

Raisin Administrative Committee

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ADMINISTERING THE FEDERAL MARKETING
AGREEMENT AND ORDER REGULATING THE
HANDLING OF CALIFORNIA RAISINS

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July 22, 2004

Docket Clerk
Marketing Order Administrative Branch
Fruit and Vegetable Programs
AMS/USDA
1400 Independence Avenue, SW
Stop 0237
Washington D.C. 20250-0237

Att'n: George Kelhart

Hello:

I am pleased to submit the enclosed Regulatory Flexibility Act, Section 610 Review of the Marketing Order, Number 989, for Raisins Processed in California. The due date for this review is July 23, 2004.

Should you have any questions regarding this Report, do not hesitate in calling me at: (559) 225-0520.

Thank you.

Sincerely,

JOHN N. BECK
President

REGULATORY FLEXIBILITY ACT

SECTION 610 REVIEW

Marketing Order of Raisins
Produced in California
Marketing Order 989

July 23, 2004

Background

This review is being conducted under section 610 of the Regulatory Flexibility Act (RFA). The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders (orders) issued under the Agricultural Marketing Agreement Act of 1937 (Act) are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Small agricultural service firms, which include handlers and shippers of the commodity, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$750,000. As published in the *Federal Register*, April 2nd, 2003, 13 of the handlers of raisins are subject to the regulations have annual sales estimated to be at least \$5,000,000 and the remaining have sales less than \$5,000,000. No more than 10 handlers are classified as small entities. More than 90% of the producers have less than \$750,000 annual revenue from California Raisins.

In January of 1997, Fruit and Vegetable Programs (FV) of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA) made a policy decision to include initial and final RFA analyses in all of its informal and formal rulemaking documents. Prior to that, FV had been certifying that the specific rulemaking actions did not have a significant economic impact on a substantial number of small entities. The decision to include these analyses was made to ensure that the impact of regulations on small entities was more thoroughly reviewed, especially because FV orders have small entity orientation. Most rulemaking decision makers and drafters have found the RFA analysis tools useful in ensuring that all reasonable alternatives are considered in minimizing the economic burden or increasing the benefits for small entities, and for assessing the overall impact on industries, while achieving the objectives of the Act.

Consistent with this policy decision, AMS published in the *Federal Register* on February 18, 1999, a plan to review all regulations that warrant periodic review. An updated plan was published in the *Federal Register* on January 4, 2002. The reviews are being conducted over the next 10 years under section 610 of the RFA. Of the program reviews being conducted, approximately 17 are FV orders. The FV orders are being reviewed for the purpose of determining whether they should be continued without change, or should be amended, rescinded, or terminated (consistent with the objectives of applicable statutes) to minimize the impacts of small entities.

In reviewing each of its orders, FV is considering the following factors:

- (1) The continued need for the order;
- (2) The nature of complaints or comments from the public concerning the order;
- (3) The complexity of the order;
- (4) The extent to which the rules of the order overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with state and local regulations; and
- (5) The length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

USDA is required to terminate an order if it finds that the provisions no longer tend to effectuate the declared policy of the Act. Termination is also required whenever it is favored by a majority of producers who during a crop year have been engaged in the production of the commodity for market, and that such majority produce for market more than 50% (percent) of the volume of the commodity produced during that crop year.

***Review of the Marketing Order No. 989 for
Raisins Produced From Grapes Grown in California***

Marketing Order No. 989 (order) authorizes volume control measures for raisins in the form of free and reserve tonnage. Tonnage is released gradually through the season by preliminary, interim and final percentages. Under the order, free raisins can be used in any market. Reserve raisins may be sold to handlers for free use; used in diversion programs; exported to authorized countries; carried over to the next crop year; sold to government agencies; or disposed to other outlets noncompetitive with free raisins. Volume control helps balance supply and demand and is dictated by a mathematical formula described in the marketing order. All of these outlets have been used over the years. The order also authorizes minimum grade and size regulation, and minimum requirements are currently in effect. Grade and size requirements established under the order are applied to imported raisins.

