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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. AMS–SC–23–0039; 23–J–0080]

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 to amend Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. The Raisin Administrative Committee, which locally administers the Order, recommended amendments that would reduce Committee size, eliminate the designated cooperative bargaining association member seat, lower quorum requirements, remove producer district representation, remove the requirement for separate member and alternate nominations for independent and small cooperative producers, remove factors for establishing marketing policy, add language to clarify the quality of reconditioned raisins, add authority to accept voluntary contributions, and add language regarding ownership of intellectual property. In addition, the Agricultural Marketing Service (AMS) may make any such changes to the Order as may be necessary to conform to any amendment that may result from the hearing. This recommended decision invites written exceptions on the proposed amendments.

DATES: Written exceptions must be filed by October 15, 2024.

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

<https://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 <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the January 12, 2024, issue of the **Federal Register** (89 FR 2178).

This recommended decision is in conformance with the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 14094.

Notice of this rulemaking action was provided to Tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the United States Department of Agriculture's Office of the Hearing Clerk of this recommended decision with respect to the proposed amendments to 7 CFR part 989 ("Marketing Order 989" or "Order") regulating the handling of raisins produced from grapes grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Christy Pankey, 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 and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing on February 13 and 14, 2024 at the office of the Raisin Administrative Committee, 2445 Capitol Street, Suite 200, Fresno, California 93721. Notice of this hearing was published in the **Federal Register** on January 12, 2024 (89 FR 2178). The notice of hearing contained four proposals submitted to the Agricultural Marketing Service (AMS) by the Raisin Administrative Committee (Committee). AMS also proposed to make changes as appropriate based on the results of the hearing.

On October 20, 2022, the Committee recommended to AMS three proposals that would: (1) amend Committee size, composition, producer representation, and quorum requirements; (2) amend nomination procedures for small cooperative and independent producers; (3) remove two factors considered in the development of the annual marketing policy; and add language to clarify the quality of reconditioned raisins. The Committee voted on the above proposed amendments, 20 in favor and 10 opposed, at its August 17, 2022, meeting. On August 16, 2023, the Committee also voted to recommend to AMS the inclusion of two additional amendments that would add authority to accept voluntary contributions and add language regarding Committee ownership of intellectual property. These two amendments are hereinafter referred to as Proposal No. 4. AMS received the Committee's unanimous recommendation for those two amendments on August 21, 2023.

After reviewing all aforementioned proposals and other information submitted by the Committee, AMS decided to schedule this matter for a hearing.

Under Proposal No. 1, membership size would be reduced from 47 to 21 members and alternates, the designated cooperative bargaining association member seat would be eliminated, quorum requirements would be lowered from 25 to 14, producer district representation would be removed, and a designated seat for an unaffiliated independent producer member would

be added. Specifically, producer member seats would be decreased from 35 to 12 and handler member seats would be decreased from 10 to 8.

Proposal No. 2 entails removing the requirement for industry candidates to be nominated as either a member or an alternate. Proposal No. 3 would remove factor “4” and part of factor “5” from considerations when developing the marketing policy and add language clarifying that successfully reconditioned raisins are “standard raisins.”

Proposal No. 4 would enable the Committee to accept voluntary contributions and add language regarding ownership of and rights to intellectual property.

AMS also 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.

Ten witnesses testified at the hearing: three independent small producers, two independent small handlers, one independent large handler, one marketing cooperative small producer, one bargaining association small producer, one Committee staff member, and one witness from USDA. Eight industry witnesses supported all four proposals. One witness, representing the Raisin Bargaining Association (RBA), opposed the elimination of the designated cooperative bargaining association member seat under Proposal No. 1. The USDA witness remained neutral.

The Committee is the largest among all marketing order Committees and boards, with 47 members and 47 alternates, for a total of 94 positions. After two years of ongoing discussion and deliberation, the Committee recommended AMS reduce its size after determining that a substantial decline in the California raisin industry and the removal of volume regulation authority in 2018 has resulted in a high percentage of Committee vacancies and low attendance at Committee meetings.

Proponents at the hearing testified that Proposals No. 1 and 2 are expected to reduce Committee vacancies, improve participation, provide a cost savings to the program, increase administrative efficiency, and continue to provide fair representation while better aligning Committee membership with the overall size of the California raisin industry.

The witness representing the RBA contended that the removal of the designated cooperative bargaining association member seat, as recommended by Proposal No. 1, would further diminish the RBA’s ability to act

on the behalf of raisin producers. Further, the witness testified that without the cooperative bargaining association seat small producers would not be afforded a voice on the Committee.

