

TRANSCRIPT OF PROCEEDINGS

PROPOSED AMENDMENTS TO THE MARKETING ORDER
REGULATING RAISIN PRODUCE FROM GRAPES
GROWN IN CALIFORNIA
(MARKETING ORDER NO. 989)

Pages: 299 through 371
Place: Fresno, California
Date: February 14, 2024

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UNITED STATES DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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PROPOSED AMENDMENTS TO THE MARKETING ORDER
REGULATING RAISIN PRODUCE FROM GRAPES
GROWN IN CALIFORNIA
(MARKETING ORDER NO. 989)

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WEDNESDAY,
FEBRUARY 14, 2024

The hearing came to order at 9:08 a.m. at
Office of the Raisin Administrative Committee, located
at 2445 Capitol Street, #200, Fresno, California,
Channing Strother, Chief Administrative Law Judge,
presiding.

BEFORE:

CHANNING STROTHER
Chief administrative Law Judge

1 APPEARANCES:

2 On Behalf of the U.S. Department of Agriculture:

3 CHRISTY PANKEY, Agricultural Marketing Specialist
4 SANDI DREISONSTOK, Agricultural Marketing Specialist
5 RUPA CHILUKURI, Attorney with the Office of the General
6 Counsel representing U.S. Department of
7 Agriculture, the Agricultural Marketing Services
8 SAMANTHA DORSEY, Attorney Advisor with the USDA Office
9 Of General Counsel
10 BARRY BROADBENT, Acting Branch Chief, Western Region
11 Branch, Marketing Development Division
12 MARC MCFETRIDGE, Agricultural Economist, U.S. Department
13 Of Agriculture, Agricultural Marketing Services,
14 Specialty Crops Program, Marketing Development
15 Division.
16 JEREMY SASSELLI, USDA Marketing Specialist
17 KATHIE NOTORO, USDA Marketing Specialist

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:08 A.M.

3 FURTHER TESTIMONY OF RICHARD CROWE

4 JUDGE STROTHER: Mr. Crowe, welcome back to the
5 stand.

6 MR. CROWE: Do you want me to go over there?

7 JUDGE STROTHER: Yeah, go ahead and sit in that
8 spot. I don't think you'll be there long, but who
9 knows.

10 MR. CROWE: No, I don't think so.

11 JUDGE STROTHER: Okay. You may sit. I'll remind
12 you you're still under oath.

13 MR. CROWE: Okay.

14 JUDGE STROTHER: First thing, let's just mark these
15 with exhibit numbers, I think. Not that it means it's
16 necessarily going to go into the record. I think we're
17 up to Exhibit 26; is that right?

18 MR. SASSELLI: Actually, 27.

19 JUDGE STROTHER: 27?

20 MS. CHILUKURI: Yeah.

21 JUDGE STROTHER: All right. I've got a document,
22 "California leads in raisin production," and this will
23 be 27.

24 (Whereupon, Exhibit 27 was marked
25 for identification.)

1 JUDGE STROTHER: "Top Raisin Producing Countries,"
2 we'll label that for identification Exhibit 28.

3 (Whereupon, Exhibit 28 was marked
4 for identification.)

5 JUDGE STROTHER: Exhibit 29 is an "Ag MRC, A
6 National Information Resource for Value Added
7 Agriculture." We'll label that Exhibit 28.

8 MR. CROWE: 28 or 29?

9 JUDGE STROTHER: I'm sorry, 29.

10 (Whereupon, Exhibit 29 was marked
11 for identification.)

12 JUDGE STROTHER: I've got -- we're back on the
13 record, aren't we?

14 All right. Counsel, it came up in your cross.
15 Do you want to talk to the witness first?

16 MS. CHILUKURI: Defer to AMS.

17 RE-CROSS-EXAMINATION

18 BY MS. PANKEY:

19 Q. Hi, Mr. Crowe. Thank you for taking the stand
20 again today.

21 Could you just briefly explain to us the
22 purpose of these exhibits and -- and what -- what
23 relevance they have?

24 A. Yes. So in the absence of Factor 5 to provide
25 world data of grape production to the Secretary, since

1 we don't have the NASS report since 2019 for the rest of
2 that information, this is a marketing -- Agricultural
3 Marketing Resource Center report synopsis. The actual
4 report, if you want to get the entirety of it, costs
5 \$2500, so -- but the point and the relevancy is that
6 it -- there are ways to get these data to the USDA, to
7 the Secretary if the Committee can't come up with the
8 world data. It looks like they may have done that.

9 And the other two articles are just what was
10 discussed yesterday, the ways and manners and means of
11 producing grapes and raisins.

12 And the other one is on California -- it's an
13 older report, but the top raisin-producing countries
14 gives you another perspective of the world raisin
15 development.

16 That's all. It was just a short little
17 statement that these are -- in the absence of Factor 5
18 requirement, the USDA can obtain some of these data from
19 these reports if needed.

20 Q. Okay.

21 JUDGE STROTHER: First of all, I apologize. I
22 think I misremembered what these exhibits went to.
23 These go to daily production around the world, not to
24 whether they're economic alternatives.

25 MR. CROWE: That's right. It's the world global

1 raisin production data that was called for in Factor 5.
2 That's now moot, but this is an alternative source.

3 BY MS. PANKEY:

4 Q. Okay. Thank you.

5 I just -- I think yesterday when I was asking
6 you about Factor Number 4, the estimated desirable
7 carryout, I'm not sure if I got exactly what that was
8 and why that's no longer needed, but maybe you can
9 provide a little bit more explanation.

10 A. Well, as I understand it, it's linked to the
11 volume control, and since the volume control requirement
12 authority was removed at the last market order revision,
13 there's no -- there's no carryover anymore apparently,
14 so that's all -- that's why it's -- in its entirety,
15 we're asking to just remove Factor 4, and just revise
16 Factor 5 to remove the global situation and demand of
17 raisins.

18 Q. Okay.

19 MS. PANKEY: Okay. I have no further questioning.

20 JUDGE STROTHER: Okay.

21 CROSS-EXAMINATION

22 BY MS. CHILUKURI:

23 Q. Hi, Mr. Crowe. I just wanted to follow up on
24 one thing you said in your testimony. You said USDA
25 could refer to these sources; is that correct? So could

1 the RAC refer to these sources that you're citing?

2 A. Well, that begs the question, is the RAC
3 supposed to develop global raisin demand reports and
4 scenarios, and then send them to the USDA to use to
5 report to the Secretary, or is the USDA and the National
6 Agricultural Statistics Service supposed to develop
7 those? That's -- to me, that's the -- begs in a
8 question.

9 Q. Okay. So I won't be answering any
10 questions --

11 A. I know.

12 Q. -- but did you want to answer the question?

13 A. That's the question that's out there for us.
14 I mean, I don't know if we have the wherewithal or -- to
15 do global scenarios, get into Turkey, get into
16 Argentina, Afghanistan -- I doubt that we can get any
17 data from Afghanistan these days. So, you know,
18 that's -- that's an echelon way above me in terms of how
19 do we determine if Factor 5 is even relevant anymore.

20 Q. Okay. So if I'm understanding correctly,
21 Factor 5 may not be relevant, NASS no longer publishes
22 that report that provides that data --

23 A. That's correct.

24 Q. -- and it may be difficult for the RAC to
25 obtain that data for different reasons --

1 A. Yes.

2 Q. -- whether it's cost prohibitive or you
3 just -- it's hard for you to get the data; is that
4 correct?

5 A. That's my perspective, but I'm just humble me.

6 Q. Okay. Thank you very much. I don't have any
7 other questions.

8 JUDGE STROTHER: Anyone else, any questions?

9 Okay. Anyone object to these going into the
10 record?

11 Let me expand on my thinking on that. I
12 don't -- I don't know enough about the background of
13 what's in these -- what's being talked about in these
14 items to know the truth for purposes of hearsay, but, I
15 mean, these are examples of potential other places data
16 could be obtained --

17 MR. CROWE: Research.

18 JUDGE STROTHER: -- I think is what the witness is
19 saying, and I think it's relevant to that. And I don't
20 make a decision in this case so I don't assign weight to
21 them, so I'm making no determination about what weight
22 should be given those.

23 But, thank you, Mr. Crowe.

24 All right. Are we ready for Mr. -- Mr. -- I'm
25 sorry, say your name again.

1 THE WITNESS: Richard Sahatjian.

2 TESTIMONY OF RICHARD SAHATJIAN

3 JUDGE STROTHER: Welcome back, or welcome,
4 Mr. Sahatjian. I'll get it right by the time you leave.

5 Raise your right hand.

6 RICHARD SAHATJIAN,
7 having been first duly sworn, testified and was
8 examined, as follows:

9 MR. SAHATJIAN: I do.

10 JUDGE STROTHER: You have an exhibit, which is, I
11 guess your statement, "Quality Standards for
12 Reconditioned Raisins." Let's label that for
13 identification Exhibit 30.

14 (Whereupon, Exhibit 30 was marked
15 for identification.)

16 JUDGE STROTHER: Okay. You may proceed with your
17 statement, sir.

18 MR. SAHATJIAN: My name is Richard Sahatjian.

19 You want my address? Sorry.

20 JUDGE STROTHER: Yes, give your name, spell your
21 name --

22 MR. SAHATJIAN: Spell it, and address.

23 JUDGE STROTHER: -- address, and your position.

24 MR. SAHATJIAN: Okay. Richard Sahatjian.

25 R-i-c-h-a-r-d S-a-h-a-t-j-i-a-n. Address is 11687 Road

1 27 1/2 in Madera, California, 93637.

