

in harvest costs results in a larger payment to producers for the certificates. The reduction in harvest costs for new participants and resulting increased payment was intended to take into account in producing a 2002 crop up to time of removal, the the cultural and some harvest costs incurred by such producers.

Under the additional opportunity program, vines had to either be removed, or chain sawed at the base by July 31, 2002. RAC staff verified that the vines had been removed or adequately chain sawed. RAC staff later re-inspected vines that had been chain sawed to ensure that the remainder of the vine had been removed.

Accordingly, a new paragraph (u) was added to § 989.156 specifying the provisions of the additional opportunity program with applicable time frames. In addition, necessary conforming changes were made to paragraphs (a), (q), and (s) of § 989.156.

The interim final rule stated that, when redeeming certificates for 2001 raisin handlers would pay the RAC the harvest cost plus payment for bins and for receiving, storing, fumigating, and handling the reserve raisins. The Committee believed that RDP certificates should be treated like "raisins", and handlers should pay the same as if they had to buy raisins directly from producers. Bin rental is included in the cost of raisins bought directly from producers and the Committee believed that this cost should be included in the cost of raisins bought through the RDP. The bin payment was set at \$20. However, some Committee members believed that this fee contributed to handler delays/reluctance in buying 2001 RDP certificates for 2000–01 reserve pool raisins from producers. To avoid this in purchasing 2002 RDP certificates for 2001–02 reserve pool raisins, the Committee on August 14, 2002, unanimously voted to waive the \$20 per ton bin fee.

#### 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.

This rule continues to revise § 989.156 of the order's rules and regulations regarding the RDP. 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. A 2002 RDP for NS raisins was established in November 2001, and 54,086 tons of 2001 crop reserve raisins were allocated to the program. This rule continues in effect a rule that allowed producers an additional opportunity to participate in the 2002 RDP in view of the oversupply situation affecting the California raisin industry. An additional 25,000 tons of 2001 crop reserve raisins was allocated to the RDP. The additional program applied to producers who agreed to remove vines from production, and was intended to help the industry reduce its burdensome oversupply. Under the program, the RAC received applications from producers accounting for an estimated 2,265 acres, and 5,920 tons of raisins that would be removed from production. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the additional opportunity program was intended to help the industry as a whole reduce its burdensome oversupply. The California raisin industry has experienced successive crop years of high production. The 10-year average for deliveries of NS raisins to handlers is 344,303 tons. NS raisin deliveries for the 2000 crop year were 432,616 tons, and deliveries for the 2001 crop year were 377,328 tons. As previously stated,

the initial RDP removed about 3,850 acres from production. It is estimated that the additional opportunity program removed another 2,265 acres from production, for a combined total of about 6,115 acres, which helped the industry reduce its oversupply.

Regarding the impact of this action on producers, the program provided producers an additional opportunity to earn some income for removing their vineyards from production. Participating producers received a bonus for removing their vines. They received a diversion certificate from the RAC equal to 1.5 times the creditable fruit weight of the raisins produced on the production unit (up to a maximum of 3 tons per acre). Producers will sell their certificates to handlers and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the additional RDP were announced by the RAC at \$100 per ton for "new participants" (producers who did not participate in the initial 2002 RDP), and \$340 per ton for "early season spur pruners" (approved participants in the initial 2002 RDP who curtailed production by spur pruning their vines).

Regarding the impact on handlers, handlers will redeem certificates for 2001 crop NS raisins and pay the RAC the applicable harvest cost (\$100 per ton for new vine pull participants, and \$340 per ton for early season spur pruners) plus and for receiving, storing, fumigating, handling (\$46 per ton), and inspecting (\$9.00 per ton). The program will return \$155 per ton for new participant certificates, and \$395 per ton for remaining certificates to the 2001 NS reserve pool. A bin fee, which has been one of the charges has been dropped because of delays in purchases of RDP certificates. Such income to the reserve pool could be used to pay remaining pool expenses or be distributed to 2001 NS reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC. There was discussion at the meeting regarding whether the program should include a moratorium on replanting. At the time, there was no authority for a moratorium on replanting. Some members expressed concern that producers may remove their vines and replant with new systems that produce higher yields, thereby contributing to more oversupply. At the time, there was no authority for a moratorium on replanting.