

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Doc. No. AO-FV-16-0016; AMS-SC-16-0011; SC16-989-1]

#### Raisins Produced From Grapes Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Order No. 989

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

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision proposes amendments to Marketing Order No. 989 (order), which regulates the handling of raisins grown in California. Five amendments are proposed by the Raisin Administrative Committee (RAC or Committee), which is responsible for local administration of the order. These proposed amendments would: Authorize production research; establish new nomination procedures for independent producer member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different markets; and add a continuance referenda requirement.

In addition, the Agricultural Marketing Service (AMS) proposed two amendments. These amendments would remove order language pertaining to volume regulation and reserve pool authority and would establish term limits for Committee members. In addition, AMS proposed to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. These proposed amendments are intended to update the order to reflect changes in the industry and potential future changes, and to improve the operation and administration of the order.

**DATES:** Written exceptions must be filed by June 30, 2017.

**ADDRESSES:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031-S, Washington, DC 20250-9200; Fax: (202) 720-9776 or via the internet at <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

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Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on April 14, 2016, and published in the April 22, 2016 issue of the **Federal Register** (81 FR 23650).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Orders 12866, 13563, and 13175.

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 989 regulating the handling of raisins grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held on May 3 and 4, 2016, in Clovis, California. Notice of this hearing was published in the **Federal Register** on April 22, 2016 (81 FR 23650). The notice of hearing contained five proposals submitted by the Committee and three proposals by USDA.

The Committee's proposed amendments were recommended by the Committee on January 27, 2016, and were submitted to USDA on February 2, 2016. USDA made a determination to schedule this matter for hearing.

The Committee's proposed amendments to the order would: (1) Authorize production research; (2) establish new nomination procedures for independent producer member and alternate member seats; (3) add authority to regulate quality; (4) add authority to establish different regulations for different markets; and (5) add a continuance referenda requirement.

The Department of Agriculture (USDA) also proposed two amendments to: (1) Remove order language pertaining to volume regulation and reserve pool authority, and (2) establish term limits for Committee members. In addition, USDA proposed to make any such changes as may be necessary to the order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Fourteen industry witnesses testified at the hearing. The witnesses represented raisin producers and handlers in the production area, as well as the Committee, and they all supported the proposed amendments, with the exception of one industry witness who did not support the proposal for continuance referenda. All industry witnesses, however, were opposed to USDA's proposal to require term limits for Committee membership.

Witnesses offered testimony supporting the recommendation to authorize production research.

According to testimony, production research has historically been conducted by the California Raisin Marketing Board (CRMB). However, due to ongoing legal challenges to that program, the program's research activities have been suspended. Witnesses stated that adding research authority to the Federal marketing order would enable the industry to continue research while CRMB research is suspended. In the event that the CRMB were to cease to exist, the industry would be able to maintain research continuity under the Federal program.

Witnesses testified in support of revising the RAC nomination process for independent producer members and independent producer alternate members so that each would be held separately. Witnesses stated that the current process, which combines nominations for members and alternates, and allots seats based on votes received to fill member seats first, results in multiple independent producer alternate member seat vacancies.

Allowing for separate nominations for members and alternates would, according to witnesses, encourage participation by those who wish to serve in only one capacity and not the other. This process would allow individuals who only want to serve as alternates to no longer risk being seated as a member if they received high vote counts, as they would have previously. Witnesses believe that this proposal would increase participation of independent producers in the RAC as fewer vacancies would occur with separate nominations for members and alternates.

Witnesses favored two proposals that would add authority to the order to regulate quality and to allow the establishment of different regulations for different markets. Witnesses explained that "quality" is mentioned in several sections of the order. However, the authority to regulate quality does not currently exist. The proposal to add this authority would support the order's current language. Witnesses also stated that quality authority could be used to establish future regulation to address quality issues not traditionally captured in grade and size regulation, such as the reduction of contaminants, including Ochratoxin. Witnesses indicated that this authority could also assist the industry in complying with the Food and Drug Administration's (FDA) food safety guidelines under the Food Safety Modernization Act of 2011 (FSMA).

The proposal to add authority to establish different regulations for

different markets was supported by witnesses who spoke to the need to tailor product to the differing demands of foreign consumers. Witnesses explained that this would help their products to be more competitive against foreign producers in those markets. Furthermore, witnesses indicated that this authority would allow future quality regulations to fit the demand profile of individual markets.

The proposal to require continuance referenda was supported by witnesses who valued the opportunity to voice their support or displeasure with the order on a periodic basis. While all but one witness testified in support of this proposal, there were differing positions taken on the timing of such referenda. The one witness who testified against the proposal stated that he would have been in favor of a "discontinuance" referendum requirement. By "discontinuance", the witness explained that a two-thirds majority of voters voting would need to favor discontinuance in order for the program to no longer exist.

Nonetheless, the majority of witnesses favored an initial continuance referendum no sooner than five years and no later than six years from implementation of the amendment and that subsequent referenda be conducted every six years.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of July 21, 2016, for the submission of corrections to the transcript, and September 9, 2016, as a deadline for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing.

One brief was filed. The brief identified a correction that had been overlooked and not included in the transcript corrections due July 21, 2016. This correction has been taken into consideration in the development of this recommended decision.

#### Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to amend § 989.53 to authorize production research.
2. Whether to amend §§ 989.29 and 989.129 to authorize separate nominations for independent producer member and independent producer alternate member seats.
3. Whether to amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality, and whether to revise the heading prior to § 989.58 to include quality.

4. Whether to amend § 989.59 to add authority to establish different regulations for different markets.

5. Whether to amend § 989.91 to require continuance referenda.

6. Whether to amend the order to remove volume regulation and reserve pool authority. This would include: Removing §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173 and 989.210; and redesignating § 989.70 as § 989.96. In addition, whether corresponding changes should be made to the following headings: "Volume Regulation" prior to §§ 989.65; "Volume Regulation" prior to § 989.166; and "Subpart—Schedule of Payments" prior to § 989.401.

7. Whether to amend § 989.28 to establish term limits.

8. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include non-substantive, typographical errors.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

#### *Material Issue Number 1—Production Research*

Section 989.53, Research and development, should be amended to provide the Committee with the authority to conduct production research. This authority would only be used by the Committee in the event that the California Raisin Marketing Board (CRMB), which oversees the state marketing program which currently conducts industry research, ceases to exist or is no longer financially able to fund the work.

The CRMB is currently the designated funding source for industry-wide production research, referred to as "crop production research" under the state program. According to witnesses, research under the CRMB was suspended approximately three years ago pending the results of ongoing litigation. As a result, important research is not being conducted.

Witnesses were also concerned that the CRMB referendum requirement, which requires the industry to indicate its support for continuance of the program every five years, may cause the CRMB to cease to exist. If that were to occur, there would be no funding program available to the industry unless

the proposed amendment to provide such authority under the order were successful.

Witnesses in support of this amendment stated that a collective effort was necessary in order for the industry to address the ongoing challenges that producers and handlers cannot financially support on their own. Challenges needing production research generally include: Pests, water issues related to drought, new varietal development, and crop production.

