk.

In the proposed rule (See § 1140.2(a)), forward contracting under the pilot program was restricted to a handler that operates ''one or more pool plants.'' In this final rule, this has been changed to read ''any handler defined in §§ 1000.9 and 1135.9.'' The language in the proposed rule would have excluded proprietary handlers that do not operate pool plants from participating in the pilot program. As noted by Kraft Foods in its comment, ''this limitation is not in the statute creating the pilot program, and would unnecessarily exclude a number of handlers and producers from enjoying the benefits intended by Congress.''

The language contained in the proposed rule would not have permitted forward contracting for many manufacturing plants that use pooled milk for their manufactured dairy products. In fact, many nonpool plants that receive producer milk by diversion from pool plants would have been unable to forward contract under the pilot program.

In providing for the forward contract pilot program, Congress provided handlers who forward contract with an exemption from paying the minimum Federal order price to producers with whom they have contracted. The November 1999 amendments to the Act did not *permit* handlers who manufacture Class II, III, and IV products to forward contract because any handler, even handlers with all Class I milk, could have forward contracted prior to the amendments. What the amendments did do, however, was excuse handlers from paying producers minimum order prices for Class II, III, and IV milk under forward contract.

The language in § 1140.2(a) for the proposed rule stated that only pool plant operators could forward contract and be exempt from minimum Federal order pricing. This language, however, does not take into consideration the complex marketing arrangements that exist between pool plants, cooperative association bulk tank handlers, and nonpool plants.

In many markets, milk of nonmember producers that is regularly received at a nonpool plant is actually pooled by a pool plant operator or by a cooperative association through its deliveries to a pool plant. The nonmember milk delivered to the nonpool plant is reported as producer milk diverted to a nonpool plant by the cooperative association on its monthly report of receipts and utilization to the market administrator. Alternatively, if a cooperative association is not involved in the transaction, such milk could be reported by a pool plant operator on its report.

Many nonpool plant operators that receive nonmember milk that is pooled through another handler issue checks to their nonmember producers. They submit their payrolls showing these payments to the market administrator. Nevertheless, these nonpool plant operators are not responsible under the order for paying their nonmember producers the minimum Federal order price; it is the handler—*i.e.,* either the cooperative association or pool plant operator—that pools the milk for them who would be held responsible for an underpayment.

In this final rule, only producer milk that is under forward contract with a handler in compliance with the rules provided here will be exempt from the order's minimum prices. In the case of nonmember milk that is reported as producer milk by a cooperative association handler or pool plant operator, but payrolled by a nonpool plant operator, the cooperative association or pool plant operator, respectively, will be held responsible for any underpayment to a nonmember producer in the event that milk under contract becomes subject to minimum order pricing (for instance, in the case of over-contracted milk). In this way, cooperative association handlers, pool plant operators, and nonpool plant operators may continue the complex arrangements that have evolved to pool milk under the Federal milk order program and all will be permitted to participate in the pilot program.

The language in § 1140.2(a) of this final rule has been modified to reflect the change from ''handler that operates one or more pool plants'' to simply ''handler.'' As defined in § 1000.9, handler includes not only the operator of a pool plant or a nonpool plant, but also a broker serving as a handler as provided in § 1000.9(b) and a cooperative association acting as a handler with respect to milk delivered to a pool plant or diverted to a nonpool plant. Finally, the term ''handler'' includes a proprietary bulk tank handler as defined in § 1135.9 of the Western order.

Any handler participating in the pilot program will still be required to file all of the reports that are now required under an order. This includes reports of receipts and utilization of milk and monthly payroll reports that show all information now required under the orders.

Handlers participating in the pilot program will have to submit to the market administrator a copy of each contract for which it is claiming exemption from the order's minimum pricing. This contract must be signed prior to the 1st day of the 1st month for which the contract applies and must be received by the market administrator by the 15th day of that month. For the first month that the pilot program is effective, contracts must be signed on or after the day on which the program becomes effective. For example, if the program becomes effective on July 17, contracts for August milk must be signed between July 17 and July 31 and must be in the market administrator's office by August 15.