The order establishes a number of calendar dates, which provide guidance to the committee in their deliberations. August 1st is the beginning of the crop year. August 15th is the calculation of the Trade Demand. October 5th, an announcement of preliminary free and reserve percentages is made, and the crop estimate is announced. If a diversion program has been called for, it is announced on or before November 30. Interim percentages can be announced on or before February 15th, and final percentages by February 15th.

California's grapes are classified into three groups –table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a significant amount of variability into the raisin market. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, a large surplus situation leads to serious marketing problems. Handlers

compete against each other in an attempt to sell more raisins to reduce inventories and to market the crop. This situation puts downward pressure on growers' prices and incomes. The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and equilibrates supply and demand.

The order authorizes marketing research and development projects and marketing promotion, including paid advertising. Projects in these areas are currently active, except that paid advertising is now being used only in foreign marketing efforts. Under the order, the industry is able to pursue a very active marketing effort in Asian and European countries.

The Raisin Administrative Committee consists of 47 members, including 35 producers, 10 handlers, 1 cooperative bargaining association member, and 1 public member. Each member has an alternate. Members' two-year terms begin on May 1st. Producer and handler members are nominated at meetings and by elected mail ballots.

Currently, there are approximately 4,500 producers and 23 handlers of California raisins. The majority of these producers and handlers would be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all industry entities regardless of size, and do not have differential impacts based on size.

The committee is also responsible for recommending implementation of regulatory actions to USDA and recommending changes to the marketing order and its rules and regulations. USDA must approve activities undertaken by the Committee before they can be implemented. Activities of the Committee are funded with assessment monies collected from handlers.

The Continued Need for the Marketing Order

The rationalization for the continuance of the order, without change, at this time, is provided below.

The order was established in August 1949 after raisin growers cast an 83% approval vote. Prior to 1949 the California raisin industry was confronted with surpluses for more than a decade. The situation changed radically during the war since raisins were in great demand. Prices rose rapidly and acreage of raisin grapes expanded significantly. However, in 1947, large wine inventories were carried over, so there was a smaller crush of raisin grapes. Commercial exports of raisins dropped.

These factors caused raisin prices to decline sharply in 1947 and 1948. A greater decline in prices would have occurred if the Government had not purchased nearly 59,000 tones of raisins.

Because of the variability in the raisin variety grape industry, it was concluded that the California raisin marketing order would create the tools necessary to react to dramatic seasonal changes in supply. In this way, producers would be benefited by higher average prices and greater aggregate returns for their raisins than would be the case³ in the absence of such control. This

would be true even if the surplus should be salvaged at low values, because the demand for raisins is inelastic. Control of the surplus would equalize among producers the burden of such surplus.

Within 7 years, the committee established minimum grade and condition standards for the industry. Over the years the order helped provide stability and a compass to the industry providing guidance in important decision-making. In 1967 the Raisin Bargaining Association was created. In 1972 a severe spring freeze caused early disaster for the crop, resulting in the smallest raisin crop since the turn of the century. Supply and demand was balanced in the wake of this freeze. In 1982, the industry created its Market Incentive Program (MIP) expanding the sales of raisins around the world, to the extent that in 2003 exports represent approximately 35% of the total sales. Production research has promulgated programs leading newer, faster, more economical production and harvesting methodologies such as dried-on-the-vine raisins and mechanical harvesting. The Raisin Marketing Order was not imposed by the Federal Government on the industry; rather, it was proposed and is supported by the industry. It has proven to be effectual time and time again.

Another example of the timeless effectiveness of the order is the administration of the export program for California raisins. The program works as follows: normally, the domestic free-tonnage price for raisins may be valued higher than that of other raisin producing countries. The program is designed to effectively blend the price a handler pays for raisins shipped into the export market. The industry supports funding for the export program through the sale of its reserve raisins. The program currently provides reserve cash or raisins available for sale to handlers at a blended sales price "cash back or raisin back." This entire program is authorized under the authority of the order. The committee defines the terms and conditions of the program, and regulates compliance with these terms and conditions.