Proponents of Proposal No. 1 testified, however, that a designated seat for the RBA is no longer warranted. The proponents believe that, were the designated cooperative bargaining association seat retained as part of the proposed restructuring, it would provide an outsized influence on the reduced Committee. Furthermore, proponents affirmed that both small producers and RBA producers would retain a voice without the designated cooperative bargaining association member seat and would continue to be represented on the Committee through allocated seats.

Witnesses supported Proposals No. 2–4.

Based on the hearing record, this initial decision recommends amending the Order to incorporate Proposals No. 1–4, as they are likely to address industry concerns without imposing undue burdens on small businesses upon implementation.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of 20 business days from the date the transcript corrections were made available on the AMS website (May 1, 2024) for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. No briefs were filed.

Material Issues

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

1. Whether to:
 - i. Amend § 989.26 to reduce Committee membership size from 47 to 21 members and alternates. Corresponding changes would be made to § 989.126.
 - ii. Amend § 989.26 to remove the designated cooperative bargaining association seat. Corresponding changes would remove references to the designated cooperative bargaining association position in § 989.30.
 - iii. Amend §§ 989.26(c) and 989.126(a)(1) to remove producer district representation and add an unaffiliated independent producer member seat. Corresponding changes would remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.
 - iv. Amend § 989.38 to lower quorum requirements from 25 to 14.
2. Whether to amend § 989.29 to eliminate the requirement for separate

nominations for independent producers or producers affiliated with small cooperative marketing associations.

3. Whether to remove paragraph (a)(4) and the last part of paragraph (a)(5) from § 989.54, and to amend §§ 989.24 and 989.58 by adding language that would clarify that raisins that have been reconditioned, inspected, and certified as meeting the minimum grade shall be classified as standard raisins.

4. Whether to add §§ 989.63 and 989.64 to establish authorities regarding the acceptance of voluntary contributions, ownership rights of intellectual property, and the collection of rents/royalties from such intellectual property.

5. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include correction of 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 No. 1—Committee Membership Size and Composition, Producer District Representation, and Quorum Requirements

Section 989.26 “Establishment and membership” should be amended to reduce the number of Committee members from 47 to 21. This amendment would decrease the number of producer members from 35 to 12 and handler members from 10 to 8. Further, § 989.26 should be amended to eliminate the designated cooperative bargaining association member position. The public member position would remain unchanged. Corresponding changes would reapportion producer and handler members in § 989.126 and remove the references to the cooperative bargaining association and cooperative bargaining association(s) officers or employees in § 989.30.

Additionally, §§ 989.26(c) and 989.126(a) should be amended to remove producer districts and to designate one unaffiliated independent producer member and alternate position on the Committee. This change would combine nominations for the current three districts into a single ballot for independent producer members and alternates and include an additional nomination for an unaffiliated independent producer member and alternate position. Corresponding changes would remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.

Finally, § 989.38 “Procedure” should be amended to lower quorum requirements from 25 to 14.

The evidence of record is that the Committee has experienced an increase in Committee vacancies due to a substantial decline in the size of the California raisin industry. Lower levels of engagement from industry members have also been observed since the removal of volume regulation authority from the Order in 2018. The record further shows that the raisin industry’s decline is a result of volatile producer returns over the past two decades, and that industry members lost interest in attending Committee meetings after volume regulation authority was removed in 2018.

The Committee believes reducing Committee size and reapportioning membership, including the elimination of the designated cooperative bargaining association member seat and the removal of producer districts, would reduce Committee vacancies and improve attendance, provide a cost savings, increase administrative efficiencies, provide fair representation, and balance Committee membership with the overall size of the California raisin industry. The amendment to lower quorum requirements to align with the reduced Committee size would also aid in achieving those goals.

Currently, § 989.26 provides that Committee membership consist of 47 members, of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association, and 1 shall be a public member. For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they represent as an alternate. The industry is comprised of three marketing segments: independent producers and handlers, a cooperative marketing association—Sun-Maid Growers of California (Sun-Maid), and a cooperative bargaining association—the Raisin Bargaining Association (RBA). Member representation, excluding all designated seats, is based on a proportional share system. Witnesses testified that this system ensures fair representation on the Committee by allocating producer and handler seats based on each marketing segment’s proportional share or contribution to total raisin acquisitions. The designated cooperative bargaining association member and public member seats are not based on proportional shares. Section 989.26(e) provides the cooperative bargaining association member shall be selected from the cooperative bargaining association(s)

and the public member shall be nominated by Committee members.