Witnesses familiar with immediate research needs of the industry indicated the necessity for: Improved raisin grapes for mechanical harvest, including types resistant to powdery mildew; nematode-resistant rootstocks; early ripening varieties; and control of pests, including vine mealybug. These witnesses also explained that future research could potentially impact producers in a multitude of positive ways, "such as reduced pesticide usage or possibly safer and more economical products."

A witness also stated that "Also, in regards to labor, if a viable new variety were discovered with the potential to be harvested with fewer laborers needed, it would help all producers farm the crop more economically and also keep the price of raisins competitive in the marketplace."

Witnesses explained that if this proposal were implemented, the transition from CRMB to RAC of oversight of research under the order would not be difficult.

According to the record, many of the CRMB Research Committee board members also serve on the current Raisin Administrative Committee, and they are familiar with the procedures for requests, budgets and implementation of research projects. The RAC would establish a budget for research and the USDA would have oversight. If the assessment rate needed to be increased to cover the costs, a new rate would be recommended by the RAC and submitted to USDA for approval, as well as public comment, prior to implementation.

Representatives of the CRMB testifying at the hearing stated that on April 14, 2016, the CRMB voted and unanimously passed a resolution supporting this proposal. Through testimony and the content of the CRMB resolution, witnesses clearly stated that, in the absence of the CRMB's ability to support research or if the organization ceases to exist, research should be authorized to be conducted under the federal marketing order. If the CRMB is able to conduct research in the future, production research under the order would be not implemented. Therefore,

only one or the other organization would be collecting funds and overseeing research at any given time.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 989.53 be amended to authorize production research as proposed.

#### *Material Issue Number 2—Independent Producer Nominations*

Section 989.29, Initial members and nomination of successor members, and § 989.129, Voting at nominations meetings, should be amended to authorize separate nominations for independent producer member and independent producer alternate member seats.

According to the record, there have been extensive vacancies in the seats allocated to independent producer alternate members on the RAC for the past five two-year terms. Out of the total 15 to 16 independent producer alternate member seats available, there have been 12, 13, 14, 14 and 11 vacancies for the 2006–2008, 2008–2010, 2010–2012, 2012–2014 and 2014–2016 two-year terms, respectively.

While the independent producer member seats have been, for the most part, filled during the same five terms, the lack of independent producer alternate members results in less than full participation of the independent producer community. Alternate member seats allow for representation at a meeting when the member is not able to attend. Similarly, service as an alternate member provides exposure to the workings of the order and training for alternates to be able to serve as full members in future terms.

According to witnesses, full representation would give independent producers full participation in the RAC's administrative decisions and program direction. In an effort to encourage increased participation, the RAC proposes that allowing separate nominations for members and alternate member seats would encourage participation by those who wish to serve in a specific seat only.

Witnesses explained that raisin producers are largely divided into three groups: Members of Sun-Maid, members of the Raisin Bargaining Association (RBA), and independents.

Sun-Maid is a marketing-processing cooperative. Their membership is made up of those producers that have a membership in the organization. Sun-Maid producers typically deliver all of their crop to the cooperative. On some occasions, the cooperative may also buy raisins from independent producers and

the RBA. The RBA serves its members by negotiating raisin prices for its members.

Independent producers choose not to be members of either Sun-Maid or the RBA. Independent producers typically sell their product to Sun-Maid or independent packers. However, some independent producers are members of Fresno Co-op, a small marketing cooperative representing one to two percent of the industry.

According to the record, Sun-Maid producer members represent roughly 28 percent of industry production, with the RBA membership representing approximately 26 percent of industry production. The balance, or roughly 46 percent of the industry, is represented by independent producers.

Out of the RAC's 47-seat Committee, 35 seats are allocated to producer representatives, as stipulated in § 989.26 of the order. For the 2014–2016 term, producer representation is allocated such that independent producers represent 16 votes (or roughly 46 percent of the RAC calculated by dividing 16 by 35), Sun-Maid represents 10 votes (roughly 28 percent of the RAC), and the RBA represents 9 votes (roughly 26 percent of the RAC).

Currently, independent producer nominations are held in three districts. Districts One and Two, which represent all counties north and south of Fresno County, respectively, have one member and one alternate each for the 2014–2016 term. The largest district, Fresno County, for the 2014–2016 term, has 13 member and 13 alternate member seats.

According to the record, nominees are identified at district nomination meetings, which are widely advertised by the RAC through direct-mailings, newspaper advertisements, and placement on the program's Web site. Names collected at the nomination meetings are placed on a ballot. An example given by one witness indicated that, for District Three, if 13 seats for independent producer members and 13 seats for independent producer alternate members are available, the RAC would hope to receive at least 26 different nominees to fill all positions.

Ballots are then mailed to all independent producers who vote within their own district according to where their farm is located. When tabulating the votes according to § 989.29(2)(ii), the individual receiving the highest number of votes is designated as the first independent producer member nominee. The producer receiving the second highest number of votes is designated as the second independent producer member nominee. This tabulation process continues until all 13

of the independent producer member seats are nominated. The individual receiving the 14th highest number of votes is designated as an alternate member nominee, with this process being followed until all nominees for all independent producer member and alternate positions have been nominated. In other words, the top 13 who receive the most votes will be nominated to hold a member position, and the remaining would be nominated to hold alternate member positions.

However, witnesses explained that, in most cases, there are too few nominees to fill both independent producer member and independent producer alternate member seats. If 20 names are on the one ballot, with only 13 member seats available, the independent producer would vote for no more than 13 names to fill the 13 member seats. Of the remaining candidates, seven would hold alternate member positions, and six alternate member seats would be left vacant. One witness offered another example of a past nomination meeting where 14 independent producer member seats, along with their corresponding alternate member seats, were available to be filled. A total of five people attended that meeting. Therefore, there were only five individuals willing to fill 28 independent producer seats.

Witnesses speaking to the issue of low independent producer participation speculated that uncertainty over whether one would be nominated as a full member rather than an alternate member was preventing many from agreeing to be candidates. Similarly, there is a reluctance among independent producers to nominate other independent producers with limited time to attend regular RAC meetings. Witnesses indicated that the time commitment for a three- or four-hour meeting once a month as a full member was too big of a commitment for a producer who spends long days tending to his or her ranch. However, those individuals would be more inclined to serve as alternates because the commitment would be on an as-needed basis when required to serve in the place of an absent member.

Witnesses explained that the proposal to allow for separate nomination processes for independent producer member and independent producer alternate members is designed to eliminate the risk of being nominated to a member seat to those individuals interested in serving only as an alternate. Witnesses indicated that this proposal would increase participation of independent producers on the RAC.

According to the record, if the proposed amendment passes, instead of

a single ballot for all nominations as is currently done, there would be two separate ballots: one for members and one for alternate members. As is currently the practice, a meeting would be held by the RAC for the purpose of receiving nominations; if the proposed amendment passes, those nominations would be submitted separately for members and alternates.