2 My name is Richard Sahatjian. I'm executive
3 vice-president of Victor Packing, a large handler and
4 small producer of California raisins. I also serve as a
5 board member of the Raisin Administrative Committee. I
6 have a vested interest in the United States agriculture
7 and, more specifically, in the California raisin
8 industry. My family has farmed in California's San
9 Joaquin Valley since 1928, and started Victor Packing in
10 1963 to handle, process, pack, and ship California
11 raisins domestically and throughout the world. I am
12 testifying on a proposal to add language to our
13 marketing order that clarifies that successfully
14 reconditioned that meet the order's minimum grade
15 requirements should not be differentiated from other
16 raisin for any purposes. The RAC recommended this
17 language to streamline the sales process.

18 The purpose of the proposal I'm speaking about
19 today is to add language that clarifies that
20 successfully reconditioned fruit that meets the order's
21 minimum grade requirements shall not be differentiated
22 from other fruit.

23 The Committee believes that there is the
24 impression in the raisin market that the quality of
25 reconditioned raisins that have been reworked and

1 reinspected to meet the order's minimum grade
2 requirements is somehow diminished. This has been
3 evidenced in the past with sales solicitations that
4 specify that the product cannot be reconditioned fruit,
5 from both government and outside customer requests. The
6 Committee believes that this additional language will
7 help to dispel this negative impression by defining
8 natural condition raisins as any raisins that have been
9 inspected and meet the order's minimum requirements,
10 regardless of whether the fruit has been reworked at
11 some point.

12 The current order language does not address
13 quality of reconditioned fruit specifically. The
14 addition of a paragraph clarifying that the quality of
15 reconditioned fruit is not differentiated from other
16 marketable fruit is what is desirable.

17 We anticipate no negative impacts on
18 producers, handlers, and consumers with the addition of
19 the proposed language. The change may positively impact
20 producers and handlers in the marketing of their fruit.
21 The change would not impact the quality of the fruit but
22 would allow handlers to market fruit without prejudice
23 based on how the fruit was conditioned.

24 Over the past 20 years -- and you guys have
25 heard a lot in testimony about this -- the California

1 raisin industry has contracted from producing over
2 350,000 tons to now producing roughly half that volume.
3 Because we now have much smaller production and in
4 certain years a high percentage in need of
5 reconditioning, such as the 2023 crop, there's a greater
6 need to eliminate the differentiation and stigma
7 associated with reconditioned raisins. If raisins are
8 reconditioned to meet incoming grade standards, why have
9 the negative label associated with that lot of raisins?
10 If the reconditioning process fails to increase the
11 quality of a lot of raisins to meet minimum incoming
12 grades, then the product continues to fail incoming
13 inspection and must be further reworked.

14 Also, in the past when the industry had a
15 reserve pool, we were not allowed to put reconditioned
16 raisins in the reserve pool. Now there's no reserve
17 pool, this -- now there's no reserve pool, so this
18 further limits the usefulness of the reconditioned
19 categorization.

20 I guess the second point about eliminating
21 this reconditioned category is that not all
22 reconditioning is the same, so there's a stigma
23 associated with reconditioned raisins, but some raisins
24 fail for minimal grade -- for minimal issues.

25 For -- for more -- for these minimal reworked

1 matters -- sorry.

2 For some -- for some raisins failing incoming
3 inspection, we run minimal rework processes to improve
4 quality that minimally affect the rains. For more
5 problematic lots that have excessive mold or moisture, a
6 more intensive process is undertaken to remedy the
7 failing grapes. Regardless of the process used, the
8 whole point of reconditioning is to bring product into
9 compliance with minimum incoming grades and standards.
10 For example, if incoming product comes in and fails for
11 maturity, the handler will typically run the raisins
12 vacuum to pull out substandard and immature fruit. This
13 is an example of some raisins coming in that have
14 minimally -- minimal defect.

15 The end product is raisins that meet incoming
16 grades with no failing defects, but it still has the
17 negative label of reconditioned raisins attached to it.
18 Adding the proposed language would eliminate this
19 negative label.

20 Ultimately, customer requests and
21 specifications dictate which raw product is used for the
22 final pack. For some customers, packers still use --
23 still will not use reconditioned raisins or will not use
24 a certain type of reconditioned raisins. For example,
25 some customers want bloom on fruit to be on -- bloom

1 from the fruit to be on the raisins for baking or
2 cosmetic purposes. Some customers use the yeast that is
3 living in the bloom of the raisin. During a
4 wash-and-dry reconditioning process, we wash the fruit
5 before redrying it and largely remove the bloom of the
6 fruit. So for this reason, we cannot wash-and-dry
7 reconditioned raisins. But we might be able to use
8 other types of reconditioned raisins if we set aside the
9 stigma. Other customers place a premium on the cosmetic
10 appearance of the bloom. Whatever the reason, beauty is
11 ultimately in the eye of the beholder, and we will
12 continue to tailor the packed product to customer
13 specifications.

14 In conclusion, I am in support of adding
15 language to the order that clarifies that successfully
16 reconditioned raisins that meet the order's minimum
17 grade requirements should not be differentiated from
18 other raisins for any purpose. Eliminating outdated
19 restrictions that serve -- that serve no good purpose
20 will help streamline the sales process, and we believe
21 this will be a positive change for the California raisin
22 handlers and growers.

23 JUDGE STROTHER: Can I just ask, everybody here
24 probably knows, but I don't know, so is bloom --

25 MR. SAHATJIAN: Oh.

1 JUDGE STROTHER: -- just yeast?

2 MR. SAHATJIAN: So bloom, yeah, bloom is what's --
3 what's on the grapes when they're developing, and it's
4 kind of like a white film, I guess is the best way to
5 explain it, and it stays on raisins that are minimally
6 handled. So, you know, if they're just hand-picked, put
7 on trays, and harvested, they come into the packing
8 facilities with bloom on them. Now, when you start
9 doing different harvesting techniques that -- that
10 handle the raisins more -- or with machines that are,
11 you know, that have more contact with the raisins, or
12 the grapes as they're being dried, that bloom can start
13 coming off. And then in a wash-and-dry reconditioned
14 process, that -- most of that bloom come off the
15 raisins.

16 But some customers, and this is just one
17 example, some -- some customers use it, and then some
18 customers want to see it on the product. It's kind of a
19 natural -- well, it's a naturally occurring substance
20 that's on -- that's on the product.

21 JUDGE STROTHER: Does it help the raisins thrive?
22 Is it like detritus for wine grapes?

23 MR. SAHATJIAN: No, but it -- but it probably -- it
24 has an effect of, like, protecting the grapes as
25 they're -- as they're developing from the elements, from

1 different environmental and -- I mean, from -- from
2 rain, you know, and also probably from pests as well.

3 JUDGE STROTHER: Very well.

4 Your witness, USDA.

5 CROSS-EXAMINATION

6 BY MS. PANKEY:

7 Q. Is it Sahatjian?

8 A. Yep.

9 Q. Okay. Thank you, Mr. Sahatjian.

10 In regards to your discussion about bloom, so
11 would bloom be considered a defect?

12 A. No.

13 Q. No. So I believe what you're saying is that
14 when you recondition fruit, you would lose this bloom
15 through the wash-and-dry process; is that what you were
16 saying?

17 A. It was just an example of -- the bloom -- the
18 bloom on raisins is -- is removed when you wash and dry
19 product, and that's -- you know, but conversely, if
20 you're not doing a full wash -- so there's multiple ways
21 to recondition product, you know, as minimally as
22 running product over a shaker to limit foreign material
23 that -- that ended up in the raisins while they were
24 being dried or boxed into bins before coming into
25 packing facilities. So -- so on one end, you know, you

1 have, you know, just shaking raisins over a conveyor,
2 shaker conveyor. On the other end of the extreme is a
3 full wash and dry to remedy greater defects in the
4 raisins. So if the product comes into the packing
5 facility with -- with mold or with excessive moisture,
6 or fermentation, I mean, there's -- there's so many
7 things that could -- could -- could be causing the
8 product to fail incoming grade.

9 Depending on what that defect is, the packing
10 facility will, you know, tailor the method to -- to
11 that, and do essentially the minimally -- the least
12 invasive process to that product. When you -- when you
13 have to do a wash and dry versus just put product over a
14 shaker or put product under a vacuum that has, you know,
15 minimal impact on the -- on the fruit quality, when you
16 have to do a wash and dry, you're going to have --
17 you're going to lose the bloom of the raisin. It is
18 just an example of the extremes or the -- or the varying
19 degrees of reconditioning that are required, or that
20 could be -- could -- that could remedy the problem.

21 But there's -- there's just a big spectrum,
22 you know, so instead of throwing all -- all of these
23 into a category and saying, hey, these are all bad, you
24 shouldn't use these for certain, you know, customers or
25 certain -- or you can't use them for the government

1 purposes, instead of doing that, I think it's -- the
2 most important thing is at the end of that process, it
3 meets incoming inspection, it meets incoming grade. And
4 if it doesn't, then it's still failing product, you
5 shouldn't be able to use it for anything. But if it
6 does, we don't see any purpose to have it continue to be
7 categorized reconditioned process -- or reconditioned
8 product throughout the life of that -- you know,
9 throughout the trace path of that -- of that lot.