Proposal No. 1 would reduce the size of the Committee from 47 to 21 members. In addition, the proposal includes the elimination of the designated cooperative bargaining association member seat, the addition of an unaffiliated independent producer member seat, removal of producer districts, and lowering Committee quorum requirements. The proportional share system and requirement that each member have an alternate would remain unchanged. The restructured Committee would consist of the following:

- twelve (12) producer member seats (reduced from 35), of which one independent producer member seat would be allocated to an unaffiliated independent producer,
- eight (8) handler members seats (reduced from 10), and
- one (1) public member.

In addition, the quorum requirement would be reduced from 25 to 14.

The record shows the decline in the industry, the high percentage of Committee vacancies, and low attendance rates substantiate the proposed amendment to reduce Committee size. Several witnesses testified that the decline in the crop size and the number of producers has made it increasingly difficult to fill Committee seats. This has led to a number of issues with the Committee’s ability to effectively administer the program due to the large number of vacancies and low attendance.

Industry Decline

The economic viability of raisins produced from grapes grown in California has been on an unsustainable path for many years. Several witnesses testified to the significant decrease in raisin bearing acres, from 225,000 to 98,000, and the number of raisin producers, from 3,500 to 1,500, due to industry instability over the past two decades. Hearing evidence shows the decline is attributable to the various challenges the California raisin industry has faced since its peak in 2000 and to the different strategies that raisin producers have employed in an effort to mitigate the financial strain posed by such challenges. The record shows these challenges, including overproduction, foreign competition, changing consumer preferences, and overall high production costs have negatively impacted producer returns.

Overproduction and foreign competition have created a challenging environment for raisin producers, impacting their ability to achieve favorable returns. Hearing evidence

shows gradual increases in raisin production by foreign countries, who benefit from low production costs and government subsidies, diminished the California raisin industry’s world market share and depressed prices for domestic handlers and producers. Witnesses testified that the California raisin industry lost its pricing power in global markets after raisin production in foreign countries such as Turkey, Uzbekistan, and Afghanistan surpassed U.S. production and drove the prices of raisins down. For the California raisin industry, some export markets such as Europe, where the industry had established a strong foothold, are no longer available to U.S. raisin handlers because they cannot compete due to higher shipping costs. Further, one witness testified that until the 2000’s, the industry remained competitive despite increases in foreign production. Domestic raisin producers, however, experienced a sharp downturn in profitability after a four-year period of large crops that resulted in a tremendous surplus, market oversaturation, and reduced pricing. Thus, the California raisin industry, which once dominated the global market by producing over 50 percent of the world’s supply in the 1990s, now accounts for approximately just 8 percent of the world market share today.

The hearing record also shows consumer preferences have shifted away from raisins, furthering the decline in raisin demand. One witness testified that raisins are not as popular with younger generations, such as Millennials and Generation Z. Such changes in consumer preferences have contributed to decreases in demand and lower sales and revenue for producers, leading to declining production levels and diminished returns.

High production costs due to drought, labor shortage, and other factors have also contributed to less than favorable returns for raisin producers. Witnesses testified to rising labor costs, such as double-digit wage inflation mandated by the State of California, and labor shortages, particularly during harvest. These factors require producers to offer higher wages to attract or retain workers, and have systemically increased the cost of raisin production. In addition, rising input costs related to irrigation, fertilizer, environmental regulation, taxation, and multiple years of drought have also driven the cost of production higher. As such, cost increases have made raisin production more expensive, leading some producers to scale back or abandon raisin production altogether.

The record shows that the myriad of challenges faced by the California raisin industry has pushed many raisin producers to either sell their land or transition to more profitable crops. One witness testified that among the largest factors contributing to the industry's decline is producers pulling out vineyards due to insufficient producer returns. Another witness testified that the California raisin industry has shrunk over the years due to higher-value crops replacing raisins on farmland in the production area. The record suggests raisin producers have used these tactics, and other strategies, such as cutting production costs that inevitably led to greater decreases in production, to optimize returns. Overall, the increase in Committee vacancies and low attendance at meetings is attributable to the decrease in raisin production, and the number of raisin producers, as a result of declining demand, high production costs, and low grower returns.

The record shows the decline in the California raisin industry has directly

impacted the number of Committee vacancies as there are fewer producers in industry to draw from. Further, low attendance rates at Committee meetings are attributable to both the increase in Committee vacancies and to raisin producers becoming uninterested in Committee operations after the removal of volume regulation authority from the Order. The record further indicates that the Committee is the largest of all marketing orders, comprising 47 members and 47 alternates. However, witnesses testified that the Committee has increasingly struggled to fill member positions due to the significant decline in the number of producers and bearing acres in the past 20 years, and that this difficulty arises because the Committee did not downsize in response to the shrinking industry, leading to a rise in vacancies.

