

U.S.C. 553) because the crop year is underway and this rule suspends language concerning offers of reserve tonnage raisins to handlers for free use. This action could provide the Committee with more flexibility in meeting its marketing needs and therefore should be implemented as soon as possible. Further, handlers are currently making their marketing plans for the upcoming season. Handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed 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.

#### § 989.54 [Amended]

2. In § 989.54, paragraph (g) the words, "On or before November 15 of the crop year," and "simultaneous", are suspended indefinitely from the first sentence.

#### § 989.67 [Amended]

3. In § 989.67, paragraph (j) the words, "by more than 5 percent" and "105 percent of", are suspended indefinitely from the first sentence.

Dated: September 22, 1997.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 97-25621 Filed 9-25-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1138

[DA-97-07]

#### Milk in the New Mexico-West Texas Marketing Area; Suspension of Certain Provisions of the Order

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

**ACTION:** Final rule; suspension.

**SUMMARY:** This document suspends certain provisions of the pool plant and

producer milk definitions of the New Mexico-West Texas Federal milk marketing order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of the producers who supply milk to the market, requested continuation of the current suspension which would limit the pooling of diverted milk. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the market will continue to have their milk priced under the New Mexico-West Texas order without incurring costly and inefficient movements of milk.

**EFFECTIVE DATE:** October 1, 1997, through September 30, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO 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 26257).

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 174 producers was pooled on the New Mexico-West Texas Federal milk order. Of these producers, 26 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 19 handlers operating pool plants under the New Mexico-West Texas order. Twelve of these handlers would be considered small businesses.

The suspension continues the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The continued suspension will allow more pooling of diverted milk. 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.

#### 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 New Mexico-West Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 13, 1997 (62 FR 26257) concerning a proposed suspension of certain

provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the 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 October 1, 1997, through September 30, 1999, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1138.7, paragraph (a)(1), the words "including producer milk diverted from the plant,";
2. In § 1138.7, paragraph (c), the words "35 percent or more of the producer"; and
3. In § 1138.13(d), paragraphs (1), (2), and (5).

#### Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions that are suspended limit the pooling of diverted milk. This suspension will be effective from October 1997 through September 1999. The current suspension will expire September 30, 1997.

This rule continues the suspension of:

1. The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted;

2. The requirement that a cooperative association must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant;

3. The requirement that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant;

4. The provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to, and physically received at, pool plants during the month; and

5. The provision that excludes from the pool, milk diverted from a pool plant to the extent that it would cause the plant to lose its status as a pool plant.

Continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the

New Mexico-West Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1995 and therefore should be continued until restructuring of the Federal order program is achieved as mandated in the 1996 Farm Bill.

A comment in support of the continuation of the suspension was filed by Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., two cooperative associations representing producers whose milk is pooled on Order 138. The cooperative associations state that the continued suspension is necessary to balance markets in the Texas and New Mexico milksheds and to allow producers in the area to participate in the Federal order program.

Select Milk Producers, Inc. (Select), a dairy cooperative located in New Mexico representing producers that account for approximately one-third of the milk that has been historically associated with the New Mexico-West Texas Marketing area, submitted a comment in opposition to the continued suspension. The cooperative states that current marketing conditions do not warrant the suspension of segments of performance standard provisions in the marketing area. According to the commentor, pooling standards that are loose or non-existent permit abusive pool shifting to occur and may result in the inefficient and uneconomical movement of milk supplies.

The cooperative association opposes the suspension of the portion of the pool plant provision which would exclude producer milk diversions for purposes of pool plant qualification. According to Select, without such a standard there is an unlimited amount of milk that can be attached to the order and diverted.

Select states that instead of suspending the pooling qualifications altogether as proposed by AMPI, the Secretary should utilize his authority to alter the shipping requirement by up to 10 percentage points as specified in Order 138. A reduced shipping requirement, according to Select, would permit qualification of milk in the order without eliminating the provision entirely.

The cooperative also states that the "touch-base" provision included in the New Mexico-West Texas order should not be suspended entirely, but that a minimum touch-base requirement should be maintained to ensure that loose shipping requirements are not abused. Furthermore, Select states that the proponent fails to identify the amount of milk that may be depooled if the standard limiting the total quantity

of milk diverted by a cooperative association is not suspended.