10 Q. So for customers that specify that they want
11 bloom on their raisins, but it failed the incoming
12 inspection and you had to do a reconditioning of it,
13 right, but you did a method that wasn't as invasive so
14 you were able to maintain that bloom, are customers
15 still saying that they don't want -- those customers
16 that want bloom, are they saying that they won't want
17 reconditioned fruit, or is that something you're
18 experiencing if you know you have to do that?

19 A. It would be on case-by-case basis. I mean,
20 some customers just say we don't want reconditioned
21 raisins, because there's that negative stigma associated
22 with it. And they -- they might not understand that,
23 hey, we just barely did anything to this product, you
24 know, it had minimal impact on the product itself, but
25 they just -- you know, they don't have that depth of

1 understanding.

2 Q. Okay. And in your opinion, you believe by
3 adding this language to the marketing order, it would
4 clarify that and solve that issue?

5 A. Yes.

6 Q. Okay. Thank you.

7 Some preliminary questions for you. To what
8 extent were you involved in the discussions and the
9 deliberations on the proposed amendments?

10 A. I was involved in Committee meetings.

11 Q. Okay. Did you serve on any committees or -- I
12 mean subcommittees or --

13 A. Not -- not the rulemaking subcommittee, no.

14 Q. Okay. Do you believe the amendments proposed
15 have the broadest of industry support?

16 A. Yes.

17 Q. To your knowledge, did all industry groups,
18 including those representing small businesses, have an
19 opportunity to provide input on the proposed amendments?

20 A. Yes.

21 Q. Based on your understanding, would any groups
22 in industry have an unfair advantage as to -- as a
23 result of these amendments?

24 A. No.

25 Q. Do you support the amendments as proposed?

1 A. Yes.

2 Q. Okay. Thank you.

3 I think you already explained this in your
4 testimony, but would you provide us -- could you tell
5 what reconditioned raisins are once again?

6 A. Yeah. Reconditioned raisins are raisins that
7 initially fail incoming grades and standards. And when
8 raisins come into a packing facility that fail incoming
9 grades and standards, packing facilities are required to
10 do something to the product to get it up to a standard
11 that's acceptable. Growers also have a -- have the
12 ability to take the product back to their farms and
13 rework them, but the majority of the product is -- is
14 reworked or reconditioned at packing facilities.

15 You've had other testimony about dehydrators.
16 So dehydrators are used in some reconditioning
17 processes. There's a -- there's a big spectrum, like I
18 alluded to earlier, from just running product over a
19 shaker to eliminate foreign material all the way up to
20 wash and dry to remove mold, fermentation. If there's
21 excessive moisture, then they're dried, dried down
22 further in dehydrators. So that -- there's a big span,
23 there's a big -- there's a pretty big spectrum of why
24 something could fail and what needs to be done.
25 Substandard products, you know, if there's excessive

1 substandard product in the incoming raisins, or
2 excessive -- or low maturity, a low B&B, then product
3 needs to be reworked in one way or another as well.

4 Q. Okay. So as you stated, with reconditioning,
5 there's multiple methods that can be applied depending
6 on what defects are found in that initial inspection,
7 correct?

8 A. Correct.

9 Q. So basically, just -- so reconditioning is the
10 industry's way of separating good fruit that would pass
11 inspection versus the defective fruit; is that correct?

12 A. It's a way -- reconditioning is a way to bring
13 failing-grade raisins up to passing-grade raisins for
14 incoming inspection.

15 Q. And does that include removing the defective
16 fruit --

17 A. Yes.

18 Q. -- from the lot?

19 A. Yes.

20 Just to kind of expand a little bit on that,
21 so if a product comes in and has excessive substandard
22 raisins, so too much product in it that has no maturity,
23 no sugar, right, and with regard to raisins, sugar is
24 the key, I mean, we can't have raisins without sugar,
25 like a lot of fruit products, I guess. So if there's

1 too much or excessive substandard fruit within a lot of
2 raisins, we -- through the reconditioning process, we
3 remove a portion of that substandard fruit so that the
4 end product is at a passing level, and it's based on
5 percentages. And the -- the incoming inspection, the
6 grades allow for some substandard product, but if it
7 exceeds a certain threshold, it needs to be
8 reconditioned, we need to remove the excess amount.

9 Q. Okay. And in your opinion -- you said that if
10 customers that are specifying that they do not want this
11 reconditioned fruit. In your opinion, why would these
12 customers have this negative connotation about
13 reconditioned fruit? What is it that they're
14 misunderstanding about the product? Why would they say
15 that they don't want it?

16 A. They think that it's somehow inferior product
17 because it came in and initially failed incoming
18 inspection. It just sounds bad. Same reason why I
19 think the government previously didn't want
20 reconditioned raisins, because they wanted -- they
21 have -- there's a negative stigma attached to any
22 product that doesn't come in and initially pass
23 incoming inspection.

24 Q. Right. So what you're saying is when -- when
25 the fruit has been reconditioned, and it does pass

1 inspection, at that point what would the fruit be
2 categorized as?

3 A. It should just be categorized as any other
4 natural lot of -- natural conditioned raisins.

5 Q. And what are natural condition raisins?

6 A. Natural condition raisins are essentially raw
7 raisins out of -- you know, out of the field that still
8 need to be processed for human consumption, but they are
9 in -- they meet incoming grades and standards --

10 Q. Okay.

11 A. -- which are different than outgoing grades
12 and standards.

13 Q. Is there any price difference between raisins
14 that have been reconditioned and raisins that were not?

15 A. To the grower or to the -- to the trade or --
16 or --

17 Q. To the customers.

18 A. To customers. Not -- not any that -- I mean,
19 there's no price difference -- there might be different
20 prices that certain customers have, I mean, different
21 customers have different prices depending on
22 specification, and -- but to answer your question, no.

23 Q. Okay. Were there instances where you
24 reconditioned fruit as a handler, and it was rejected or
25 not sold because it was reconditioned?

1 A. Ultimately, we -- we end up selling -- selling
2 all the product, I mean, to one outlet or another, so we
3 don't have, you know, a lot -- you know, a storage area
4 where there's reconditioned raisins that can't be sold
5 for five years or something like that, no.

6 It creates, you know, challenges in the sales
7 process, though. You know, it -- you know, it's just
8 one more kind of roadblock. Ultimately, you know, the
9 product sells to some customer that, you know, doesn't
10 have that specification or doesn't have that, you know,
11 intolerance for reconditioned raisins, but they all
12 sell.

13 Q. In your testimony, you stated the change may
14 positively impact producers and handlers in the
15 marketing of their fruit. Can you explain how?

16 A. Yeah. Yeah, to eliminate -- to eliminate
17 additional challenges in the sales process, essentially.
18 So if we remove this roadblock, I'll say, and it's --
19 you know, it's -- to remove -- to remove just another
20 hurdle in terms of selling our raisins, as you've heard
21 today, we have challenges in this industry, we don't
22 need to create any additional ones.

23 Q. Okay. When you said in your testimony that
24 there was a negative label of reconditioned raisins
25 attached to it, are you speaking about just their

1 negative perception and connotation of reconditioned
2 raisins, or are -- are these raisins once they've been
3 reconditioned specified as reconditioned? Is it a --

4 A. Just perception. Yeah, perception.

5 Q. Okay. You might have answered this already,
6 but my last question is, in your testimony, you stated
7 the RAC recommended this language to streamline the
8 sales process. How would the addition of this language
9 to the marketing order streamline sales?

10 A. It -- it essentially limits a point of
11 contention between the industry and the consumers of
12 the -- of the product we're producing, so if there's
13 not -- you know, to me it's -- it's an unnecessary label
14 that -- that -- it's probably outdated to some extent.

15 And as I mentioned before, if the product is
16 meeting incoming inspection after the process, there's
17 no -- there's no reason to continue to create, you know,
18 a bad label that follows that lot throughout the life,
19 you know, of the product.

20 Q. Okay. And you mentioned that the struggles
21 with sales with handlers having to sell reconditioned
22 raisins, would you also say that those struggles are
23 sometimes a disruption to the marketing of raisins --

24 A. Yes.

25 Q. -- in California? Okay.

1 MS. PANKEY: I have no further questions. Thank
2 you.

3 JUDGE STROTHER: Let me try a couple.

4 Are there producers or growers that are more
5 prone, because of factors specific to them, to have
6 raisins that are in need of reconditioning?

7 MR. SAHATJIAN: Yes, there are. I mean, there's --
8 just like any other, I guess profession, there's --
9 there's growers that do a really good job and rarely
10 have any need for reconditioning, and then there's --
11 there's other growers that repeatedly have quality
12 issues on incoming. You know, at the end, the end
13 product is -- is relatively uniform, but -- but, yes, to
14 answer your question, there's -- you know, there's a lot
15 of factors that go into making good raisins.

16 In addition, you know, soil and location and
17 water availability, and there's -- there's a lot of
18 factors, I mean, it's not just, you know, a grower's
19 cultural practices, but they all -- they all contribute.

20 JUDGE STROTHER: Actually the latter is sort of
21 what I was thinking about. I assume, I mean, if it
22 rains during harvest, is that another factor?

