

crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate from the RAC that represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 ton per acre production cap. The production cap limits the yield that a producer can claim. Producers who

historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on January 29, 2003, and recommended allocating 35,000 tons of 2002 NS reserve raisins to a 2003 RDP. The program will be limited to vine removal for complete production units, with a 5-year moratorium on replanting raisin-variety grapes. Damages of \$700 per ton of creditable fruit weight represented on the RDP certificate will be imposed on producers who replant prior to July 31, 2008. Harvest costs were established at \$340 per ton. The RAC also recommended reducing the production cap from 2.75 to 2.0 tons per acre. With this year's large crop of about 373,000 tons, the RAC believes that the grape vines will produce a smaller crop next year. Thus, the RAC recommended reducing the cap from 2.75 to 2.0 tons per acre to reflect anticipated 2003 crop yields.

The RAC's RDP recommendation passed with 24 members in favor and 21 opposed. Those opposed expressed concern with the RDP as a whole, not the production cap. They believe that many producers have already pulled out their vines, and that attrition should occur naturally in the industry. Concern also was expressed that the tonnage allocated to the diversion program would be added to next year's crop estimate, thereby reducing next year's free tonnage percentage and producer returns. Those in favor of the program contend that, with a 2002 NS crop estimated at about 373,000 tons, and a computed trade demand (comparable to market needs) of 196,185 tons, there would be 176,815 tons of reserve raisins. A diversion program is one avenue authorized under the order to utilize these reserve raisins.

On February 7, 2003, USDA approved the requirements of the RDP recommended by the RAC, with the exception of the production cap, which requires informal rulemaking. This rule implements the RAC's recommendation to reduce the 2003 RDP production cap from 2.75 to 2.0 tons per acre. Paragraph (t) in § 989.156 of the order's rules and regulations is revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (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 business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(t) of the order's rules and regulations regarding the RDP. Authority for this action is provided in § 989.56(a) of the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP.

This rule reduces the cap from 2.75 to 2.0 tons per acre to reflect next year's estimated yield. Regarding the impact of