Ballot mailing and tabulation of results would follow the current practice, described above, with the individual receiving the highest number of independent producer member votes becoming the first independent producer nominee, and so on, until all independent producer member seats are assigned a nominee. The same process would be used for identifying the individuals assigned as nominees to fill the independent producer member alternate seats.

USDA would oversee the nomination process, review background and acceptance statements and ultimately select and appoint the members. The timing of the nominations would not change, and there would be no anticipated additional costs in the administration of the nomination process.

Witnesses explained that this proposal, if implemented, would positively impact the California raisin industry, indicating that it would result in a fuller representation of those impacted by the program. Full representation would give the independent producers the fullest potential of their voice in the RAC decision-making process. Representation of small, independent producer businesses on the RAC could also increase, thereby supporting small business interests.

Additionally, witnesses indicated that increased participation of independent producers serving as alternate producer members could be viewed as a training opportunity for future generations of RAC members. Serving as alternates would allow these individuals to become familiar with the administrative functioning of the order. One witness indicated the desire to nominate individuals who are new to the industry or generational members who are assuming responsibility for their family farm. The witness described these individuals as the future of the industry.

No testimony opposing the proposed amendment was presented at the hearing. For the reasons stated above, it is recommended that § 989.29, Initial members and nomination of successor members, and § 989.129, Voting at nominations meetings, be amended to authorize separate nominations for

independent producer member and independent producer alternate member seats as proposed.

#### *Material Issue Number 3—Authority To Regulate Quality*

Sections 989.58, 989.59 and 989.61 (“Natural condition raisins,” “Regulation of the handling of raisins subsequent to their acquisition by handlers” and “Above parity situations,” respectively) should be amended to regulate quality by inserting the word “quality” after the words “minimum grade” in each section, respectively. Additionally, the heading prior to § 989.58 should be revised to read “Grade, Quality, and Condition Standards”. This would add authority to regulate quality under the order.

Currently, §§ 989.58 and 989.59 of the order state that the RAC has authority to regulate grade and condition standards. The attribute “quality” is not specifically mentioned. However, current program language indicates the intent to regulate quality by use of that word in several sections of the order. The inclusion of “quality” as a regulated attribute would support and further strengthen the current usage of this term in the order and its application in current inspection and order activities.

Witnesses explained that, if implemented, this proposal would clarify the intent of §§ 989.53 (Research and development), 989.54 (Marketing policy), 989.73 (Reports), 989.107 (Inspection certificate), 989.157 through 989.160 (Quality Control), and form FV 146 (Certificate of Quality and Condition), which all refer to the regulation of “quality” under the order.

Witnesses explained that the authority to regulate quality would allow them to regulate product attributes that fall outside the traditional scope of “grade” and “condition standards.” According to the record, current raisin grade and condition standards found in the order correspond to the “U.S. Standards for Grades of Processed Raisins,” USDA, December 1, 1978. The attributes regulated under grade and condition standards include, but are not limited to: Characteristics of damaged raisins (sunburn, scars, insect injury, etc.); presence of capstems, sugar crystals, grit, sand, silt, discoloration, moisture, or mold; and signs of immaturity. According to the record, “quality” would therefore mean attributes that impact the consumer, supply chain, end user, or the public’s demand for the product.

Witnesses also testified about the importance of quality checks on product, specifically residual testing for

herbicides, pesticides or fungicide residues, to ensure the safety of the consumer. As an example, witnesses discussed the need to regulate Ochratoxin, a naturally occurring fungus. A tolerance limit for this fungus is in place for products entering many markets. Witnesses stated that the ability to meet those markets' import requirements are vital to continued trade. By implementing quality regulation under the order, the industry would be certain that this requirement would be equally applied to all handlers of raisins within the U.S. Witnesses also explained that many producers are prohibited from using chemicals and their usage is regulated in the production of raisins, but this authority would allow for product validation or attesting that there are no residual chemicals on incoming or outgoing raisins from the packers.

Furthermore, in the event that the industry desires to implement further regulation to conform to forthcoming FDA guidelines under the Food Safety Modernization Act, those regulations may not fall within the traditional framework of grade and condition standards. Thus, the authority to regulate quality would provide the RAC with the flexibility to meet future regulatory needs of its industry.

Witnesses stated that the anticipated cost impact on the industry as a result of this proposal would be minimal at this time. If approved in referendum by producers, the addition of "quality" to the list of attributes that can be regulated under the order would not necessarily result in new, immediate regulation. Any new regulation would need to be developed and vetted as a proposal, approved and recommended by the RAC, published by USDA as a proposed rule, allow for public comment, and receive USDA approval prior to being implemented.

If quality regulation were recommended by the RAC and approved by USDA, such regulation would address quality concerns within the industry. For example, if Ochratoxin were to be regulated, its regulation would benefit the industry by ensuring that raisins with high levels of this toxin were not placed into the market. In addition, foreign markets with low Ochratoxin threshold levels would be assured that California raisins are adequately regulated. This type of regulation would assure customers of the industry's oversight of product quality. As such, witnesses explained that any potential costs of future regulation would be outweighed by the benefits of product quality assurance in the market. Witnesses also explained

that California raisins are currently inspected. The addition of another inspection parameter is unlikely to result in significant costs. Witnesses also anticipated that quality regulations could result in increased returns for both producers and handlers as, in some markets, a higher price would be paid for quality-certified product.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that §§ 989.58, 989.59 and 989.61, and the heading preceding § 989.58 should be amended to add quality regulation authority under the order.

#### *Material Issue Number 4—Different Market Regulations*

Section 989.59, Regulation of the handling of raisins subsequent to their acquisition by handlers, should be further amended to provide authority to establish different regulations for different markets.

Current order language establishes grade and condition standards for two classifications only: Grade A and Grade B. According to the record, the California raisin industry has customers in as many as 50 different countries. While the consumer bases in these countries vary significantly, the order does not allow for different quality or grade standards to be applied to exports to those markets. This proposed authority would allow the RAC to develop regulation for product that is best suited for a particular market destination.

Witnesses clarified that this proposal would only result in the addition of the authority to establish different regulations for different market destinations under the order. This proposal would not result in new, immediate regulation. If this proposal is implemented, the RAC could make recommendations for different regulations for different market destinations to USDA. Any new regulation would need to be developed and vetted as a proposal, approved and recommended by the RAC, published by USDA as a proposed rule, allow for public comment, and receive USDA approval prior to being implemented.

Witnesses stated that if any market-specific regulations were to be implemented as a result of this authority, the anticipated impact on producers and handlers would not be negative. Different regulations for different market destinations would not prevent product from being sold into the market. Instead, it would match product attributes to the consumer profile and customer demands of each market. In

doing so, witnesses anticipate that returns to producers and handlers could increase as consumers would be more likely to pay more for those products.

One witness stated that in the current global market, customers regularly establish their own individual specifications and define their own key attributes of quality. Thus, the authority of the marketing order to be more selective and precise for individual markets would likely enhance demand for California raisins. Witnesses further added that market-specific regulations tailored to market-specific consumers would allow the industry to be more competitive against foreign producers in those markets.