It is the responsibility of each handler to give to each contracting dairy farmer or cooperative association a disclosure statement informing them of the nature of the pilot program and providing them with certain information that they should consider before entering into a forward contract. The disclosure statement must be signed on the same date as the contract by the dairy farmer or cooperative association representative and will have to be returned to the market administrator together with the contract by the 15th day of the month. Any contract that is submitted to the market administrator without the disclosure statement will be considered to be invalid for the purpose of being exempt from the order's minimum pricing and will be returned to the handler.

Several commenters objected to having to submit a disclosure statement each time they contract with a producer. They argued that attaching a disclosure statement to the first forward contract with a producer was sufficient and that having to do so with each succeeding contract involved unnecessary paperwork.

As noted earlier in the section dealing with the Paperwork Reduction Act, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. In fact, it is only one paragraph long and can easily be incorporated in the body of a forward contract itself or can be handled as a one-page supplement that may be attached to the forward contract.

In its proposed rule, the Department proposed 2 provisions to help dairy farmers adjust to the new program. One provision would have required that each forward contract under the pilot program contain a clause that gives a dairy farmer 3 days to change his or her mind about forward contracting their milk. The 2nd proposed provision would have limited the contract period for first-time contracts under the pilot program to 6 months. Both of these proposals were opposed by a majority of the commenters who addressed these issues.

Numerous commenters contended that these 2 provisions would be very damaging to the pilot program, even rendering it totally ineffective. One commenter who specializes in hedging price risks noted that the 3-day cancellation provision would severely constrain a handler in offsetting its risk if it had to wait for 3 days after signing a contract before it could safely hedge a price commitment that it had made 3 days earlier. With respect to the proposed rule limiting first-time contracts to 6 months, many commenters observed that a 6-month contract would not match up with a dairy farmer's budgeting process.

In response to those commenters who argued that having to wait 3 days would subject handlers to extraordinary, unreasonable price risk, we undertook a careful review of the options available to handlers for hedging such risk. In particular, we analyzed the costs associated with purchasing at-the-money put options in lieu of selling futures to hedge forward contracts during the 3 days when a forward contract could be canceled. We also looked at the costs incurred in selling futures and simultaneously purchasing an equivalent amount of at-the-money call options to hedge the price risks associated with entering into forward contracts during the 3 days when the contract could be canceled. Our analysis indicates that the costs of the 3-day cancellation provision could amount to between 10 and 15 cents per hundredweight. These costs would likely be passed on to producers in the form of lower contract prices which could dampen any interest in the pilot program.

In proposing the 3-day cancellation clause for producers who enter into forward contracts under the pilot program it was our intent to help farmers adjust to the new program and to protect them from undue pressure in signing forward contracts. However, based on the comments and on our analysis it is clear that the 3-day cancellation provision would result in some additional costs to handlers who enter into forward contracts and hedge such contracts by using the futures market. Such costs could be passed on to producers in terms of lower forward contract prices. Therefore, while we continue to see merit in this provision, we must conclude that, on balance, the 3-day cancellation provision could work against the interests of dairy farmers by denying them the opportunity to utilize forward contracts under the pilot program. Accordingly, this provision has been removed from this final rule. Nevertheless, we will carefully monitor whether producers have been provided with adequate time and information before entering into forward contracts with handlers under the pilot program and will revisit this issue if necessary.

With respect to the 6-month forward contract restriction for producers forward contracting for the first time, we still believe that a restriction for first-time forward contracts would have merit. However, we are convinced by the comments submitted that the maximum contract length should be changed from 6 months to 12 months to be more consistent with budgeting and banking practices. After a producer has entered into his or her first forward contract under the pilot program, subsequent contracts could be written for longer periods of time.