23 MR. SAHATJIAN: It's definitely another factor, and
24 you have no control over that. You know, sometimes a
25 rain cell will hit one area and not another, and those

1 areas that -- that got hit with the rain during --
2 during the drying process will have, you know, quality
3 problems coming in.

4 JUDGE STROTHER: Okay. Do you happen to know -- I
5 assume that when USDA promulgated the original
6 regulations, marketing order made a distinction
7 between -- is it natural condition raisins and
8 reconditioned raisins, that -- did they state a
9 rationale why they were making that distinction?

10 MR. SAHATJIAN: I don't know the answer to that
11 question.

12 JUDGE STROTHER: Yeah. What -- I have a hand in
13 the audience. Let me work with this witness for a
14 second.

15 MR. MILINOVICH: Okay.

16 JUDGE STROTHER: Because my follow-up to that was
17 going to be is -- is it your testimony that something
18 has changed since USDA adopted that regulation with that
19 rationale, and you don't know what they said to begin
20 with.

21 MR. SAHATJIAN: I don't know what they said to
22 begin with. Like I mentioned in my testimony, it's
23 something -- at some point, you know -- well, may -- you
24 know, during the time of our reserve pool and the volume
25 control, I imagine that, you know, there's -- there was

1 a -- there was a -- you know, there was product that was
2 reconditioned, and perhaps processors felt that, you
3 know, they didn't have to do as good of a job to
4 recondition perhaps to -- because they knew it was going
5 into a different pool. Now that we have no volume
6 control, everything is -- needs to pass our -- you know,
7 it needs to pass outgoing inspection. You know, we have
8 to be comfortable with the product that we're sending
9 out. If we are not packing good product, we'll have
10 complaints or quality issues, so we -- we kind of own it
11 all the way through now. There's no -- there's no pool
12 to dump, you know, quality that we're not comfortable
13 packing into anymore.

14 So -- so, yeah, I don't know what the original
15 rationale was, but to me it seems like an outdated
16 stigma or categorization.

17 JUDGE STROTHER: I mean, the other thing I thought
18 of, maybe reconditioning techniques have gotten better.

19 MR. SAHATJIAN: It probably has.

20 JUDGE STROTHER: And I don't think the record
21 knows. I don't know.

22 We got -- we had somebody that -- that's
23 enough for me.

24 We had someone in the audience that wanted
25 to --

1 MR. MILINOVICH: I was just going to say to answer
2 that --

3 JUDGE STROTHER: Who are you, sir?

4 MR. MILINOVICH: Jeff Milinovich.

5 JUDGE STROTHER: Just identify yourself. And you
6 were sworn in.

7 MR. MILINOVICH: Jeff Milinovich. I was sworn in
8 last time.

9 During the reserve, the issue was all --
10 nowadays, all packers control their own inventory, so
11 when you recondition raisins, you know you're
12 reconditioning, exactly what he touched on. The issue
13 back then was people didn't want to sit on reconditioned
14 raisins knowing that they hadn't reconditioned them, and
15 then them go to another packer. So the difference was
16 the -- all reconditioned raisins have been processed to
17 a certain point, and it was keeping product from going
18 to a different packer that had already had some
19 processing already, so it just kind of -- I mean, if
20 anything, it was more of a distrust in the packing
21 community in the past, I think, than anything that is
22 today. Because everybody processes their own fruit
23 today. There's not a pool where movement of product is
24 going from one packer to another, if that makes any
25 sense.

1 JUDGE STROTHER: No. It makes sense. I'm trying
2 to think of the name -- there's a principal. It's a law
3 of the green or law of the common. Law of the common,
4 right? If you're fishing and using the same resource or
5 going into it and everything is mixed up, you don't have
6 as much of an interest in things being -- being good, or
7 you'll just take as much as possible.

8 Who are you, sir?

9 MR. KISTER: Yeah, that --

10 MS. POWELL: Steve Kister.

11 MR. KISTER: Steve Kister.

12 JUDGE STROTHER: Yes. And you were -- yeah. You
13 were sworn in before, and you're going to be --

14 MR. KISTER: Right.

15 JUDGE STROTHER: -- come up again.

16 MR. KISTER: Yes. That was -- that was part of the
17 history of it, because when you had a huge reserve pool,
18 packers' requirements weren't initially met upfront, so
19 later in the year, you'd have what they called
20 ten-and-ten sales, and it was -- would be common to take
21 reserve raisins and transfer them to packer and packer,
22 and those -- that was a common pool that certain packers
23 would want to source, others wouldn't have the need for
24 it.

25 JUDGE STROTHER: I hope that's okay. I keep

1 looking to the USDA, because they're not only active in
2 this case, but they're also the ones writing the
3 decision. I hope this is helping expand the record
4 instead of mucking it up. I see you smiling.

5 Oh, one more.

6 MR. CHOOLJIAN: I'm Gerald Chooljian.

7 JUDGE STROTHER: I think you've been sworn.

8 MR. CHOOLJIAN: I was sworn in.

9 JUDGE STROTHER: Yes, sir. You're under oath.

10 MR. CHOOLJIAN: What Richard stated, you know,
11 growers can take fruit back, so the differentiation is
12 if a grower takes his fruit back that fails, he -- he
13 reconditions them himself on his premises so there's no
14 record of it, then he delivers that same fruit back, and
15 it passes inspection, there's no designation that was
16 reconditioned fruit. So, you know, if it stays with the
17 packer and it stays under USDA surveillance, and it
18 becomes reconditioned, then it's called reconditioned,
19 but when a grower takes it home and does the same thing
20 to it and brings it back, it's no longer designated as
21 reconditioned, so this kind of just evens -- evens the
22 playing field.

23 JUDGE STROTHER: That's an interesting point. You
24 agree with that?

25 MR. SAHATJIAN: Yes, I agree with it.

1 And I also -- I'll -- I'll kind of put
2 emphasis on what you said. I think since the order was
3 written in 1949, reconditioning techniques have
4 definitely improved such that there -- there's really no
5 purpose anymore to having that, that different
6 classification. So kind of just wanted to agree with
7 what you're saying as well. Give a little more emphasis
8 to that. I didn't mention that in my testimony.

9 JUDGE STROTHER: Very well. Thank you. I think
10 that fills out the record a bit on that point.

11 Any further questions of this witness?

12 Any objection to Exhibit 30?

13 MS. CHILUKURI: Your Honor, we have additional
14 questions.

15 JUDGE STROTHER: Oh, I'm so sorry. Didn't mean to
16 go quickly. I should know that by now.

17 CROSS-EXAMINATION

18 BY MR. McFETRIDGE:

19 Q. Marc McFetridge with USDA.

20 Thank you, Mr. Sahatjian for your testimony.

21 I did want to follow up on my comment from the
22 group just recently. If a grower, you know, after
23 harvesting realizes, all right, we're probably not going
24 to pass inspection, they could conduct a reconditioning
25 process on their farm and then deliver it and pass

1 inspection, that would not be considered a reconditioned
2 raisin; is that correct?

3 A. That's correct. And -- and most of the time,
4 the -- the instances where that happens is when they're
5 the minimally invasive reconditioning types, so most
6 growers won't take home product that's got mold --
7 excessive mold or excessive moisture that they don't
8 have facilities to remedy. Most of the time they're
9 going to take it home if it fails for maturity, or
10 substandard, they're going to run it over, you know, a
11 shaker, for example, like I said, the most minimally
12 invasive type of process is something that, you know,
13 some growers will have at their farms, and they'll run
14 it over a shaker instead of have us do it as handlers.

15 Q. Thank you.

16 Would you be able to provide for the record,
17 just because you're talking about the shaking process,
18 could you just give us, you know, an example of what
19 that is so we have it for the record, please.

20 A. Yeah. So essentially it's bins of raisins, so
21 raisins come into packing facilities in bins, wooden
22 bins, and -- or boxes. I know there's terminology that
23 you guys aren't familiar with. But wooden boxes
24 essentially, and they're dumped onto a -- you know, down
25 through a hopper onto -- onto either a vibratory shaker

1 or other type of conveying system that -- that might
2 have either a vacuum over it to eliminate products or
3 screens below it to eliminate, you know, if there's
4 excessive sand or something like that. There's -- like
5 I said, there's a lot of different failing defects. But
6 essentially it travels through that conveying system and
7 gets remedied, you know, in one way or another. And
8 then it ends up back into a wood box.

9 Q. So the vacuum --

10 A. And it's graded.

11 Q. So the vacuum process is to remove any, like,
12 sand or -- I know you were talking before about removing
13 some immature fruit. The shaking process, would it --
14 would the vacuum remove that immature fruit or would the
15 shaking process remove it?

16 A. Shaking is essentially a convey process from
17 one point to another. And, yeah, vacuums will eliminate
18 low maturity or high substandard product from -- from
19 the lot. And then what's -- what's left at the end of
20 the line that ends up in the box again is -- is product
21 that has a higher grade.

22 Q. All right. And I know you discussed wash and
23 dry. Can you just kind of walk us through that process,
24 too, for the record?