As previously stated, many export markets have unique product specifications in place to meet their consumer tastes and needs of their market. Witnesses explained that many California raisin handlers shipping to those markets are already meeting those product specifications. However, if this proposal were implemented, the RAC could recommend standards for all California raisin handlers shipping to specific export markets, thereby ensuring uniform quality of product and a level playing field for foreign customers who are comparing product services from multiple handlers.

According to the hearing record, the addition of this authority is not intended to address any specific export market at this time. Witnesses stated that the market is currently functioning well, with quality product being shipped to consistently meet foreign customers' product specifications.

According to data submitted at the hearing, the top five export markets for natural seedless raisins in crop year 2014–2015 were Japan, the United Kingdom, Canada, China and Germany. Exports for the 2014–2015 crop year totaled 111,407 packed tons, which is slightly lower than the five-crop-year average of 130,880 packed tons. By comparison, U.S. consumption of natural seedless for the 2014–2015 crop year totaled 180,627 packed tons. Based on these numbers, roughly 40 percent of the California raisin crop is exported ( $111,407 / (180,627 + 111,407) \approx 40\%$ ). Therefore, as witnesses indicated, the ability to develop specific quality or grade requirements for these export markets would assist in meeting or improving product demand for roughly half of the industry's production.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that § 989.59, Regulation of the handling of raisins subsequent to their acquisition by handlers, should be

further amended to provide authority to establish different regulations for different markets.

*Material Issue Number 5—Continuance Referenda*

Section 989.91, Suspension or termination, should be amended to require continuance referenda. Currently there is no continuance referendum requirement in the order.

If implemented, this amendment would provide the industry with an opportunity to determine if the order is favored by producers between five to six years after the implementation of the proposal for the initial referendum and every six years thereafter for subsequent referenda. If continuance were favored by at least two-thirds of producers voting in the continuance referendum, or if the volume of those voting represented a two-thirds majority of volume voted in support of continuance, the order would continue. If the vote failed to get two-thirds support by either number of voters or volume, USDA could terminate the program.

Witnesses explained that when the details of this proposal were first developed by the RAC's Rulemaking Workgroup (workgroup), the recommendation was to conduct an initial continuance referendum no sooner than five years after, and no later than six years after, the proposal was implemented. Subsequent referenda were to be conducted every six years thereafter. This recommendation was voted on and accepted by the workgroup, and was then presented to the Administrative Issues Subcommittee and full RAC membership meeting on January 27, 2016.

According to the record, when this recommendation was presented at the January 27, 2016 meeting, a lengthy discussion, including several proposed modifications, ensued. At that meeting, a revision to the proposed continuance referendum requirement was made, resulting in the initial referendum being slated to occur no sooner than two crop years and no later than six crop years of the proposal's implementation. The modified proposal passed with sixteen "yes" votes and ten "no" votes. Consequently, the modified proposal became the amendatory text included in the Notice of Hearing for this proposed rulemaking.

However, at the close of the January 27, 2016, meeting, and in subsequent RAC discussions, the modified continuance referendum requirement was revisited by individuals raising concerns that two years may not provide sufficient time for the industry to fully

adjust to any amendments resulting from this rulemaking action prior to a continuance vote. The RAC met again on April 14, 2016, and voted unanimously to uphold the original recommendation of the workgroup. In other words, the RAC voted to change the timing of the initial referendum requirement from two to six crop years after implementation back to a requirement of holding the initial referendum between five and six crop years after implementation.

As a result of the April 14, 2016, unanimous RAC vote, witnesses testifying on behalf of this amendment proposed a modification to the Notice of Hearing language, requesting that the phrase "no less than two years and no later than six years" be reverted to the workgroup's original proposal of "no less than five years and no more than six years" after implementation of the amendment. All witnesses testifying in favor of the proposed continuance referendum requirement supported this modification.

As a conforming change, USDA recommends modifying the alternate language proposed by the RAC to change the word "year" to "crop year", as necessary, to be consistent with previously proposed amendatory language for this change. The RAC proposed modification and the USDA conforming change have been included in the amendatory text of this recommended decision. The requirement for subsequent referenda to be conducted every six crop years thereafter remains unchanged.

In general, witnesses favored the continuance referendum requirement stating that the industry had not undergone an amendatory proceeding of its marketing program since 1989 and, therefore, has not had the opportunity to ascertain producer support since then. If implemented, witnesses stated that the continuance referendum requirement would provide the industry with regular feedback on the success and acceptance of its program's activities.

Furthermore, witnesses stated that this proposal, if implemented, would bring the order in line with the "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders," (guidelines) issued by the U.S. Department of Agriculture on January 25, 1982. These guidelines state that, "The Secretary believes these referenda are in the public interest. They provide the industry with the means to regularly re-assess the value of marketing orders and keep the Department informed of the wishes of the majority of the industry. Therefore, the Secretary is requiring that periodic referenda be

conducted for each order. USDA will work with each committee in development of a time frame appropriate for each order."

One witness raised concerns over the two-thirds majority requirement, as described above, to determine continuance, suspension or termination. This witness indicated that the two-thirds support requirement may be too large, and that if one-third of the industry were to not favor continuance, the program would fail. This witness indicated that this presented too large of a risk to the program and that a "discontinuance" referendum requiring two-thirds in favor of discontinuance would be more favorable.

Witnesses countering this position stated that the two-thirds in favor of continuance requirement is standard across many current marketing orders containing active continuance referendum requirements.

Witnesses also stated that the raisin industry has a history of consensus-building, with RAC votes on recommended actions historically being voted unanimously after extensive internal discussion and deliberations over a proposed course of action. One witness offered that, through the process of debate and compromise, consensus is reached. This witness also indicated that historically, in spite of robust and lengthy debates, the industry has shown an appreciation and value for its marketing order program.

Ultimately, witnesses concurred that the proposal for mandatory continuance referenda had been discussed and debated in the industry and, if implemented with the modified language presented at the hearing, would be a positive compromise encompassing many viewpoints. Witnesses stated that there would be minimal costs associated with implementing this proposal, if approved and implemented. Witnesses further explained that USDA has established procedures for conducting continuance referenda, as these are regularly held in other marketing orders, and that the addition of a continuance referendum every six years will assure that the marketing order is responsive to industry needs and changing circumstances. While it would not directly improve producer returns, witnesses stated that it would indirectly assure that the industry believes the marketing order is operating in their best interest, as the marketing order is funded by the assessments of the industry.

Witnesses further stated that many producers are small businesses, and this proposal will provide another

democratic opportunity to participate in the marketing order.

For the reasons stated above, it is recommended that § 989.91 be amended to require continuance referenda as proposed.

#### *Material Issue Number 6—Volume Regulation Removal*

USDA is proposing that all volume regulation and reserve pool authorities, and their related provisions, be removed from the order. As such, the following sections should be removed from the order: §§ 989.55, Regulation by the Secretary; 989.56, Raisin diversion program; 989.65, Free and reserve tonnage; 989.66, Reserve tonnage generally; 989.67, Disposal of reserve raisins; 989.71, Disposition of unsold reserve tonnage in above parity situations; 989.72, Exemption of educational institutions; 989.82, Expenses of reserve raisin operations; 989.154, Marketing policy computations; 989.156, Raisin diversion program; 989.166, Reserve tonnage generally; 989.167, Disposal of reserve raisins; 989.221, Sale and export of reserve raisins by handlers; 989.257, Final free and reserve percentages; and, 989.401 Payments for services performed with respect to reserve tonnage raisins.

