

percentage. Since producers are paid by handlers for their free tonnage raisins, a lower free tonnage percentage reduces producer returns. The industry has had concerns with the impact of large diversion programs on the following year's free tonnage percentage.

As a result, the RAC recommended that the concern about large RDP's adversely impacting the following year's free tonnage percentage be addressed through application of the production cap. A production cap is a limit on the yield per acre that is permitted under a RDP. Section 989.156(a) specifies that the RAC must announce the production cap at the same time it announces a RDP for the crop year. The section specifies further that the production cap shall equal 2.75 tons per acre, unless it is lowered by the RAC, with approval of the Secretary.

The RAC proposed that it have the flexibility to limit the production cap to a percentage of the yield per acre for production units on which producers agree to spur prune (or curtail production by methods other than vine removal) to lessen the adverse effects a large RDP would have on the following year's free tonnage percentage. For example, the RAC could specify that the production cap applicable to 2003 spur pruners would equal the lesser of 2.75 tons per acre, or 80 percent of the 2002 yield per acre on that production unit. The following table illustrates this further.

| 2002 yield per acre (tons) | Application of production cap (tons) |
|----------------------------|--------------------------------------|
| 5.0 .....                  | 2.75 (2.75 cap)                      |
| 4.0 .....                  | 2.75 (2.75 cap)                      |
| 3.5 .....                  | 2.75 (2.75 cap)                      |
| 3.4375 .....               | 2.75 (both 80% and 2.75)             |
| 3.2 .....                  | 2.56 (80% cap)                       |
| 3.0 .....                  | 2.4 (80% cap)                        |
| 2.5 .....                  | 2.0 (80% cap)                        |
| 2.0 .....                  | 1.6 (80% cap)                        |
| 1.5 .....                  | 1.2 (80% cap)                        |
| 1.0 .....                  | 0.8 (80% cap)                        |

Participants who agree to remove vines would not be subject to the percentage limit on the production cap because of the effectiveness of vine removal in reducing production capacity. However, such participants would remain subject to the established production cap. This additional flexibility is specified in § 989.156(a)(2).

#### **Allocation of Tonnage for Spur Pruners (Includes Methods of Diversion Other Than Vine Removal)**

Prior to implementation of the interim final rule, § 989.156(d) required that, if reserve tonnage existed after the

allocation of diversion tonnage had been made to all eligible producer applicants who agreed to remove vines, a lottery would be held to allocate remaining tonnage. The RAC recommended that it have the flexibility to allocate such tonnage either pro rata to remaining applicants or by a lottery for complete production units to remaining applicants if a minimal amount of tonnage remains. Allocating tonnage pro rata will provide the opportunity for all producers to participate in a spur prune program. Accordingly, §§ 989.156(a)(2) and 989.156(d) were modified to incorporate this option.

#### **Inclusion of Partial Production Units**

As described above, the RAC contemplates future RDP's where the tonnage allotted to applicants who agree to spur prune vines (or divert production using a method other than vine removal) may be done on a pro rata basis. Such producers would spur prune only a portion of a production unit, or a "partial" unit.

In 1997, the RAC recommended that partial production units no longer be accepted into the RDP, and § 989.156 was modified accordingly (62 FR 60764; November 13, 1997). This action was taken because the RAC had concerns that some producers were removing weak vines in a production unit and getting credit under a RDP for an inflated amount of tonnage.

To implement the RAC's proposal for allocating tonnage on a pro-rata basis to applicants who agree to spur prune their vines, and help maintain integrity of the program, the RAC recommended that a partial production unit must have two permanent, contiguous (natural or man-made) boundaries. This should eliminate the ability for producers to select certain rows of weak vines and artificially inflate the tonnage on their unit. This definition was added to paragraph (o) of § 989.156. Additionally, the words "or portion thereof" were added to paragraphs (h) and (i) of § 989.156 to indicate that partial units may be included in a RDP.

Finally, the RAC recommended that it be given the authority to specify provisions for a partial production unit to maintain the integrity of the program. For example, the RAC indicated that it might want to specify that only a certain corner of each vineyard may be accepted into a spur-prune RDP to further alleviate the problem of a producer choosing the weakest corner of his/her vineyard, and to help maintain the integrity of the RDP. Accordingly, paragraph (a) of § 989.156 was modified to reflect that the RAC may limit a program that is applicable to partial

production units by specifying the portion of the production units that can be diverted, or like provisions to maintain the integrity of the program.

#### **Final 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 final 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.

The California Agriculture Statistics Service (CASS) forecasted the 2002 production of raisin variety grapes at 2,550,000 tons (green). This is a relatively high level of production. The record high production occurred in 2000, at 2,921,000 tons (green).

Producers market raisin variety grapes in the fresh market (table), wine or juice market (crush), or dry them into raisins. Typically, 67 percent of the crop is dried for raisins, 20 percent crushed for wine and juice, and the remaining 13 percent of the crop is utilized in fresh and canned sales. These outlets provide a hedge for producers attempting to minimize risk from bad weather (rain) or a depressed market (concentrate, wine, or raisins).

For the week ending March 22, 2003, seasonal deliveries for all varietal types of raisins were at 421,725 tons (381,992 tons for Natural (sun-dried) Seedless (NS)). This will be the third consecutive year that raisin production has been