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February 2, 2004

Via Email and Fax

Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Ave. S.W. Stop 0237
Washington, DC 20250-0237

Reference: Docket No. FV03-900-1 PR; 68 FR 67381-5 December 2, 2003. Proposed Rule to Exempt 100% Organic Producers from Assessments for Market Promotion Activities under Marketing Order Programs

Dear Sirs:

These comments are submitted on behalf of Sun-Maid Growers of California and the over 1,000 raisin growers Sun-Maid represents within the California raisin industry. As a marketing cooperative, under Sun-Maid's by-laws and marketing agreements, Sun-Maid has the authority and the responsibility to represent our grower members on their behalf in marketing order programs. As such we represent approximately one-third of the California raisin industry subject to the federal marketing order on raisins 7 CFR Part 989. Also, having previously discussed these issues with other California raisin industry persons, we believe in full confidence that our comments represent the concerns of most of the California raisin industry growers.

Also, as marketer and distributor of a wide assortment of dried fruits, our comments are also applicable to dried prunes (plums), dates, cranberries, and cherries.

Also, Sun-Maid is a marketer (and handler) of both organic and non-organic products and understands and appreciates the care and precision by which the U.S.D.A. has drafted the proposed rule, as well as the precise nature of section 10607 of the 2002 Farm Bill which established this limited exemption.

Appropriate limits of exemption.

We have been advised that as a general matter of legal interpretation of laws and regulations, that "exemptions" are read narrowly rather than expansively. This places § 10607 into proper

context. As stated in the brief AMS "Small Business Guide for complying with Marketing Agreements and Orders for Fruits Vegetables and Specialty Crops" (the "Small Business Guide").

> "Marketing orders help fruit and vegetable growers work together to solve marketing problems that they cannot solve individually."

As such, the fundamental principle of marketing orders is collective action by 100% of the persons and that there are no "free riders"; or as few "free riders" as reasonably possible.

Under properly designed and executed marketing order "market promotion programs" and "research" programs, all persons involved in the production and marketing of the commodity gain. For example, like the federal Almond Board, the state of California Raisin Marketing Board has conducted research activities on the human health benefits of eating raisins versus other food choices. These have been consistent with the National Cancer Institute and the well recognized Produce for Better Health efforts to promote more fruit and vegetable consumption to improve national eating trends and health. As such, these efforts assist all California raisin growers, whether organic or not.

Likewise, research is also being conducted on improving grape/raisin growing techniques to improve yields per acre, reduce costs, and improve quality. Similar to health research, all raisin producers benefit from such efforts.

Nonetheless, Congress has recognized that,

> "a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non organic products, shall be exempt from the payment of an assessment under a commodity promotion law...." (Section 10607 of the 2002 Farm Bill).

This limited exemption and the proposed rules are appropriate because these create the fewest number of "free riders", while at the same time still create the opportunity for 100% organic producers who either market their own product or who market with handlers who handle only 100% organic. Sun-Maid will not be eligible for the exemption on our organic volume but finds this understandable and acceptable.

2. <u>Application procedure and Board participation.</u>

As an active participant in federal marketing order programs and their administration since the creation of the federal marketing order on raisins was created in 1949, Sun-Maid agrees with the administration of the proposed exemption being by application and being reviewed by the specific commodity board. Each board has the responsibility for the administration of its marketing order and any exemptions, and the responsibility for the exemptions appropriately should remain there.

3. <u>Continued participation in other marketing order activities.</u>

The Small Business Guide summarizes four basic marketing order activities and their purpose:

	Order Activity/Purpose	Handler Responsibility
A.	Fund committee operations through assessments on handlers. In many programs, assessment funds are also used for research and development projects to improve production, distribution, and consumption.	Pay assessments to the committee on a pro rata basis.
B.	Establish minimum grade, size, quality and maturity requirements to promote repeat consumer purchasing and increase demand, and, set the size, capacity, weight, dimensions or pack of the containers used by the industry to enable the industry to eliminate deceptive containers and pricing practices.	Obtain Federal or Federal-State inspection and certification that commodity meets applicable requirements.
C.	Collect and publish shipment and other market information to effectively operate a marketing order program. This information is also useful to individual growers and handlers in making informed marketing decisions, thus promoting competition and efficiency.	Submit any required reports to the committee on a periodic basis and maintain records.
D.	Establish volume controls or provide for reserve pools so that excess production can be returned to the market during times of diminished supplies.	Requirements vary, but may include witholding a portion of the commodity received from farmers for sale at a later time when marketing conditions improve.

We recommend that the Small Business Guide be modified to include an explanation on the new organic exemption for market promotion and research assessment. In explaining the exemption, we recommend that it explain that:

- The exemption does not apply to assessments which are spent on activities which are not market promotion and research.
  The exemption does not apply to the other activities of marketing orders (lettered B, C, and D above).
  The exemption only applies to federal marketing orders under the 1937 Marketing Act, and not state marketing orders.

Likewise, we recommend that similar explanations are included in the final Federal Register announcement finalizing the provisions of this new rule.

Thank you for your consideration.

Sincerely,

Barry F. Kriebel
President

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