In addition, the following headings should be removed: “Volume Regulation” prior to § 989.65, “Free and reserve tonnage.”; “Volume Regulation” prior to § 989.166, “Reserve tonnage generally.” and, “Subpart—Schedule of Payments” prior to § 989.401, “Payments for services performed with respect to reserve tonnage raisins.”

Also in accordance with this proposal, the following sections should be revised: §§ 989.11 “Producer,” which mentions the diversion program; 989.53 “Research and development,” to remove research and development projects related to reserve tonnage raisins; 989.54 “Marketing policy,” to remove marketing policy trade demand calculations linked to reserve raisins; 989.58 “Natural condition raisins,” to remove references to free and tonnage raisins; 989.59 “Regulation of the handling of raisins subsequent to their acquisition by handler,” to remove regulation of the handling of reserve raisins subsequent to their acquisition by handlers; 989.60 “Exemption,” to remove exemptions for reserve raisins; 989.73 “Reports,” to remove reports related to reserve raisins; 989.79 “Expenses,” to remove the authority for the RAC to incur expenses related to volume regulation or reserve raisins; 989.80 “Assessments,” to remove assessment language involving volume

regulations and reserve pool raisins; 989.84 “Disposition limitation,” to remove disposition limitations for reserve raisins on handlers; 989.158 “Natural condition raisins,” to remove the inclusion of reserve raisins from the natural condition raisin definition and provisions for reconditioning of off-grade reserve raisins; 989.173 “Reports,” to remove reporting requirements related to reserve pool raisins and volume regulation; and, 989.210 “Handling of varietal types of raisins acquired pursuant to a weight dockage system,” to remove handling regulation of reserve varietal types of raisins acquired using a weight dockage system.

Lastly, § 989.70, “Storage of raisins held on memorandum receipt and of packer-owned tonnage,” should be re-designated as § 989.96 as a result of the removal and amendment of the above sections.

According to the record, on June 22, 2015, the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the marketing order’s reserve pool authority to the Hornes was a taking under the Fifth Amendment to the U.S. Constitution. By a July 16, 2015, letter to the RAC, USDA stated, “In light of the *Horne* decision, the U.S. Department of Agriculture has decided not to authorize the reserve program of the federal marketing order for California raisins for the foreseeable future, effective immediately.”

Accordingly, USDA is proposing the removal of the reserve pool authority. In addition, USDA has determined that the reserve pool authority is inextricably connected to the order’s volume regulation authority. Furthermore, language for both authorities can be extracted from the order language without disturbing the remaining program functions. Therefore, USDA is proposing that all volume regulation and reserve pool authorities, and all related provisions, be removed from the order.

A USDA witness speaking on behalf of this proposal indicated that the July 16, 2015, letter to the RAC indicated USDA’s intention to schedule a formal rulemaking hearing. According to the witness and record evidence, the letter encouraged the RAC “to consider proposals to amend provisions in the marketing order related to the reserve program.” During a July 28, 2015, meeting with the RAC, the RAC was again informed of USDA’s intention to initiate rulemaking in the spring of 2016, for the purpose of amending the order as described above. Finally, on August 20, 2015, USDA met with the RAC to notify them that the

mentioned hearing would take place in May 2016.

The RAC was provided with a draft of USDA’s proposed modifications to the marketing order language that indicated which sections of language would be removed, revised, and re-designated. The RAC was given the opportunity to provide feedback on the proposed modified language. Consequently, some minor adjustments were made based on industry feedback, and the industry indicated its general acceptance of USDA’s proposed modifications prior to entering into the pre-hearing *ex parte* period. These proposed changes are captured in the proposed amendatory text published in this proceeding’s Notice of Hearing, as well as in the amendatory text of this recommended decision. Industry witnesses testifying at the hearing indicated general support for USDA’s proposed amendatory changes.

One witness speaking on behalf of the industry’s largest producer-handler cooperative, indicated that historical data supported the proposal that volume regulation was no longer needed in the order. The witness presented record evidence showing the varying acres of California raisins by variety grapes from 2006 to 2015. As one example, according to the data, in 2006, raisin variety bearing acres was 234,000, and in 2015, it was 190,000, indicating a sharp decline in raisin-producing acreage.

The witness explained that this data supported the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the order’s reserve pool authority has not been utilized since 2010.

No testimony opposing the proposed amendment was given at the hearing. For the reasons stated above, it is recommended that volume regulation and reserve pool authorities in the order be amended as proposed, including: Removing §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173 and 989.210; and re-designating § 989.70 as § 989.96.

In addition, the following headings should be removed: “Volume Regulation” prior to § 989.65, “Free and



reserve tonnage.”; “Volume Regulation” prior to § 989.166, “Reserve tonnage generally.”; and “Subpart—Schedule of Payments” prior to § 989.401, “Payments for services performed with respect to reserve tonnage raisins.”

#### *Material Issue Number 7—Term Limits*

Section 989.28, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve as a member of the RAC.

Currently, the term of office of each member and alternate member of the RAC is two years. There are no provisions related to term limits in the marketing order. Members and alternates may serve on the RAC until their respective successors are selected and have been qualified.

The USDA believes that all marketing order programs should include tenure limitations for committee membership. The USDA believes that this provision would increase industry participation on the RAC, provide for more diverse membership, provide the Committee with new perspectives and ideas, and increase the number of individuals in the industry with Committee experience.

At the hearing and as stated in the Notice of Hearing, USDA proposed a period of eight years as an appropriate limit to the number of years a member may serve consecutively. Since the current term of office for members and alternates is two years, USDA is proposing that members serve no more than four consecutive two-year terms, or a total of eight years. Once a member has served on the RAC for four consecutive terms, or eight years, the member could not serve as a member for at least one year before being eligible to serve again.

As originally stated in the Notice of Hearing, USDA’s proposal for term limits would have applied to both members and alternate members. However, at the hearing, the USDA witness testifying on behalf of this proposal offered a modification to remove the term limit requirement from alternate member service. The witness clarified that the modification would allow continuity to be maintained through individuals rotating their service between member and alternate member status. The witness stated that the modified language would uphold the intent of the 1982 guidelines as well as meet the needs of the industry for continuity of service. The modified language proposed by USDA would read as follows: “Committee members may serve up to four consecutive two-year terms of office. In no event shall any member serve more than eight

consecutive years on the Committee. For purposes of determining when a representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment. This limitation on tenure shall not apply to the service of alternate members.” This language has been incorporated into the regulatory text of this recommended decision.

This proposal falls within the 1982 guidelines and USDA’s experience that indicates that a period of eight years is an appropriate period. Eight years is considered long enough for committee members to make meaningful contributions to the administration of a marketing order, but not so long as to exclude others from participation on the committee.