25 A. Yeah. So wash and dry is used when there is

1 embedded sand, excessive mold, or -- or excessive
2 moisture. So if there is -- so I guess at the far --
3 also fermentation, okay, so at the far end of the
4 spectrum where -- where product comes in that needs a
5 full wash and dry, product will go into a -- into a hot
6 bath of water, and then it's -- then it will travel
7 through augers to eliminate sand. It will then go over
8 mold belts. Mold belts are essentially belts, conveying
9 belts that have drums underneath the belts that, you
10 know, pound up against the underside of the belt so that
11 any product that has mold will stick to the belt, and
12 the good product flows downward, and the sticky
13 product -- because when there's mold, there's damage to
14 the raisin, it breaks the raisin's skin, so that --
15 that -- those damaged raisins that had mold damage
16 will -- will be discarded. The good product continues
17 on, goes onto trays to be redried in dehydrators. Comes
18 out the other side of the dehydrator dried, and it's
19 washed and dried. And then it's regraded.

20 And in theory, and in practice, the product
21 coming out is -- is much better than the product going
22 in, and it meets incoming grades and standards because
23 the bad product has been eliminated.

24 Q. All right. Thank you.

25 Is there any other reconditioning process or

1 are those the two main ones, the shaking and then the --
2 the wash and dry?

3 A. So there's -- there's just a dry, so if -- if
4 product just comes in with excessive moisture, you don't
5 have to go through all those steps. You know, you don't
6 have to have the sand removal, the mold removal, it just
7 goes essentially from the bin onto a tray, dried to a --
8 to an acceptable level, a stable level, and then -- can
9 then re- -- reinspected.

10 Q. All right. Thank you.

11 Now, you hit on this twice, after the shaking
12 process and the wash and dry, after the raisin goes
13 through the reconditioning process, you stated that it
14 is actually at a higher quality than it was before the
15 process; is that correct?

16 A. Yes.

17 Q. And that's because of the removal of any, you
18 said mold --

19 A. Defects.

20 Q. Defects.

21 A. Defects.

22 Q. Any type of defects.

23 A. Yeah.

24 Q. Thank you.

25 A. It's not a perfect process, it doesn't come

1 out perfect, but it comes out more often than not in
2 a -- in a condition that is meeting incoming grades and
3 standards. It doesn't go from unacceptable to perfect.
4 It -- it -- it moves the product from product that
5 doesn't meet incoming grade to product that meets
6 incoming grade.

7 Q. All right. Thank you.

8 In your testimony, you specified that you --
9 Victor Packing is considered a large handler. Is that
10 based on the Small Business Administration of having
11 more than 300 or 34 million annual sales?

12 A. Yes.

13 Q. Thank you.

14 And then you specify that you are a small
15 producer of California raisins, and that's also based on
16 the Small Business Administration definition of having
17 less than \$4 million of annual sales?

18 A. Yes.

19 Q. Thank you.

20 In your testimony, you say, this has been
21 evident in the past with sales solicitations that
22 specify that the product cannot be reconditioned fruit
23 from both government and outside customer requests. Has
24 Victor Packing participated in USDA sales in the past?

25 A. Yes.

1 Q. In the past, USDA would not accept
2 reconditioned raisins; is that correct?

3 A. That's my understanding, yes.

4 Q. Has the USDA specifications for raisins
5 changed so now reconditioned raisins are acceptable?

6 A. My understanding is they will accept
7 reconditioned raisins now.

8 Q. Is there -- is there any connotation in the
9 USDA specification that distinguishes between natural
10 and reconditioned raisins for any USDA purchases now?

11 A. Not that I'm aware.

12 MR. McFETRIDGE: Thank you. I think that's all the
13 questions I have.

14 CROSS-EXAMINATION

15 BY MS. DORSEY:

16 Q. Samantha Dorsey with the USDA.

17 Thank you, Mr. Sahatjian. Good morning.

18 So in your testimony, you had discussed that
19 customers ultimately dictate, you know, the purchasing,
20 and they may have special certain specifications, so if
21 the proposal was to move forward where reconditioned
22 raisins could be considered standard raisins, would
23 consumers be made aware of that fact that the standard
24 grade raisins that they may be purchasing from you were
25 at one point reconditioned?

1 A. No. There would be no -- there would be
2 designation as reconditioned. It would be that, hey,
3 these are -- these were once natural condition raisins
4 like every other raisins, and now we're going to hit
5 your specification.

6 Q. Do you think once consumers become aware of
7 the change to the regulation, that they may inquire and
8 you may face the issues that you did at one point when
9 they were just reconditioned, and perhaps that specific
10 purchaser did not want to purchase reconditioned
11 raisins?

12 A. I don't think so, but it's possible there will
13 be a little bit of a honeymoon period where people who
14 previously, you know, specified that they didn't want
15 reconditioned raisins, they might continue along with
16 it, but -- but I think in time, it will go away as a --
17 as an issue. I don't think -- you know, I think, you
18 know, there's certain buyers that have in their mind
19 now, okay, that because they've been doing this for 30
20 years and they've been specifying, hey, no reconditioned
21 raisins for us, but I think -- I think it's -- it
22 will -- it will kind of resolve itself, and -- and I
23 think it's going to become a -- you know, without the
24 designation, I think it will -- it will go away as an
25 issue, as it should, I think.

1 MS. DORSEY: Okay. Okay. Thank you. No further
2 questions for me.

3 CROSS-EXAMINATION

4 BY MS. CHILUKURI:

5 Q. Rupa Chilukuri for the USDA.

6 I want to follow up and see if you had any --
7 if you can provide us any information on statistics or
8 percentages as it relates to within a given crop year,
9 how many raisins would require reconditioning --

10 A. It really depends --

11 Q. -- for example?

12 A. -- on the year. As the Judge said earlier, a
13 lot of times it will depend on, you know, whether you
14 get hit with a rain during harvest. I mean, some years
15 I'd say that the reconditioned rate could be near
16 50 percent. In some years, it's below 10 percent. But,
17 you know, that -- that number now is -- is a lot
18 different than it used to be, so, you know, 50 percent
19 of our crop now is -- is you know -- I mean, depending
20 on how much product we produce, could be 75,000 tons.
21 In the past, 50 percent could have been closer to
22 200,000 tons. But we don't have as much product anymore
23 in general to provide to -- to our customers, so sort of
24 attaching a negative label to any percentage now is --
25 is detrimental to our sales efforts.

1 Q. Okay. And following up, just thinking about,
2 I guess impact on a consumer, so if I'm a consumer of
3 raisins, as a consumer of raisins, what would I notice
4 in terms of the difference between a raisin that's been
5 reconditioned that I'm eating versus -- assuming that
6 it's gone through all the other processes, versus a
7 natural condition raisin or standard raisin that's gone
8 through this other process to the point that it gets to
9 me.

10 A. A consumer should not recognize any
11 difference.

12 Q. Okay. And I was hoping that we could walk
13 through and discuss with some specificity actual changes
14 to the regulations. So with this proposal, you talk
15 generally about wanting the proposed language. Can you
16 refer us to what actually is being changed in the
17 regulation?

18 A. So I -- I don't have --

19 Q. We have a notice of hearing, and I believe the
20 actual regulations are up on the table for you.

21 A. That's the notice of hearing. That's the
22 regulation. This one here.

23 Q. So the notice of hearing is identified as
24 Exhibit 1.

25 A. Here?

1 Q. Right. That shorter document, right.

2 A. Correct.

3 Q. Okay. So can you refer us to which provisions
4 would change as a result of this proposal or that you --
5 that the industry, you, are testifying that should
6 change?

7 And I can -- I can help you out a little bit
8 here.

9 A. Yeah. Sure.

10 Q. Why don't we go to 989.24.

11 A. 989.

12 Q. So if you can find that reference in the
13 notice of hearing. And I believe it's on page -- I
14 believe it's on -- is it the second page? Yeah, second
15 page of the document. So that's 2179. I think this
16 references that you would be amending 989.24 --

17 A. Right.

18 Q. -- and 989.58 by adding language to clarify
19 the quality --

20 A. Right.

21 Q. -- of reconditioned and standard raisins; is
22 that correct?

23 A. Yes.

24 Q. Okay. I read that right?

25 A. Yeah.

1 Q. So going down to 2180, can you tell me how you
2 plan to amend -- how you'd like to amend 989.24?

3 A. Well, I guess that's not really in my
4 wheelhouse. I mean, I'm speaking in favor of adding
5 this language. I -- I'm not -- I don't anticipate being
6 the rule writer on it. But, you know, the -- the -- the
7 request is to have permission to -- to amend it, and I'm
8 in favor of that.

9 Q. Okay. Can you -- do you feel comfortable
10 talking about the definition of some of these things as
11 it relates to the regulation, so what a natural
12 condition raisin is and where it's found in the
13 regulations?

14 A. I'm not exactly sure where they're at. I'm
15 happy to talk about them, though, if you want to point
16 me to it. Did I answer that?

17 Q. Sure. Let's go to 989.24 in the other
18 document, and if you could sort of talk us through the
19 different types of raisins that are listed in 989.24.

20 A. Okay.

21 Q. So the larger document, that's the set of
22 regulations.

23 A. Okay. 989.24. Okay. So --

24 Q. And that refers to 989.24, standard raisins,
25 off-grade raisins, other failing raisins, and raisin

1 residual material?

2 A. Uh-huh.

3 Q. Is that where you're at? Okay. Can you --
4 can you give us -- you know, obviously we've been
5 talking about raisins that have been reconditioned. Can
6 we talk a little bit more what a standard raisin is?