There are reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, there are no reporting or recordkeeping burdens on either small or large handlers beyond that of past years. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with the order. For these reasons, the order does not present any unusual burden on large or small processors.

The USDA reviews industry recommendations and programs for consistency with the regulatory authorities provided in the order, the prevailing and prospective market situation, and the impact upon small businesses. An assessment is also made as to whether regulatory recommendations

or programs are practical for those who would be regulated, and whether the recommendations are consistent with USDA policy.

The California Raisin marketing order has proven to be an effective tool used by the industry for over 50 years in managing and marketing its crop. The order will help the industry to face the challenges of the future. There is definitely a continuing need for the Order.

The Nature of Complaints or Comments from the Public Concerning the Marketing Order

The RAC office issues meeting announcements and agendas in both hard copy forms to its mailing list, as well as posting announcements of meetings on its web site. All meetings are open to the public, and comments from the audience are considered in the decision-making process prior to programs being implemented.

The order describes the process for formal rule making, an exercise leading to substantive changes to the order. This process is necessarily lengthy and technical. For over a year, the industry has worked on developing a number formal rule making changes to the order which, when approved by the USDA, would be presented to the entire industry for a referendum vote. In total, over 20 substantive suggestions have been written, considered by work groups, committees, and the full board. To date, there has not been a consensus at the Board level to formally submit these proposals to the USDA for review and comment, and ultimately to the industry for a referendum vote. The RAC has voted a number of times to not hold a full referendum on the continuing need for the order.

In conclusion, there is sound industry support for the continuation of the Order, however, there are a number of industry representatives who believe the Order could be strengthened and improved via rule making changes.

The Complexity of the Marketing Order

The order itself is quite complex. It probably is more intricate and difficult than other volume control marketing orders.

Since raisins are one of those crops, which are harvested only once a year, it requires a full twelve months to work through a complete sequence of meetings and decisions. Moreover, since raisins and the marketing order allow for reserve raisins to be released by the Committee long than 18 months after harvest, and greater time is needed for cash to be generated to finalize reserve crop year pools, it can take a long time to see the impact of decisions

The RAC staff continues to do what it can to make the order and its regulations as easy to understand as possible. In addition, USDA reviews Committee recommendations to help ensure they are no more complex than necessary. Committee staff offers materials to producers and handlers explaining the programs and regulations, and periodically conducts education workshops and orientation sessions to help members better understand the programs.

The scope of the Order necessarily dictates a level of complexity. Opportunities will be present in the future to enhance simplicity as substantive amendments are carried forward in formal rule-making situations.

The Extent to which the Order Overlaps, Duplicates or Conflicts, with other Federal Rules, and to the Extent Feasible, with State and Local Regulations

Neither the USDA nor the staff of the RAC have identified any relevant Federal rules, or state and local regulations that duplicate, overlap, or conflict with this order's requirements. However, there is a companion California State marketing order that also applies to the raisin industry. This program works hand in hand with the Federal marketing order to ensure there is no duplication of efforts. The programs share staff and office space, and many of the Federal marketing order committee members are also members of the State marketing order committee. This dynamic helps to ensure the programs complement each other rather than conflict, duplicate efforts, or overlap. The State marketing organization, The California Raisin Marketing Board, engages in those activities not undertaken by the Federal order; namely production research, marketing research, and domestic market promotion. Both programs operate in concert with each other to benefit the raisin industry.

No overlaps, duplications and/or conflicts exist with other federal rules or regulations.