A 3rd proposed provision that was widely opposed by commenters and received virtually no support would have required the basis for pricing milk under a forward contract to be the same as the basis for pricing milk that was not under forward contract. Specifically, in the 4 Federal orders with butterfat and skim milk pricing, forward contracts would have been required to be written in those terms, and in the 7 orders with component pricing of milk, forward contracts would have been required to be written in terms of those same components. This provision was proposed for 2 reasons. First, we thought such pricing would be more understandable to producers who had part of their milk subject to minimum order pricing and part of it subject to forward contract pricing. Second, we thought that such pricing would be easier for producers to verify using testing data provided by the market administrator.

This proposal was seen by commenters to be unnecessarily limiting and an obstacle to effectively hedging contract prices, which may be based upon futures market prices that may not price each component of milk. Therefore, it has been removed. However, producers who are not members of a cooperative association should understand that their milk weights and tests will continue to be handled in the same way by the market administrator even if they choose to enter into a forward contract which prices their milk on a basis that differs from the order in which their milk is pooled. For example, if a producer under the Appalachian Order, which prices milk to dairy farmers on the basis of skim milk and butterfat, enters into a contract that prices milk on the basis of protein, butterfat, other solids, and somatic cell count, the producer will not receive data from the market administrator to compare against the buying handler's test data. If the producer wishes to verify these tests, he or she will have to do so at their own expense.

As proposed, payments specified under a forward contract must be made on the same dates as order payments which they replace. No comments were received in opposition to this provision and it should be carried forward for several reasons. First, nearly every handler entering into forward contracts would have some milk that is subject to minimum order pricing. It is highly unlikely that these handlers would establish a dual accounting and payment system even if they thought that different payment dates would be preferable to those specified under the order. Second, if handlers paid producers under contract at different times than producers not under contract, this disparate treatment could cause problems which might influence the success of the pilot program for reasons entirely apart from more predictable pricing. Third, from an administrative standpoint, it will be much easier to administer the pilot program if payments are made on the same day as minimum order payments.

Some commenters argued that the market administrator should enforce forward contract prices just as they do minimum order prices. Another comment stated that the regulations should enforce payment of all contracts.

The Act requires the Secretary to establish a forward pricing pilot program. Milk for nonfluid use which is covered by forward contracts under the

pilot program is exempt from the minimum price provisions of the orders. We do not believe it should be the role of the market administrator or the Department to determine the terms of forward contracts or to enforce negotiated prices. Payment for milk covered under forward contract is required to be made by the dates specified in § 1140.2(e) of the regulations.

Some commenters argued that allowing a handler to draw money from the producer-settlement fund and not pass it on to its producers could create disorderly marketing conditions. One commenter concluded that allowing a handler to keep the difference between the order's blend price and the contract price was an unjustified windfall to the handler.

This issue merits some discussion. Frankly, we do not know what form forward contracts will take under the pilot program. We do know the nature of some forward contracts prior to the pilot program. In the Upper Midwest, where much of the milk that is pooled is used for Class III use, many forward contracts provided for a Class III price plus a pool draw. If a handler was a cheese operation, the pool draw would equal the difference between the order's blend price and the Class III price.

It may be that this same formula will be the popular way to forward contract under the pilot program, but there are several variables that make this unclear. First, the pilot program applies to all Federal order markets, with Class I utilizations ranging from 90 percent to 10 percent. There is a significant difference in the pool draw between these extremes. Second, forward contracts may only cover milk used for Class II, III, or IV use. While a contract providing for a Class III price plus the pool draw might make sense for a cheese plant, it may not fit well with an ice cream or butter-powder operation.

Producers who are contemplating forward contracting should keep in mind that their benchmark price is the Federal order blend price. That is the minimum price that they would receive in the absence of a forward contract. Thus, it seems reasonable that when producers negotiate a forward contract price, they would hope to approximate, ideally, the minimum blend price plus applicable premiums averaged over the forward contract period.

