

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 the following fall from the RAC which 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.

#### **RAC Recommendation**

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC also has been reviewing options to help the industry address these issues through the marketing order. The RAC proposed some requirements for a 2003 RDP at a meeting on October 15, 2002. Additional revisions were proposed by the RAC's Executive Committee on October 24, and November 4 and 26, 2002. The RAC met on December 12, 2002, to review the Executive Committee's changes and proposed program. The RAC ultimately recommended specific changes to the order's regulations regarding the RDP that could apply to any future RDP. The changes were designed to provide the RAC with additional flexibility when implementing a RDP, and provide opportunity for all producers to participate in a program. The changes are described in the following paragraphs.

#### **Additional Date for Increasing the RDP Tonnage**

With the exception of the 2002–03 crop year, § 989.56(a) of the order and § 989.156(a)(1) of the regulations specify that the RAC must announce the quantity of tonnage allotted to a RDP on or before November 30 of each crop

year. Section 989.156(a)(1) specifies further, with the exception of the 2002–03 crop year, that the RAC may announce an increase in the tonnage eligible for a RDP on or before January 15 of each crop year. The November 30 deadline in the order was suspended, and the November 30 and January 15 dates in the regulations were extended for the 2002–03 crop year to dates specified by the RAC (67 FR 71072, November 29, 2002) to allow time for review and modification of the RAC's proposed RDP changes.

The RAC recommended that the regulations be modified to allow the RAC an additional opportunity to increase the tonnage eligible for a RDP on or before May 1 of each crop year subsequent to 2002–03. This will allow the RAC the opportunity to allocate additional tonnage to a RDP in years when raisin deliveries may be slow, or when additional reserve raisins may be available later during the crop year. Section 989.156(a)(1) was modified accordingly.

#### **Limit on Tonnage Allocated for Vine Removal**

Section 989.156(h)(1) specifies that the RAC may limit a RDP to vine removal only. This requirement remains unchanged by this rule. However, the RAC proposed having the ability to cap, or limit, the amount of tonnage allocated to a RDP for vine removal. For example, the RAC may allocate 100,000 tons to a RDP, of which 50,000 tons would be allotted for vine removal only. Under this scenario, the remaining 50,000 tons would be available for spur pruners (or producers who opted to reduce their production by methods other than vine removal). As described later in this rule, the RAC recommended revising the regulations to allow for the allocation of tonnage to spur pruners pro rata to all who applied. Imposing a cap on vine removers would ensure that a certain amount of tonnage would be available for a spur prune program. This additional requirement is specified in § 989.156(a)(2).

#### **Additional Agreement for Vine Removers Who Replant**

The RAC recommended that authority be added for the RAC to condition a vine removal program with a producer's agreement not to replant and to compensate the RAC for damages if replanting occurs. Producers who agree to remove vines, but replant within a specified number of years (maximum of 5 crop years), as determined by the RAC, with the approval of USDA, must agree to compensate the RAC for appropriate damages for the tonnage

specified in the applicable diversion certificate. The payment of damages would be appropriate because replanting would cause serious damage to a RDP and the raisin industry. On January 29, 2003, the RAC recommended, and USDA subsequently approved, imposing a 5-year restriction on replanting as a feature of a 2003 RDP for NS raisins (35,000 tons of 2002 reserve raisins were allocated to a 2003 RDP). This should remove acreage from production for at least 8 crop years because it takes about 3 years for a new vineyard to have significant production. Adding this requirement to a RDP is expected to help the industry reduce its burdensome oversupply.

Accordingly, the producer application for a 2003 RDP was modified to condition a vine removal program with a producer's agreement not to replant. Producers who elect to participate in a RDP and later replant will be required to compensate the RAC for damages at a rate of \$700 per ton, as recommended by the RAC and approved by USDA, for the tonnage specified on the diversion certificate.

The interim final rule specified that funds collected by the RAC for such damages will be deposited in the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool. An addition has been made to this final rule, based on a comment received. The comment is addressed in detail later in this rule. Specifically, if the applicable reserve pool has been closed and equity distributed, damages collected will be deposited in the reserve pool for the crop year in which such monies are received. If no reserve pool exists for that year, then damages collected will be deposited in an open reserve pool of the crop year closest to the applicable diversion pool. Finally, as stated in the interim final rule, if a determination is made by the RAC that a producer violated the agreement not to replant and is subject to damages, the producer may appeal the RAC's decision in accordance with paragraph (m) of § 989.156.

#### **Application of Production Cap**

Under a RDP, the reserve tonnage allocated to a program becomes part of the following year's supply. For example, if 100,000 tons of 2002–03 reserve raisins were allocated to a RDP, that tonnage would be issued to RDP producers in the fall of 2003 in the form of certificates from the RAC. The certificates represent actual raisins. The 100,000 tons would then be included in the 2003–04 crop estimate. A higher crop estimate reduces the free tonnage