The Length of Time Since the Marketing Order has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the Marketing Order

Since its passage, the order has been amended 16 times. These changes have not all been major in consequence. The vast majority of the changes have been implemented outside of the formal rule making process. The actual sections of the order that have been amended over the years are listed below. These sections, along with the dates of amendments have been provided to demonstrate the flexibility of the order. The order itself is not a static document. It is dynamic and can be amended when necessary to accommodate conditions or other factors that merit attention and liveness. This characteristic is one of the strengths offered by the order in an otherwise dynamic industry such as raisins.

Changes to the order, section by section, with the dates of publication, are listed below.

§ 989.2 Act.
Date Changed, July 1977

§ 989.5 Raisins.
Date Changed, September 1972

§ 989.8 Natural condition raisins.
Date Changed, December 1960 July 1977

§ 989.10 Varietal types.
Date Changed, July 1983

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§ 989.11 Producer.
Date Changed, January 1985

§ 989.12a Cooperative bargaining association
Date Changed, August 1967

§ 989.13 Processor.
Date Changed, August, 1967, February 1968, July 1977

§ 989.14 Packer
Date Changed, August 1967

§ 989.15 Handler.
Date Changed, September 1972

§ 989.18 Committee.
Date Changed, August 1976

§ 989.21 Crop year.
Date Changed, August 1976

§ 989.22 District.
Date Changed, July 1983

**§ 989.24 Standard raisins, off-grade raisins,
other failing raisins, and raisin residual material.**
Date Changed, December 1960, July 1977

§ 989.24a Non-normal outlets.
Date Changed, July 1964

§ 989.26 Establishment and membership.
Date Changed, July 1983

§ 989.27 Eligibility.
Date Changed, July 1983

§ 989.28 Term of Office.
Date Changed, July 1983

**§ 989.29 Initial members and nominations
of successor members.**
Date Changed, July 1983, August 1989

§ 989.30 Selection
Date Changed, July 1983

§ 989.31 Failure to nominate.
Date Changed, August 1976

§ 989.32 Acceptance.
Date Changed, July 1983

§ 989.33 Alternate members.
Date Changed, August 1976

§ 989.34 Vacancies.
Date Changed, August 1976

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§ 989.35 Powers.

Date Changed, August 1976, July 1983

§ 989.37 Obligation.

Date Changed, August 1976

§ 989.38 Procedure.

Date Changed, July 1983

§ 989.39 Compensation and expenses.

Date Changed, August 1989

§ 989.53 Research and development

Date Changed, July 1983

§ 989.54 Marketing Policy

Date Changed, July 1983, January 1985, June 1989

§ 989.55 Regulation by the Secretary.

Date Changed, July 1983

§ 989.56 Raisin Diversion program.

Date Changed, January 1985, October 1985, August 1989

§ 989.58 Natural condition raisins.

Date Changed, December 1960, July 1964, August 1967, December 1967, July 1977

**§ 989.59 Regulation of the handling of raisins subsequent
to their acquisition by handlers.**

Date Changed, December 1960, August 1967, September 1972, July 1977

§ 989.60 Exemption.

Date Changed, July 1964, December 1967, September 1972, July 1977

§ 989.61 Above parity situations.

Date Changed, July 1977

§ 989.65 Free and reserve tonnage

Date Changed, July 1983

§ 989.66 Reserve tonnage generally.

Date Changed, August 1967, September 1972, August 1976, July 1977, July 1983, August 1989

§ 989.67 Disposal of reserve raisins.

Date Changed, August 1967, September 1972, August 1976, July 1977, July 1983, January 1986, August 1989

**§ 989.71 Disposition of unsold reserve
tonnage in above parity situations.**

Date Changed, August 1967

§ 989.73 Reports.

Date Changed, December 1960, August 1967, December 1967, July 1983

§ 989.76 Records.

Date Changed, December 1960, July 1983

§ 989.77 Verification of reports and records.

Date Changed, December 1960, July 1983

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§ 989.79 Expenses.

Date Changed, August 1967, August 1976, July 1977

§ 989.80 Assessments.

Date Changed, July 1964, August 1967, July 1977, July 1983

§ 989.82 Expenses of reserve raisin operations.