As noted above, we do not know how handlers will arrive at forward contract prices. They could look at futures markets for guidance. A forward contract price could be a flat blend price approximation; it could be an average futures market cheese price plus a pool draw; or, for a butter-powder operation, it could be an average future butter and powder price on a hundredweight basis plus a pool draw.

Over time, we would expect to see forward prices to producers below the blend price in some months and above the blend price in other months. When the contract price is below the blend price, the pool draw could accrue to the contracting handler. On the other hand, when the contract price is above the blend price, the contracting handler will have to supplement the pool draw to pay the producer the contract price. On balance, the pluses and minuses should cancel each other out since, one could argue, the desired objective of forward contracting is to remove the uncertainty and variability in prices, not to reduce a handler's cost by cutting its payments to producers. In fact, if producers continually find that they are losing money by forward contracting, it would seem illogical for them to continue to do so.

Some commenters also argued that handlers with forward contracts under the pilot program should be prohibited from excluding milk from regulation or, as it more commonly called, depooling milk.

This issue would by necessity involve amendments to Federal orders, unlike the pilot program, which involves no amendments to Federal orders. The depooling issue is really separate from forward contracting and is not appropriate for consideration in this informal rulemaking process.

Participation in the pilot program must be entirely voluntary on the part of dairy farmers and handlers. If the Department believes that the program is being used to coerce dairy farmers into signing contracts providing for prices that, on average, are consistently below minimum order prices, steps will be taken to halt such practices. One indication that such practices could be occurring would be complaints from dairy farmers that they were dropped because they refused to sign a forward contract with a handler. Another indication might be manifested by the replacement of one group of dairy farmers with another group of dairy farmers who have entered into forward contracts with the handler. It is conceivable that some farmers might intentionally enter into a forward contract that would consistently provide a price below the minimum order price simply to get their milk pooled on a particular market for possible future benefit. This type of activity would undermine the concept of minimum prices to dairy farmers and lead to the type of conditions that the AMAA was enacted to remedy. Should these types of activities occur after the pilot program becomes effective, the Secretary would consider appropriate actions to halt such activities.

Many commenters, including several members of Congress, took issue with our reference to suspend or terminate the pilot program in the discussion part of the proposed rule. Other commenters, however, specifically welcomed the discussion of these contingencies.

It may be true, as one commenter stated, that it is unnecessary to state that the Secretary of Agriculture can terminate the pilot program if he finds that it is operating in conflict with the Agricultural Marketing Agreement Act. However, we see no harm in stating what may not be obvious to all pilot program participants: If the program is abused, steps will be taken to stop the abuse.

Therefore, based on the rationale set forth in the proposed rule and in this document we are adopting provisions of the proposal as a final rule, with the changes discussed in this document, as well as several technical changes made for clarity.

Additional information about the pilot program is included in the Department's program announcement. The information is also available on the Dairy Programs' web site (www:ams.usda.gov/fmor/index.htm) and is available from local market administrator offices.

For the reasons set forth in the preamble, Title 7 of Chapter X of the CFR is amended by adding a new Part 1140 as follows:

PART 1140—DAIRY FORWARD PRICING PILOT PROGRAM

Subpart A—Definitions

Subpart B—Rules Governing Forward Contracts

Authority: 7 U.S.C. 601 *et seq.*

Subpart A—Definitions

§ 1140.1 Definitions.

(a) *Pilot program* means the dairy forward pricing pilot program provided by an amendment to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 *et seq.*) signed into law on November 29, 1999 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536)).

(b) *Eligible milk* means the quantity of milk equal to the contracting handler's Class II, III, and IV utilization of

producer milk, in product pounds, during the month, combining all plants of a single handler regulated under the same Federal order.

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of milk from a producer defined in §§ 1001.12, 1005.12, 1006.12, 1007.12, 1030.12, 1032.12, 1033.12, 1124.12, 1126.12, 1131.12, and 1135.12, or a cooperative association defined in § 1000.18, and a handler defined in §1000.9 or 1135.9.