According to evidence submitted at the hearing, term limits are in place in other federal marketing orders and have generally proven to have the intended impact on member participation and diversity. Of the 28 marketing orders currently in effect, 15 have term limits, including 3 out of 6 of the federal marketing orders that are based in California. The California programs requiring term limits include the Almond Board of California, the Administrative Committee for Pistachios, and the Kiwifruit Administrative Committee. Multi-state federal marketing order examples, such as the tart cherry industry administrative board, as well as the Cranberry Marketing Committee, also have term limits.

The witness further explained that term limits, as applicable in other marketing order programs, have been applied in ways that have suited those particular industries. For example, industry members can serve a number of consecutive terms before taking a minimum of a one-year break or a moving to an alternate member position. For those industries, term limits offer an opportunity to groom potential successors, while also retaining seasoned members with important institutional knowledge as alternate members who can continue to advise the board or committee.

The witness offered two specific examples of successful industry application of term limit requirements for the purpose of recruiting new, up-and-coming industry individuals: The California almond and kiwifruit industries.

In order to manage its succession planning for term limits, the Almond

Board of California conducts an almond industry leadership program that provides mentorship and education on the almond industry for younger, newer entrants into the industry. The program allows participants to be trained in a diverse range of issues, such as environmental stewardship, food quality and safety, as well as government, trade and leadership development. At the end of the program, participants are offered an opportunity to sit on a subcommittee of the Board for a year, in order to encourage them to pursue leadership roles within the industry and give them exposure to the inner workings of the organization. According to the witness, this experience helps build newcomer interest and expertise, in order to eventually move on to a position on the Almond Board of California Board of Directors.

The witness’s second example, the Kiwifruit Administrative Committee, convened an ad hoc diversity subcommittee in 2014 and implemented a diversity plan that resulted in the addition of three new members and three new alternates. The Kiwifruit Administrative Committee, or the KAC, reached out to eight local and highly visible newspapers, including the Appeal Democrat, the Chico Enterprise, the Modesto Bee, the Sacramento Bee, the Fresno Bee, the Porterville Post, the Valley Voice, and the Packer, and placed press releases on its Facebook page as well as the industry Web site and also shared the press releases with seven county Farm Bureau offices to conduct outreach. The outreach was successful in garnering many new members, four of whom are also involved in producing new kiwifruit varieties, which have recently been introduced into the market.

Industry witnesses presented testimony in opposition to this proposal. Although they agreed that increased industry participation in the program is desirable, witnesses stated that the application of term limits could be problematic. Testimony indicated that finding California raisin producers to serve on the RAC, especially independent producers, is challenging. Witnesses noted that there have been times in the past when filling RAC member positions has been difficult and that recruiting new members is not easily done. Moreover, witnesses stated that industry members who currently serve on the RAC bring knowledge and experience to the RAC that would be difficult to replace.

Furthermore, both Sun-Maid and RBA have internal programs that serve to fulfill recruitment and training



opportunities for industry members new to the program's operations. Therefore, according to witnesses, the need for a formalized, industry-wide program was not apparent.

Nonetheless, USDA believes that any additional efforts necessary to find eligible producers and handlers who are willing to serve on the RAC are offset by the benefits derived by broader industry participation in order operations. Therefore, USDA recommends adding this requirement.

For the reasons stated above, it is recommended that § 989.28, Term of office, be amended to include term limits as proposed.

#### *Material Issue Number 8—Conforming Changes*

USDA recommends that any changes that may be necessary to the order language to conform to any of the above-proposed amendments, if implemented, should be made. In addition, conforming changes may also include non-substantive, typographical errors.

As such, USDA recommends correcting the following minor inconsistencies and typographical errors found in the current order language that are not substantive in nature. These include: Changing all occurrences of the term "offgrade" to "off-grade"; changing all occurrences of the term "nonnormal" to "non-normal"; and, changing all occurrences of the term "committee" to "Committee." These corrections would result in consistent spelling of these terms throughout the order.

In addition, the words "Processed Products Standardization and Inspection Branch" in §§ 989.58(d) and 989.59(d) should be changed to "Specialty Crops Inspection Division." Similarly, "Processed Products Branch, Fruit and Vegetable Division" in § 989.102 should be changed to "Specialty Crops Inspection Division." These corrections would reflect the official name change of the AMS's inspection service office for fruit, vegetables and specialty crops.

#### **Executive Orders 12866 and 13771, and Regulatory Flexibility Act**

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled

"Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the hearing transcript, there are approximately 3,000 raisin producers in California. According to National Agricultural Statistics Service data presented at the hearing, the total value of production of raisins in the 2014/15 crop year is \$598,052,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides an average return per producer of \$199,950.67. A small producer as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually. Therefore, a majority of raisin producers are considered small entities under SBA's standards.

According to the industry, there were 23 handlers for the 2015/16 crop year. A small agricultural service firm as defined by the SBA is one that grosses less than \$7,500,000 annually. Based on Committee data, 13 handlers would be considered small entities under SBA's standards. Slightly more than half of the industry's handlers are considered small entities under SBA's standards.

The production area regulated under the order covers the state of California. Acreage devoted to raisin production in the regulated area has declined in recent years. According to data presented at the hearing, bearing acreage for raisins reached a high of 280,000 acres during the 2000/01 crop year. Since then, bearing acreage for raisins has decreased 32 percent to 190,000 in 2014/15. As a result, the total production of raisins reached a high during the 2000/01 crop year of 484,500 tons (dried basis). Since the 2000/01 crop year, total production for raisins has decreased 32 percent to 328,600 tons in 2014/15.

During the hearing held May 3 and 4, 2016, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The evidence presented at the hearing shows

that none of the proposed amendments would have any burdensome effects or a significant economic impact on a substantial number of small agricultural producers or firms.

#### *Material Issue Number 1—Authorize Production Research*

The proposal described in Material Issue 1 would amend § 989.53 to authorize production research.

Currently, the California Raisin Marketing Board (CRMB) is the funding source for production research for the California raisin industry. Three years ago, payments of assessments to the CRMB were suspended due to the results of litigation. Without funding the CRMB has been unable to conduct any new production research projects. If amended, this proposal would authorize the RAC to conduct production research without having to rely on the CRMB.

Witnesses supported this proposal and stated that future research could potentially impact producers in many ways, such as reducing pesticide usage or the development of new varieties that are less labor intensive. Production research would provide the raisin industry the ability to meet the needs of the ever changing domestic and international markets. According to a witness's testimony, the benefits of the proposed amendment would outweigh any costs.

For the reasons described above, it is determined that the proposed amendment would benefit industry participants and improve administration of the order. The costs of implementing this proposal would be minimal, if any.

#### *Material Issue Number 2—Authorize Separate Nominations for Independent Producer Member and Independent Producer Alternate Member Seats*

The proposal described in Material Issue 2 would amend §§ 989.29 and 989.129 to authorize separate nominations for independent producer members and independent producer alternate member seats.

Currently, the RAC has difficulty filling Committee seats designated for independent producer members and independent producer alternative members. Independent producer alternative member seats have gone unfilled for several consecutive years.