Date Changed, August 1967, September 1972, July 1977

§ 989.84 Disposition limitation.

Date Changed, August 1967, July 1977

§ 989.85 Personal liability.

Date Changed, August 1976, July 1983

§ 989.91 Suspension or termination.

Date Changed, December 1960, August 1976

§ 989.95 Right of Secretary.

Date Changed, August 1979, July 1983

Production improvements have occurred in the raisin industry which have required modification in the order. Examples would include Dried on the Vine (fruit that is not laid on paper trays for drying), mechanical harvesting of vineyards, etc. Increased application of these new technologies has required flexibility in certain sections of the order. For instance, deadline dates for harvest or transfers, etc. change when fruit matures quicker and/or is harvested earlier. These amendments have been adopted and changes have been made to the betterment of the entire industry.

Also provided in this document is a summary of the modifications that have been made on the order's rules and regulations. Again, this is provided as further evidence of the dynamic nature of the order and its regulations. In summary, the changes noted below, were made to help in the timeliness of issues; changes made to maximize convenience in compliance; changes made to help both producers and processors in any particular crop year; and, changes which stabilize the marketplace.

Changes to the order's rules and regulations, section by section, with the dates of publication, are listed below.

§ 989.102 Inspection service.

Date Changed, May 1984

§ 989.105 Inspection Point.

Date Changed, December 1966

§ 989.110 Varietal Types.

Date Changed, May 1984, September 1988, August 1990, May 2002, July 2003

**§ 989.111 Independent producer and
small cooperative producer.**

Date Changed, May 1984

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§ 989.115 Independent handler, major cooperative marketing association handler, and small cooperative marketing association handler.
Date Changed, May 1984

§ 989.122 Districts for independent and small cooperative producer representation on the Committee.
Date Changed, May 1984

§ 989.126 Representation of the Committee.
Date Changed, May 1984, May 1994

§ 989.129 Voting at nominations meetings.
Date Changed, April 1973, September 1977

§ 989.139 Compensation for attendance of alternates at Committee meetings.
Date Changed, September 1977, May 1984

§ 989.154 Marketing policy computations.
Date Changed, August 1999, July 2000, August 2002

§ 989.156 Raisin diversion program
Date Changed,

January 1985	January 2001
August 1985	December 2001
December 1985	March 2002
April 1986	June 2002
February 1988	November 2002
September 1988	January 2003
March 1989	March 2003
January 1996	May 2003
November 1997	

§ 989.157 Raisins produced from grapes grown outside of California.
Date Changed, July 1990

§ 989.158 Natural condition raisins.
Date Changed,

March 1962	October 1970
October 19, 1962	July 1973
October 25, 1962	September 1977
December 1963	May 1984
December 1966	August 1984
November 1967	January 1990
December 1967	September 1990

§ 989.159 Regulation of the handling of raisins subsequent to their acquisition.
Date Changed, March 1962, May 1965, December 1966, July 1971, May 1973, July 1973, September 1977, May 1984

§ 989.160 Exemptions.
Date Changed, May 1965, May 1973, August 1994

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§ 989.166 Reserve tonnage generally.

Date Changed, November 1967, June 1973, September 1977, May 1984, July 1989, August 1991, July 2003

§ 989.167 Disposal of reserve raisins.

Date Changed, November 1967, January 1968, July 1984.

§ 989.173 Reports.

Date Changed,

March 1962	July 1973
October 1963	July 1974
August 1964	September 1977
May 1965	May 1984
December 1966	July 1990
November 1967	March 2000
May 1973	July 2001

The topics listed above reflect the diverse nature of the order and its capacity for change. Over the years, the changes have occurred without interruption in the functioning of the order.

Conclusion

In conclusion, we believe the Marketing Order, No. 949, for the Handling of Raisins Produced in California meets all of the requirements necessary for continuance without change. The order has stood the test of time and change and is vitally necessary for the continued success of this important commodity in today's complex, international marketplace.