7 A. Yeah.

8 Q. And then just the terminology.

9 A. Okay. So standard raisins are raisins that
10 come in from the field, from the farms, and they meet
11 minimum grades and standards for natural condition
12 raisins, so they are raisins that come in and don't need
13 any rework procedural -- or reconditioning procedure.
14 They come in and initially meet grade. That means they
15 are 16 percent or below in moisture, and it means they
16 are below -- 17 or below in substandard, they are above
17 the -- 35 or above in B&B maturity grade, and don't have
18 any failing defects, like a host of them, embedded sand,
19 eucalyptus leaves, fermentation, excessive mold.
20 That's -- that's product that comes in and is meeting --
21 doesn't need anything done to it.

22 Off-grade raisins have product that come in
23 and fail incoming inspecting. So off-grade raisins need
24 to have a rework or a recondition process to bring them
25 up to an acceptable incoming grade and standard.

1 Other failing raisins. So other failing
2 raisins, we don't really use this term in our -- in our
3 business, but this appears to be product that fail
4 outgoing inspection. It met incoming, but it would
5 probably be put on hold for failing outgoing grade,
6 which, you know, there's a whole other set of rules and
7 regulation for outgoing grade, and out -- there's
8 outgoing standards, so you know, instead of having a 16
9 max moisture, you have 18 max moisture for outgoing.
10 And if it fails in for any -- you know, if it came in
11 and passed, but on outgoing fails, then it gets put on
12 hold and it needs to be reworked on the outgoing side.

13 Raisin residual material. This is product
14 that -- that is eliminated during processing, so you've
15 got stems, and -- and substandard raisins, all the --
16 all the -- the residual that can't be packed into a --
17 you know, into a finished pack, and would -- that
18 would -- you know, the outgoing standards are more
19 difficult to hit than incoming, as you would imagine --
20 so during our processing, we are tasked with cleaning
21 the product, eliminating defects, improving the grades.
22 During that process, we're pilling out product that is
23 defective, and that's what would be considered raisin
24 residual material.

25 Q. Okay. Thank you.

1 So if you come in -- you have a raisin, and
2 you have to rework it, and it's not successfully
3 reconditioned, would that raisin be classified as?

4 A. It's still off-grade, it's still failing, and
5 it either needs to be reconditioned again, or it needs
6 to be turned back to the producer, but it's still
7 failing.

8 Q. And if you are able to successfully
9 recondition it, then what would it be classified as?

10 A. It should be classified as standard natural
11 condition raisins. Right now, it's classified as
12 reconditioned raisins.

13 Q. Okay. Thank you.

14 MS. CHILUKURI: I have no further questions. Thank
15 you.

16 MR. SAHATJIAN: Thank you.

17 JUDGE STROTHER: Is that it for USDA?

18 MS. CHILUKURI: Yes, Your Honor.

19 JUDGE STROTHER: Anyone else?

20 Okay. I think we admitted Exhibit 30, if I
21 recall. If not, we will now.

22 (Whereupon, Exhibit 30 was admitted
23 into the record.)

24 JUDGE STROTHER: Thank you. You're excused.

25 By the way, I meant to ask, have there been

1 any other witnesses signed up?

2 MR. SASSELLI: I don't believe so, Your Honor.

3 JUDGE STROTHER: Off the record.

4 (Whereupon, a recess was taken.)

5 JUDGE STROTHER: Okay. Back on the record.

6 Are we ready for our next witness?

7 Mr. Kister, are we there?

8 MR. KISTER: Oh.

9 JUDGE STROTHER: I think we're there.

10 MR. KISTER: Okay. I'm Steve Kister, and I'll be
11 doing the Steve Loftus presentation.

12 MS. CHILUKURI: Your Honor, can I --

13 JUDGE STROTHER: Yeah.

14 MS. CHILUKURI: -- interject. I was just curious
15 if Mr. Kister had a statement that he is distributing.
16 I see that he's reading from -- off paper.

17 JUDGE STROTHER: Yes. I don't have a copy, I don't
18 think.

19 MS. CHILUKURI: Or is he -- are those, you know,
20 his own internal notes.

21 THE CLERK: So as a procedure, I'm reading Steve
22 Loftus's.

23 JUDGE STROTHER: Were copies of that distributed?

24 THE WITNESS: I can't do that?

25 JUDGE STROTHER: Well, he can adopt them.

1 MS. CHILUKURI: Right. I think we just need
2 clarification of what exactly is happening, so --

3 JUDGE STROTHER: Yes.

4 MS. CHILUKURI: -- back to where we were discussing
5 yesterday. Mr. Loftus isn't here so we can't
6 cross-examining him. If you're adopting his testimony,
7 or whatever it is that you're doing, just making it
8 clear that it's coming from you or who you're
9 representing.

10 JUDGE STROTHER: Yes. Well, let's make sure to do
11 that. And if I don't -- we don't, remind me.

12 Do we have copies of --

13 MR. SASSELLI: No. Jeremy Sasselli. We do not
14 have copies of any exhibits or anything like that, so...

15 JUDGE STROTHER: He's using -- what was it?

16 MS. POWELL: We need a copy of Steve Loftus's, is
17 that what you're asking for, because I can go find it?

18 MR. MILINOVICH: And he has to -- and you have to
19 adopt his testimony to present it.

20 MR. SPATE: As your own.

21 MR. KISTER: Okay.

22 MS. CHILUKURI: Mr. Kister can certainly speak for
23 himself. We just want to clarify that we're not going
24 to accept something that has Steve Loftus's. But I
25 would object on the basis, you know, that Mr. Loftus is

1 not here. If it's clear that this is coming from
2 Mr. Kister, and these are his words, that's a different
3 matter.

4 We can certainly take a break if you want to
5 discuss this or --

6 JUDGE STROTHER: Yeah.

7 MS. CHILUKURI: -- revise your testimony.

8 JUDGE STROTHER: Well said, Counsel.

9 Let's take a break. Let's go off the record.
10 (Whereupon, a recess was taken.)

11 TESTIMONY OF STEVE KISTER

12 JUDGE STROTHER: All right. Mr. Kister, you're
13 still under oath.

14 I have -- you have one exhibit, I take it. At
15 the top it says Re: RAC formal rule proposal number 4.
16 This is your -- this is your statement. Let's mark this
17 Exhibit 31 for identification.

18 (Whereupon, Exhibit 31 was marked
19 for identification.)

20 JUDGE STROTHER: You may give your statement.

21 MR. KISTER: I'm Steve Kister, chairman of Sun-Maid
22 Growers and RAC member.

23 The purpose of this proposal is to expand
24 authority for the Committee to accept voluntary
25 contributions to pay expenses and authority to receive

1 income from patent or copyrights, trademarks,
2 inventions, publications, or product formulations.

3 This will make it clear that the RAC is
4 aligned with other marketing orders to the benefit of
5 our industry.

6 Recently the RAC has been approached with the
7 opportunity to generate revenue from the Dancing
8 Raisins.

9 This rule could benefit the industry and
10 support further research and potentially provide means
11 to offset some of those expenses.

12 Thank you.

13 JUDGE STROTHER: Questions, USDA.

14 MS. PANKEY: Yes.

15 CROSS-EXAMINATION

16 BY MS. PANKEY:

17 Q. Thank you, Mr. Kister, for testifying to this
18 proposal today.

19 Does the RAC currently have the authority to
20 develop intellectual property?

21 A. Yes, we do.

22 Q. Does the RAC have the authority to collect
23 voluntary contributions?

24 A. I don't think in the -- in the -- the way the
25 order is written now, I don't think so.

1 Q. Okay.

2 A. But I -- but I believe -- but I believe
3 it's -- it's common practice amongst other marketing
4 orders, I'm not sure.

5 Q. Okay. In regards to the development of
6 intellectual property, you said the RAC currently has
7 the authority to do that?

8 A. Currently, we -- we have authority over the
9 Dancing Raisins, but we just want to -- with this
10 language, we want to make it clear that the revenue
11 potentially generated from -- from these things can go
12 to the RAC with the liberty to use as we want to.

13 Q. Okay. Can you expand on that?

14 A. Well, yeah. You know, in these discussions, I
15 remember early on Barry was explaining to us the
16 difference between an assessment to a grower as opposed
17 to the legal language of a voluntary contribution, and
18 the reason why they call it voluntary is because it's
19 not a direct grower assessment. So I think what we
20 needed to do was we needed to address the idea to make
21 it clear that the RAC would be funded or potentially
22 could be funded by -- by other means other than just the
23 assessment to growers.

24 Q. Okay. And those assessments, those other
25 funds that could be used, those would be the voluntary

1 contribution?

2 A. That's -- that's what they would be -- in
3 legal terms, that's what they would be, as I understood
4 it.

5 Q. Okay. And the trademark authority that you're
6 adding to the order clarifies that such contributions
7 could be used to develop intellectual property?

8 A. Right. And it's just historically recent that
9 we've acquired the rights to the Dancing Raisins. In
10 the -- in the past, they were always property of a state
11 marketing order, the old Cal RAB and CRMB, and the State
12 worked with our -- our state marketing order to use the
13 rights to those products. And it goes way back to the
14 1970s, I think, but -- or '60s, I guess.

15 And now that -- now that the CRMB is no longer
16 in existence, the state held custody of those Dancing
17 Raisin characters for a while, but they've been
18 transferred over to the RAC.