During the past two years, milk production in this region has increased while Class I utilization has decreased. Thus, a return to the pooling standards of the order would likely result in milk movements solely for pooling requirements and/or some milk being depooled. The continuation of the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Mexico-West Texas marketing area will continue to benefit from pooling and pricing under the order.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning October 1, 1997, through September 30, 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. One comment supporting and one comment opposing the continued 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 1138

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1138 is amended as follows:

#### PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1138 continues to read as follows:

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

**§ 1138.7 [Suspended in part]**

2. In § 1138.7, paragraph (a)(1), the words "including producer milk diverted from the plant," are suspended;

3. In § 1138.7, paragraph (c), the words "35 percent or more of the producer" are suspended; and

**§ 1138.13 [Suspended in part]**

4. In § 1138.13, paragraphs (d) (1), (2), and (5) are suspended.

Dated: September 22, 1997.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE****Rural Utilities Service****7 CFR Part 1717**

**RIN 0572-AB26**

**Settlement of Debt Owed by Electric Borrowers**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Administrator of the Rural Utilities Service (RUS) hereby establishes policies and standards for the settlement of debts and claims owed by rural electric borrowers. In addition to establishing policies and standards for debt settlement, the rule establishes RUS policy on subsequent loans to borrowers whose debt has been restructured.

**DATES:** This rule is effective September 26, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Blaine D. Stockton, Jr., Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250-1560. Telephone: 202-720-9545.

**SUPPLEMENTARY INFORMATION:** This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of the Rural Utilities Service (RUS) has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Therefore, the Regulatory Flexibility Act does not

apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

**Information Collection and Recordkeeping Requirements:** The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572-0116.

**Background**

On April 4, 1996, Public Law 104-127 (110 Stat. 888) amended section 331(b) of the Consolidated Farm and Rural Development Act (Con Act) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement). The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents. The Secretary of Agriculture, in 7 CFR 2.47, has delegated authority under section 331(b) to the Administrator of RUS, with respect to loans made or guaranteed by RUS.

The proposed rule to implement this new authority was published in the **Federal Register** on March 3, 1997 at 62 FR 9382. Comments were received from 42 different individuals or organizations, including the National

Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), the Edison Electric Institute (EEI), the Office of Inspector General of the U.S. Department of Agriculture, an ad hoc group of 6 investor-owned utilities (IOUs), 9 power supply borrowers, 16 distribution borrowers, and 12 other individuals or organizations. Two of the power supply borrowers submitted identical comments, which were supported by identical or supporting comments from 9 of their members. Five other distribution borrowers and one state-wide borrower association submitted comments identical to their power supplier's comments.

In general, comments from NRECA, CFC, and most borrowers supported a more expansive use of debt relief under section 331(b) of the Con Act, more flexibility and discretion for the Administrator to grant debt relief, no limitation on the debt relief measures, such as the proposed 5 percent floor on interest rates, and other changes in support of more generous terms and conditions for defaulting borrowers and other borrowers facing financial or competitive problems. In contrast, 2 distribution borrowers opposed settlement of borrowers' debts, stating that debt forgiveness is unfair to the majority of cooperatives who exercise fiscal responsibility and presents an undesirable public image for all electric cooperatives. EEI, the ad hoc group of 6 IOUs, and 2 individual IOUs generally favored strict limitation of the Administrator's debt settlement authority to borrowers in default or where default is imminent; more specific and more restrictive standards for determining eligibility for relief and the amount of relief provided; referral of most cases to the Department of Justice for settlement under the Attorney General's settlement authority; more extensive documentation of the need for relief, the amount of relief provided, and the underlying justification; and greater congressional and public oversight of RUS' debt settlement activities.

All comments received were considered in drafting this final regulation. The more common and more significant comments are discussed below.

**Information Collection and Recordkeeping Requirements**

Several commenters expressed concern that the estimate of 2 responses per year from the public, in the form of borrowers seeking debt settlement, was too low and might impose an artificial limit on the number of applications for