(d) *Contract milk* means the producer milk covered by a forward contract.

(e) *Disclosure statement* means the following statement which must be signed by each producer entering into a forward contract with a handler before the market administrator will recognize the terms and conditions provided in such contract.

Disclosure Statement

I am voluntarily entering into a forward contract with (handler's name). I have been given a copy of the contract and I have received the USDA's Pilot Program Fact Sheet to which this disclosure statement was attached. By signing this form, I understand that I am forfeiting my right to receive the order's minimum prices for that portion of my milk that is under forward contract for the duration of the contract. I also understand that my milk will be priced in accordance with the terms and conditions of the contract.

Printed Name:
Signature:
Date:
Address:
Producer No:

(f) *Other definitions.* The definition of any term in parts 1000–1135 of this chapter apply to, and are hereby made a part of, this part.

Subpart B—Rules Governing Forward Contracts

§ 1140.2 Rules governing forward contracts.

(a) Any handler defined in §§ 1000.9 and 1135.9 may enter into forward contracts with producers or cooperative associations for the handler's eligible milk. Milk under forward contract in compliance with these rules will be exempt from the minimum payment provisions that would apply to such milk pursuant to §§ 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1124.73, 1126.73, 1131.73 and 1135.73 for the period of time covered by the contract.

(b) A forward contract with a producer or cooperative association participating for the first time in this pilot program may not exceed 12 months. In no event shall a forward contract executed pursuant to this part extend beyond December 31, 2004.

(c) Forward contracts must be signed and dated by the contracting handler and producer (or cooperative association) prior to the 1st day of the 1st month for which they are to be effective and must be in the possession of the market administrator by the 15th day of that month.[1] The disclosure statement provided in § 1140.1(e) must be signed on the same date as the contract by each producer entering into a forward contract under the pilot program, and this signed disclosure statement must be attached to each contract submitted to the market administrator.

(d) In the event that a handler's contract milk exceeds the handler's eligible milk for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. If the handler does not designate the suppliers of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

(e) Payments for milk covered by a forward contract must be made on or before the dates applicable to payments for milk that is not under forward contract under the respective Federal order.

(f) Handlers participating in the pilot program will continue to be required to file all reports that are currently required under the respective marketing orders and will continue to be required to account to the pool for all milk they receive at their respective order's minimum class prices.

(g) Nothing in this part shall impede the contractual arrangements that exist between a cooperative association and its members.

Dated: July 13, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18113 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

[1] Contracts that have been signed prior to the effective date of these rules are invalid under the pilot program.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

[No. 2000–34]

RIN 3069–AA97

Federal Home Loan Bank Advances, Eligible Collateral, New Business Activities and Related Matters

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Advances Regulation and other regulations to implement the requirements of the Federal Home Loan Bank System Modernization Act of 1999 by: allowing the Federal Home Loan Banks (Banks) to accept from community financial institution (CFI) members new categories of collateral to secure advances; expanding the purposes for which the Banks may make long-term advances to CFI members; and removing the limit on the amount of a member's advances that may be secured by other real estate-related collateral. The Finance Board also is making related and other technical changes to its regulations on General Definitions, Powers and Responsibilities of Bank Boards of Directors and Senior Management, Federal Home Loan Bank Housing Associates, Community Support Requirements, Community Investment Cash Advance Programs and Standby Letters of Credit, and adopting a new regulation on New Business Activities.

DATES: The final rule is effective on August 17, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Scott L. Smith, Deputy Director, (202) 408–2991, or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Eric E. Berg, Senior Attorney-Advisor, (202) 408–2589, Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932, or Sharon B. Like, (202) 408–2930, Senior Attorney-Advisor, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

A. Historical Benefits of Federal Home Loan Bank System

The Federal Home Loan Bank System (Bank System) comprises twelve regional Banks that are instrumentalities