19 Is that correct to say, Debbie?

20 MS. POWELL: We can use them.

21 MR. KISTER: We can use them, but the State still
22 has something to say about that, too. But they could be
23 used for revenue.

24 BY MS. PANKEY:

25 Q. Okay. So from my understanding, the State has

1 licensure of the Dancing Raisins, correct?

2 A. I think that's correct.

3 Q. And they have -- they are sublicensing that --
4 those characters to the RAC, correct?

5 A. Exactly. We've gone through that process.

6 Q. Okay. The language for the trademark
7 authority, in addition to allowing you to use voluntary
8 contributions to develop IP, it is also saying that any
9 regs or royalties or income associated with the
10 development of IP, or in the event if you were to be
11 sublicensed intellectual property, in this example the
12 State, that income would be used in accordance with the
13 provisions of the marketing order?

14 A. Exactly.

15 Q. Is that your understanding?

16 A. Exactly.

17 Q. Okay. Could you provide me, in your opinion,
18 how would those two authorities aid in the future growth
19 and stability bill of the California raisin industry?

20 A. Right. Recently, we've been approached by --
21 by people in film production, credible people that are
22 willing to make a movie of the Dancing Raisins, and so
23 we -- we don't have any firm offers on the table, but
24 they're quite interested. And the writer's strike
25 delayed that a little bit, we hoped to be further along

1 in the process right now, but it's just not that.
2 Historically in the past, it -- when the -- when the
3 commercials were really going back in the '60s, and
4 we -- we generated all sorts of items, there were vases,
5 coffee mugs, towels, just the characters themselves were
6 sold, and so they did generate revenue back in the day,
7 and we just hope to replicate that.

8 Q. Okay. And I'm not sure if you answered. How
9 would that revenue be a benefit to the industry?

10 A. I think I mentioned yesterday when I -- when I
11 was finishing up that the order today, we have -- we are
12 assessed per ton, the handlers pay a \$22 per ton
13 assessment. The industry has shrunk by over one-half,
14 so we have a serious revenue shortfall. Any revenue
15 that we can generate now would be most helpful, whether
16 it's grower research, the health -- promoting the health
17 benefits of raisins, so we just wanted to make the
18 language clear that this property that we own, that we
19 have the freedom to actually use it. It's kind of like
20 the American way, you know.

21 Q. Right. So the revenue would be used under the
22 marketing order to further promote research and --

23 A. To the benefit --

24 Q. -- that would be a --

25 A. To the benefit of the entire industry.

1 Q. Okay. Thank you.

2 In your testimony, you said, "This will make
3 it clear that the RAC is aligned with other marketing
4 orders to the benefit of our industry." Are you aware
5 of any other marketing orders with this type of
6 authority that you may have used or referenced when
7 developing this language?

8 A. Just in discussions that we had in some of the
9 subcommittee meetings. We understand that this was not
10 an uncommon practice, but specifically, I can't name --
11 give you one.

12 Q. Okay. In the event of termination of the
13 marketing order, what is your understanding of what
14 would happen to the intellectual property that was
15 developed under the marketing order or income received
16 from royalties?

17 A. We're not sure. We just want to make sure
18 that we -- we could use it, because -- because this is
19 the litigious world, and so, I mean, we -- we would like
20 the ability just to put it in the order so that no one
21 can challenge the fact that we're using our own money.

22 Q. Okay. And my final question is, in your
23 opinion, do you believe the addition of the IP
24 authority, intellectual property authority, and
25 voluntary contribution authority has the broadest

1 support in the industry?

2 A. Oh, yeah. I think it's one -- one of the
3 bright spots in the industry where there's almost
4 unanimity.

5 Q. Okay. Thank you. No further questions.

6 CROSS-EXAMINATION

7 BY MR. McFETRIDGE:

8 Q. Marc McFetridge, USDA.

9 Thank you, again, for this additional
10 testimony. Just a quick question.

11 Do you feel comfortable in your statement --
12 you say you're chairman of Sun-Maid growers, speaking as
13 the -- based on the Small Business Administration
14 definition of being a large or small handler of having
15 more or less than \$34 million of annual receipts
16 annually, would you say Sun-Maid is a large or small
17 handler?

18 A. We are -- we're a large handler.

19 MR. McFETRIDGE: Thank you. That's all I had.

20 CROSS-EXAMINATION

21 BY MS. DORSEY:

22 Q. Samantha Dorsey, USDA.

23 Mr. Kister, has the Committee been approached
24 in the past regarding using the Dancing Raisins or any
25 other IP opportunities that you're aware of?

1 A. The -- actually the -- this is -- this is
2 relatively recent in history, so I think that's
3 probably -- I mean, management at the -- at the RAC
4 would know better than I, but I think just because we
5 just recently come into possession of them, I think this
6 is the first one.

7 Q. Okay. And then I have two clarifying
8 questions from your earlier testimony. I believe you
9 referred to an entity called Cal RAB; is that correct?

10 A. Right.

11 Q. And can you just explain that to us what that
12 stands for?

13 A. Cal RAB was -- is the acronym for the
14 California Raisin Advisory Board, which was terminated
15 at one time. And then I think programs in the early
16 '90s, we resurrected it, brought it back as the
17 California Raisin Marketing Board, that was the CRMB
18 that I referred to. So the California raisins industry
19 has a long history of using a state marketing order, and
20 that's how we developed the characters, and -- and other
21 things.

22 Q. Okay. And by "characters," you're referring
23 to the Dancing Raisins?

24 A. Right.

25 Q. Okay. So that was -- those were created

1 through those two entities, or marketed through those
2 two entities?

3 A. Right.

4 Q. Okay.

5 MS. DORSEY: Okay. Those are all the questions I
6 had. Thank you, Mr. Kister.

7 CROSS-EXAMINATION

8 BY MS. CHILUKURI:

9 Q. Mr. Kister, Rupa Chilukuri for USDA.

10 Can you explain a little bit more for me as it
11 relates to the Dancing Raisins and the RAC's interest in
12 that? Is that a -- do you have an ownership interest?
13 Are you trying to see if you can revenue? Can you
14 explain how that works?

15 A. Right. They were developed by the old state
16 marketing orders, they're owned by the growers, and they
17 have very -- even when the California Raisin Marketing
18 Board was resurrected in the '90s, we were very careful
19 to protect the licensing agreements, described how they
20 could be used, and they can only be used with the
21 permission in certain parameters of -- of what growers
22 have developed over the years.

23 Q. Okay. So with this addition of authority as
24 it relates to intellectual property, are you trying to
25 enshrine certain rights or make sure that you can get

1 certain benefits from IP like the Dancing Raisins?

2 A. Actually.

3 Q. Okay.

4 MS. CHILUKURI: Okay. Thank you. I have no
5 further questions.

6 JUDGE STROTHER: Anything else?

7 No one else have a question?

8 MR. CROWE: I think by analogy, they have a big
9 almond marketing group within this region, and they're
10 doing, I think, similar things, like they're doing
11 commercials and everything that we're -- we're asking
12 here.

13 MR. KISTER: Yeah, if -- if you look at --

14 JUDGE STROTHER: I'll take that as a question.
15 There's a question at the end of that, right?

16 MR. CROWE: Yeah.

17 JUDGE STROTHER: Or a comma, "correct"?

18 MR. KISTER: The California Almond Board, for
19 example, I think has a budget over \$90 million, and
20 they -- and it's all -- it's all funded through
21 assessments, I don't know that they have any intellect.
22 But most of these marketing order, actually they own
23 their own logos, those are licensed. So -- so it's very
24 common amongst a lot of ag commodities in California to
25 have -- have marketing orders. I'm not sure if -- some

1 are federal and some are state, but it's not -- all
2 those -- all those licensing agreements are with logos
3 that you see on -- on a lot of California commodities.

4 JUDGE STROTHER: Are you finished?

5 MR. CROWE: Yeah, I'm finished.

6 JUDGE STROTHER: That's all the questions? Okay.

7 Recross?

8 RECCROSS-EXAMINATION

9 BY MR. BROADBENT:

10 Q. Mr. Kister, this is Barry Broadbent, USDA.

11 So under the authorities of the marketing
12 order, you -- the Committee can create or can cause to
13 be created by funding future intellectual property; is
14 that correct?

15 A. That's correct.

16 Q. And so -- and you have the authority and
17 you're exercising the authority now that the CRMB has
18 been continued, the Committee is undertaking those
19 professional activities that used to be undertaken by
20 the CRMB; is that correct?

21 A. Exactly.

22 Q. So this is not just -- the change would not
23 just be reflected for the Dancing Raisins specifically,
24 but it would also create the opportunity to -- to
25 benefit from those activities moving forward --

1 A. Yeah.

2 Q. -- is that correct?

3 A. Exactly.

4 Q. Okay. Just wanted to clarify.

5 MR. BROADBENT: Thank you.

6 JUDGE STROTHER: Nothing further?

7 MS. CHILUKURI: No, Your Honor.

8 JUDGE STROTHER: Anyone else?

9 Any objection to Exhibit 31, this witness's
10 statement, being entered into the record?

11 So entered.

12 (Whereupon, Exhibit 31 was admitted
13 into the record.)