According to witnesses' testimony, the purpose of the proposal is to increase the participation of independent producers willing to participate on the Committee. Full participation would give the independent producers their represented voice on RAC decisions.

In conclusion, it is determined that the benefits of increased Committee participation by independent producers would outweigh any costs associated with the implementation of the proposed amendment.

*Material Issue Number 3—Add Authority To Regulate Quality*

The proposal described in Material Issue 3 would amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality. A corresponding change would also revise the heading prior to § 989.58 to include quality.

Currently, §§ 989.58 and 989.59 of the order state that the Committee has the authority to recommend grade and condition standards regulation under the order. The attribute “quality” is not specifically mentioned. The proposed amendment would add language to include “quality” as an attribute that can be regulated under the order.

According to a witness, the proposed amendment would give the Committee flexibility to ensure consumer safety by setting quality standards for residue levels for herbicides, pesticides or fungicides. The quality standards would be equally applied to all handlers of raisins within the U.S.; some handlers are already testing for certain types of fungicides so the increased costs would be minimal.

It is determined that the additional costs incurred to regulate quality would be greatly outweighed by the increased flexibility for the industry to respond to changing quality regulations, increased consumer safety, and other benefits gained from implementing this proposal.

*Material Issue Number 4—Add Authority To Establish Different Regulations for Different Markets*

The proposal described in Material Issue 4 would amend § 989.59 to add authority to establish different regulations for different markets.

The order does not currently allow for different quality or grade standards to be applied to different foreign markets. The language in the order only has two classifications for grade and condition standards, Grade A or Grade B. The current grade and condition standards are consistent across all markets.

The proposed amendment would give the Committee the authority to develop regulations for individual foreign markets that would be best suited for that specific destination. This proposal would give the industry flexibility to tailor product attributes to meet the foreign consumer profile and the customer demands for each individual market.

For the reasons described above, it is determined that any additional costs incurred for this proposal would be outweighed by the increased flexibility for the industry to respond to a changing global marketplace.

*Material Issue Number 5—Continuance Referenda*

The proposal described in Material Issue 5 would amend § 989.91 to require continuance referenda.

The proposed amendment would require the USDA to conduct a continuance referenda between year five and year six for the first referendum and every six years thereafter to assure that the order is responsive to industry needs and changing circumstances. A witness testified that a continuance referenda is the best tool for assuring that the order remains responsive to the needs of the industry. While a continuance referenda will not directly improve producer returns, it will indirectly assure that the industry believes that the order is operating in the producer’s best interest.

For these reasons, it is determined that the benefits of conducting a continuance referenda would outweigh the potential costs of implementing this proposal.

*Material Issue Number 6—Remove Volume Regulations and Reserve Pool Authority*

The proposal described in Material Issue 6 would amend the order to remove volume regulation and reserve pool authority. This would include: Removing §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257, and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173, and 989.210; and redesignating § 989.70 as § 989.96. Corresponding changes would also remove the following headings: “Volume Regulation” prior to § 989.65; “Volume Regulation” prior to § 989.166; and, “Subpart-Schedule of Payments” prior to § 989.401.

The proposed amendment would remove all authority for the RAC to establish volume restrictions and a reserve pool. On June 22, 2015, the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the marketing order’s reserve pool authority to the Hornes was a taking under the Fifth Amendment to the U.S. Constitution. By a July 16, 2015 letter to the Raisin Administrative Committee, USDA stated, “In light of the Horne decision, the U.S. Department of

Agriculture has decided not to authorize the reserve program of the federal marketing order for California raisins for the foreseeable future, effective immediately.”

One witness explained that bearing acres have declined the past ten years that supports the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the order’s reserve pool authority has not been utilized since 2010.

The proposal would be a relaxation of regulations, for this reason, it is determined that no significant impact on small business entities is anticipated from this proposed change.

*Material Issue Number 7—Establish Term Limits*

The proposal described in Material Issue 7 would amend § 989.28 to establish term limits.

The proposed amendment would establish term limits of up to four consecutive two-year terms for members only, not alternate members. If implemented, in no event would any member serve more than eight consecutive years on the Committee. The proposal for term limits would conform the order to other existing programs. USDA strives to maintain continuity in the service of its members.

According to a witness’s testimony, term limits in other marketing orders have generally proven to have the intended impact of increased participation and diversity. For these reasons, it is determined that the benefits of the proposal would outweigh the potential costs of implementation.

The costs attributed to these proposed changes are minimal; therefore, there will not be a significant impact on a substantial number of small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the marketing of California raisins.

RAC meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and the hearing to participate in RAC deliberations on all issues. All RAC meetings and the hearing were public

forums, and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Paperwork Reduction Act**

Current information collection requirements for Part 989 are approved by OMB, under OMB Number 0581–0189—“Generic OMB Fruit Crops.” No changes are anticipated in these requirements as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

#### **Civil Justice Reform**

The amendments to the order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

#### **Rulings on Briefs of Interested Persons**

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the

findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

#### **General Findings**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of raisins grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins grown in the production area; and

(5) All handling of raisins grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized, and the Committee and industry would like to avail themselves

of the opportunity to implement the changes as soon as possible. All written exceptions received within the comment period will be considered, and a producer referendum will be conducted before any of these proposals are implemented.

#### **List of Subjects in 7 CFR Part 989**

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

#### **Recommended Further Amendment of the Marketing Order**

For the reasons set out in the preamble, 7 CFR part 989 is proposed to be amended as follows:

#### **PART 989—RAISINS PRODUCED BY GRAPES GROWN IN CALIFORNIA**

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

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 989.11 is revised to read as follows:

##### **§ 989.11 Producer.**

*Producer* means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

■ 3. In § 989.28:

■ a. Redesignate the introductory text as paragraph (a);

■ b. Revise newly redesignated paragraph (a); and

■ c. Add paragraph (b).

The revisions and addition read as follows:

##### **§ 989.28 Term of office.**

(a) The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years; *Provided*, That each such member and alternate member shall continue to serve until their successor is selected and has qualified.

(b) Representatives may serve up to four consecutive, two-year terms of office. In no event shall any representative serve more than eight consecutive years on the Committee. For purposes of determining when a representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment. This limitation on tenure shall not apply to the service of alternate members.

■ 4. In § 989.29:

- a. Revise paragraph (b)(2)(ii);
- b. Redesignate paragraph (b)(2)(iii) as paragraph (b)(2)(iv);
- c. Add a new paragraph (b)(2)(iii); and
- d. Revise newly redesignated paragraph (b)(2)(iv).

The revisions and addition read as follows:

**§ 989.29 Initial members and nomination of successor members.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(ii) Each such producer whose name is offered in nomination for producer member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. Similarly, each such producer whose name is offered in nomination for producer alternate member positions to represent on the committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the committee in each district. The producer member candidate receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee until nominees for all producer member positions have been filled. Similarly, the producer alternate member candidate receiving the highest number of votes shall be designated as the first alternate member nominee, the second highest shall be designated as the second alternate member nominee until nominees for all member positions have been filled.