14 JUDGE STROTHER: You're excused. Thank you. You
15 may step down.

16 Okay. One final check, any other witnesses
17 sign up for our list?

18 MS. NOTORO: Nobody else.

19 JUDGE STROTHER: No. Okay.

20 I think we've come to the end of this hearing.

21 MS. CHILUKURI: Your Honor, if we could actually
22 take a break just so that we could confer internally, I
23 would appreciate that, just to --

24 JUDGE STROTHER: Certainly. Do you want to come
25 back at a time certain or just -- it works for me to

1 leave it open. I don't have any place I have to go.

2 MS. CHILUKURI: Yeah. 15 minutes good?

3 JUDGE STROTHER: Sure. Around 15 minutes. Yeah,
4 that would be 20 after, but you can come back sooner --
5 say 20 after, that lets other people walk around, too.

6 By the way -- I guess this can be on the
7 record -- AMS will post the transcript when it's
8 available on their website, so the ten business days and
9 seven business days for corrections and objections will
10 run from the date it's posted on the website.

11 And you'll have the other exhibits and
12 everything will be on the website, right?

13 MS. CHILUKURI: Yes.

14 JUDGE STROTHER: Very well. Okay.

15 All right. We're taking a break until 11:20.

16 (Whereupon, a recess was taken.)

17 JUDGE STROTHER: On the record.

18 MS. CHILUKURI: Yes. Thank you, Your Honor.

19 JUDGE STROTHER: You're welcome.

20 MS. CHILUKURI: We just had a little bit of time to
21 discuss, and we'd like to actually recall Ms. Debbie
22 Powell, in part because the witnesses had referred to
23 her saying that staff could address some of these
24 questions, so we wanted to just make sure that the
25 record is complete to the extent possible, and that we

1 could follow up with her on a few -- few issues, and to
2 give her an opportunity to say anything that she might
3 want to say.

4 JUDGE STROTHER: Is that okay?

5 MS. POWELL: I guess so. No guarantees I'm going
6 to have those answers.

7 JUDGE STROTHER: There never is.

8 Welcome back to the stand. You're still under
9 oath.

10 MS. POWELL: Okay.

11 JUDGE STROTHER: Your witness.

12 TESTIMONY OF DEBBIE POWELL

13 DIRECT EXAMINATION

14 BY MS. PANKEY:

15 Q. Hi, Ms. Powell. Thank you for taking the
16 stand again.

17 I have a couple of questions in regards to
18 proposal number 4, the addition of the voluntary
19 contribution authority and the intellectual property
20 authority. Could you provide to -- for me what these
21 two authorities allow the Committee to do actually?

22 A. Well, again, the contributions, because we
23 only have the -- the order only states that we get
24 handler assessments, so now with the royalties, we can
25 collect that and use that for promotions or health and

1 nutrition or offset marketing expenses.

2 Q. Okay. So when you say the royalties, are you
3 referring to royalties that would -- you would have
4 accepted or collected in regards to the intellectual
5 property that would be sublicensed --

6 A. Correct.

7 Q. -- through an outside organization?

8 A. Correct.

9 Q. Okay. So in 989.63, which the contributions,
10 it's the authority that you are going to add to the
11 marketing order, it provides that you -- the Committee
12 may accept these voluntary contributions. It also
13 states that the contribution shall be free from any
14 encumbrances by the donor, and the Committee shall
15 retain complete control of their use. In your opinion,
16 can you provide for me what that means exactly?

17 A. Well, it means once we get that money from the
18 donor, whether that's a producer or somebody that just
19 gives us money, we can do what we want with that money
20 within the guidelines of the marketing order.

21 Q. Okay. And in the event of, let's say,
22 termination, what would happen to those funds?

23 A. Well, shall apply to determine disposition of
24 any property, including patents, copyrights, trademarks,
25 inventions, production, product formulation, or

1 publications developed through the use of funds received
2 by the Committee under this subpart.

3 So basically upon termination, however we give
4 back that money, any unspent money, it will follow this
5 same as the marketing order states.

6 Q. As provided in 989.92?

7 A. Correct.

8 Q. And 989.92 just provides that in the event of
9 termination, the Committee would close down the
10 marketing order, terminate affairs, pay any unpaid --
11 any unpaid expenses, and any funds -- any other
12 remaining funds would be distributed to those
13 appropriate parties?

14 A. That's correct.

15 Q. Okay. Could you provide for me what 989.64(c)
16 and (d) implies that the Committee may and may not do?

17 A. Let's see. (c) reads, "Should patents,
18 copyrights, trademarks, inventions, product
19 formulations, or publications be developed through the
20 use of funds collected by the Committee under this
21 subpart and funds contributed by another organization or
22 person, ownership and related rights to such patents,
23 copyrights, trademarks, inventions, product
24 formulations, or publications shall be determined by
25 agreement between the Committee and the person or

1 organization contributing the funds towards the
2 development of such patent, copyrights, inventions,
3 trademarks, product formulations, or publications in a
4 manner consistent with paragraph (a) of this section."

5 And (d), "Should any patents, copyrights,
6 trademarks, inventions, product formulations, or
7 publications be licensed to the Committee by another
8 person or organization, the rights and obligations
9 regarding such licensed patents, copyrights, trademarks,
10 inventions, product formulations, or publication shall
11 be determined by agreement between the Committee and the
12 person or organization permitting licensure in a manner
13 consistent with paragraph (a) of this section."

14 So that's what we're adding to it.

15 Q. Right. And can you explain in layman terms
16 what that means?

17 So in section 989.64(c), it's requiring that
18 any intellectual property that's being developed under
19 the marketing order using funds that are voluntary --
20 funds may be voluntary contributions from outside
21 organizations have to be consistent with paragraph (a),
22 which states that that intellectual property would be
23 the ownership of the USDA, right?

24 A. Yes.

25 Q. And that any --

1 A. Right.

2 Q. -- income or royalties that are subsequently
3 based on that intellectual property that is developed
4 would need to be used -- utilized in accordance of the
5 provisions under the marketing order, correct?

6 A. That's correct.

7 Q. And then 989.64(d) provides that any
8 intellectual property that would be licensed to the
9 Committee, in the event -- and that -- that would be
10 licensed to the Committee, and in this situation that
11 would be the California state Dancing Raisins that we're
12 talking about particularly, that that -- the -- how that
13 property would be used and the funds that would be
14 accepted, royalties, in regards to that property would
15 be determined in an agreement between that outside
16 organization and the marketing -- and the Raisin
17 Administrative Committee?

18 A. That is correct.

19 Q. Okay. That is your understanding, correct?

20 A. Yes.

21 Q. Okay.

22 MS. PANKEY: Okay. I have no further questions.

23 DIRECT EXAMINATION

24 BY MS. CHILUKURI:

25 Q. Ms. Powell, I just wanted to clarify one

1 thing. So as it relates to 989.63 and 989.64, was the
2 reason, in part, that you want -- that the Committee is
3 interested in adding these authorities, is that related
4 to -- based on the Dancing Raisin issue?

5 A. Uh-huh.

6 Q. But -- it's based on the Dancing Raisin issue
7 now, but the future -- in the future, there could be
8 other IP or other voluntary contributions?

9 A. Absolutely.

10 Q. So this gives you the opportunity to --

11 A. Yes.

12 MS. CHILUKURI: All right. Thank you very much.
13 I -- USDA doesn't have any additional questions.

14 JUDGE STROTHER: Anyone else?

15 Okay. You had no exhibits, so we don't want
16 to admit anything. Thank you for coming back on the
17 stand. And you're excused.

18 Okay. Are we now at the end of the hearing?
19 Very well.

20 All right. We talked about the -- the
21 schedule for transcript corrections and objections.

22 By the way, I meant to say, if you all can
23 collaborate on that, it makes it easier for my office to
24 handle them, getting out, certifying the transcript,
25 so -- but I'm not going to order that you do it because

1 I know it takes a certain amount of time and effort to
2 do that, but anything you can do on that would be
3 appreciated.

4 I think this has been a pretty cooperative
5 group. Anything you can do to cooperate on any
6 procedural matters and anything else, we welcome that,
7 and I congratulate your ability to do that.

8 I guess at this time, I've closed the record
9 with the exception of the transcript will come into the
10 record after it's certified. This basically means that
11 the evidence, the record, the evidence that this will be
12 decided on is in -- is in the record now. If someone
13 comes up with -- you can't just file something else.
14 Don't attach something to your brief and expect it's in
15 the way of evidence. The brief should be based on the
16 evidence. If someone wants something else to come into
17 the record, they'll have to move to reopen the record,
18 and others will be able to comment on that. I'm not
19 saying that you can't do that.

20 So the record is closed but for the certified
21 transcript.

22 Anything else anyone can think of?

23 MS. CHILUKURI: No, Your Honor.

24 JUDGE STROTHER: Okay. Thanks, everyone. Thanks
25 for coming in. Thanks for testifying. I like what I do

1 for a living, and it's been a real pleasure to work with
2 you all.

3 (Whereupon, the hearing adjourned at
4 11:30 a.m.)

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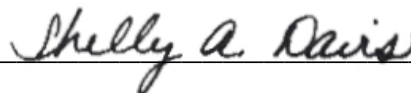
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State of California)
) ss.
County of Fresno)

I, SHELLY A. DAVIS, a Certified Shorthand Reporter in and for the State of California, holding Certificate No. 8947, do hereby certify:

That the proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed into typewritten form under my direction; that the foregoing is a true record of the proceedings taken at that time.

DATED: March 2, 2024



SHELLY A. DAVIS, C.S.R. 8947