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member

seat may be nominated to fill vacant alternate member seats. Member seat nominees shall indicate, prior to the nomination vote, whether they are willing to accept nomination for an alternate seat in the event they are not nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section

\* \* \* \* \*

■ 5. In § 989.53(a), revise the introductory text and remove the text that follows paragraph (a)(5) to read as follows:

**§ 989.53 Research and development.**

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

\* \* \* \* \*

■ 6. In § 989.54:

- a. Remove paragraphs (a) through (d) and (g);
- b. Remove paragraph (e)(4);
- c. Redesignate paragraphs (e)(5) through (e)(10) as (e)(4) through (e)(9), respectively;
- d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and
- e. Revise newly redesignated paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5) and (c).

The revisions read as follows:

**§ 989.54 Marketing policy.**

(a) Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its

recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy, the Committee may give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

\* \* \* \* \*

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

\* \* \* \* \*

(c) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

■ 7. Sections 989.55 and 989.56 are removed.

■ 8. The heading prior to § 989.58 "Grade and Condition Standards" is revised to read as follows: "GRADE, QUALITY, AND CONDITION STANDARDS".

■ 9. In § 989.58, revise paragraphs (a), (b), (d)(1), (e)(1), and (e)(4) to read as follows:

**§ 989.58 Natural condition raisins.**

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the committee may establish, with the approval of the Secretary, in applicable rules and regulations: *Provided*, That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: *And provided further*, That a handler may

acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade, quality, and condition standards for natural condition raisins.* The committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

\* \* \* \* \*

(d) \* \* \*

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of standard raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and

procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible non-normal outlets. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards:

*Provided,* That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be re-inspected and certified as a condition for their acquisition by a handler.

\* \* \* \* \*

(e) \* \* \*

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e)(2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

\* \* \* \* \*

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned.

\* \* \* \* \*

■ 10. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

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

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade quality, and condition standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section:

*Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. *And provided further,* That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

(b) The committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

\* \* \* \* \*

(d) *Inspection and certification.* Unless otherwise provided in this

section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and inspection to be made of such raisins to determine whether they meet the then applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(g) *Exemption of experimental and specialty packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

■ 11. Section 989.60(a) is revised to read as follows:

#### § 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to

permit the acquisition and disposition of any off-grade raisins, free from any or all regulations, for uses in non-normal outlets.

\* \* \* \* \*

■ 12. Section 989.61 is revised to read as follows:

#### § 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the act.

■ 13. The heading “**VOLUME REGULATION**” prior to § 989.65 is removed.

■ 14. Sections 989.65, 989.66, and 989.67 are removed.

■ 15. Redesignate § 989.70 as § 989.96.

■ 16. Sections 989.71, and 989.72 are removed.

■ 17. Section 989.73 (b) is revised to read as follows:

#### § 989.73 Reports.

\* \* \* \* \*

(b) *Acquisition reports.* Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

(1) The total quantity of standard raisins acquired;

(2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and

(3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

\* \* \* \* \*

■ 18. Section 989.79 is revised to read as follows:

#### § 989.79 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than 5 days if warranted by a late crop.

■ 19. In § 989.80, revise paragraphs (a) through (c) to read as follows:

#### § 989.80 Assessments.

(a) Each handler shall pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept

advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

\* \* \* \* \*

■ 20. Section 989.82 is removed.

■ 21. Section 989.84 is revised to read as follows:

**§ 989.84 Disposition limitation.**

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

■ 22. In § 989.91:

■ a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and;

■ b. Add a new paragraph (c).

The revisions and addition read as follows:

**§ 989.91 Suspension or termination.**

\* \* \* \* \*

(c) No less than five crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such termination shall be announced on or before the end of the crop year.

\* \* \* \* \*

■ 23. Section 989.129 is revised to read as follows:

**§ 989.129 Voting at nomination meetings.**

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and

who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: (a) Owns and farms land resulting in his or its ownership of such grapes produced thereon; (b) rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or (c) owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position.

Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled in its district.

■ 24. Sections 989.154 and 989.156 are removed.

■ 25. Section 989.158(c)(4)(i) is revised to read as follows:

**§ 989.158 Natural condition raisins.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including email. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added;

otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

\* \* \* \* \*

■ 26. The heading "Volume Regulation" prior to § 989.166 is removed.

■ 27. Sections 989.166 and 989.167 are removed.

■ 28. In § 989.173:

■ a. Revise paragraphs (a) and (b)(2)(i),

■ b. Remove paragraphs (b)(2)(ii), (f), and (g)(1)(ii);

■ c. Redesignate paragraphs (b)(2)(iii), (g) and (g)(1)(iii) as paragraphs (b)(2)(ii), (f) and (f)(1)(ii), respectively; and

■ d. Revise newly redesignated paragraph (b)(2)(ii), paragraph (c)(1), (d)(1), (d)(1)(v), and newly redesignated paragraph (f).

The revisions read as follows:

**§ 989.173 Reports.**

(a) *Inventory reports.* Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. *Provided*, That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be



necessary and which the Committee shall specify in its request.

(b) \* \* \*

(2) \* \* \*

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

\* \* \* \* \*

(c) \* \* \*

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within the State of California between plants of any such handler and from such handler to other handlers): *Provided*, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

\* \* \* \* \*

(d) \* \* \*

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

\* \* \* \* \*

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) The quantity of raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(ii) \* \* \*

(2) \* \* \*

(i) The total net weight of the standard raisins acquired during the reporting period; and

\* \* \* \* \*

(3) *Disposition report of organically-produced raisins.* No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

\* \* \* \* \*

■ 29. In § 989.210:

■ a. Remove paragraphs (b), (c) and (e);

■ b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and

■ c. Revise newly redesignated paragraph (b).

The revisions read as follows:

**§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.**

\* \* \* \* \*

(b) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

\* \* \* \* \*

■ 30. Sections 989.221 and 989.257 are removed.

■ 31. The subpart heading “Subpart-Schedule of Payments” prior to § 989.401 is removed.

■ 32. Section 989.401 is removed.

■ 33. In part 989 all references of “offgrade” are revised to read “off-grade”.

■ 34. In part 989 all references to “nonnormal” are revised to read “non-normal”.

■ 35. In part 989 all references to “committee” are revised to read “Committee”.

■ 36. In the list below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
989.58(d) .....	Processed Products Standardization and Inspection Branch.	Specialty Crops Inspection Division.
989.59(d) .....	Processed Products Standardization and Inspection Branch.	Specialty Crops Inspection Division.
989.102 .....	Processed Products Branch, Fruit and Vegetable Division.	Specialty Crops Inspection Division.

Dated: May 3, 2017.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2017-09242 Filed 5-30-17; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-0495; Directorate Identifier 2017-NM-017-AD]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier, Inc., Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model CL-600-2B19 (Regional Jet Series 100 & 440), CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), and Model CL-600-2D24 (Regional Jet Series 900) airplanes. This proposed AD was prompted by development of a modification to prevent uncommanded rudder movement during flight. This proposed AD would require modifying the wiring harness of the yaw damper control system. We are proposing this AD to address the unsafe condition on these products.