Committee Vacancies

Record evidence includes a data table from the Committee that highlights low levels of attendance and high vacancies during Committee meetings. The Committee's data, illustrated in Table 1,

a replication of exhibit 16 from the hearing, shows the attendance history for full Committee meetings conducted between August 2019 and June 2023. The Committee held 23 Committee meetings during this period, which appears in column 1. The date each meeting was held appears in column 2. The percentage of members present at each meeting appears in column 3 and is computed by dividing the total number of members voting at each meeting, which appears in column 4, by the total number of Committee seats (47). The total number of members in attendance at each meeting appears in column 5. The total number of alternate members voting at each meeting appears in column 6. The total number of alternates in attendance at each meeting appears in column 7, and the total number of vacant seats at each meeting appears in column 8. Witnesses testified that all Committee meetings are held in-person with an option for members and alternates to participate either by conference call or video.

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Table 1: Raisin Administrative Committee Full Committee Meeting Attendance History (August 2019 through June 2023)

#	Date of Meeting	% in attendance (i.e. 38/47 = 81%)	Total Voting (Members & Alternates) Attendance	Members in attendance	Voting Alternates in attendance	Total Alternates in attendance	Vacancies
1	8/15/2019	81%	38	36	2	15	14
2	10/24/2019	66%	31	24	7	14	14
3	4/29/2020	77%	36	30	6	15	17
4	6/24/2020	74%	35	30	5	8	17
5	7/29/2020	72%	34	32	2	8	17
6	8/18/2020	68%	32	25	7	13	17
7	9/16/2020	89%	42	39	3	19	16
8	10/7/2020	77%	36	35	1	9	17
9	1/27/2021	74%	35	32	3	12	15
10	3/31/2021	79%	37	33	4	14	18
11	6/30/2021	60%	28	23	5	13	21
12	8/18/2021	55%	26	22	4	14	21
13	10/6/2021	57%	27	24	3	7	15
14	12/1/2021	60%	28	26	2	8	15
15	1/26/2022	81%	38	36	2	11	15
16	3/30/2022	81%	38	36	2	11	15
17	6/29/2022	60%	28	27	1	5	17
18	8/17/2022	77%	36	31	5	11	18
19	10/5/2022	72%	34	27	7	13	19
20	1/25/2023	81%	38	37	1	12	20
21	4/12/2023	55%	26	25	1	8	20
22	5/10/2023	62%	29	27	2	10	20
23	6/28/2023	60%	28	22	6	10	21
Totals		1674%	760	679	81	260	399
Average		73%	33	30	4	11	17
Average % of Attendance (Avg/47)			70%	63%	7%	24%	37%

Shaded cells in columns 3 and 4 indicate lowest attendance.

Shaded cells in column 8 indicate Public Member/Alt not appointed at this time.

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Column 8 in Table 1 illustrates a gradual increase in Committee vacancies, from 14 to 21, for full Committee meetings held between August 2019 and June 2023. The Table further shows an average of 17 positions have remained vacant for approximately 4 years.

Low Attendance

The increase in Committee vacancies has also contributed to low attendance rates. Full Committee meetings with low attendance, between 26 to 28 members present, are highlighted in column 4 of Table 1. Dividing the number of highlighted cells (7) by the number of full Committee meetings held (23)

equates to an average low attendance rate of 30 percent for full Committee meetings held between August 2019 to June 2023.

Witnesses testified that for much of that time, initial member attendance at meetings was approximately 60 percent for full members and roughly 25 percent for alternates. These percentages suggest

that not only are there fewer producers in the industry, but those that remain are likely less interested in committing to long-term Committee service when faced with economic uncertainty and instability due to volatile producer returns.

Removal of Volume Regulation

On November 26, 2018, USDA removed all volume regulation and reserve pool authority after the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the Order's reserve pool authority to the Horne's raisin operation was a taking under the Fifth Amendment to the United States Constitution.

Attendance rates started to decline when the industry removed the authority for volume regulation from the Order. Record evidence shows that Committee meetings were once filled with members when volume regulation was in effect. Witnesses testified that staff did not have to make phone calls and send text messages to get people into meetings because there were so many Committee actions that affected producers' and handlers' bottom-line. Members and alternates wanted to have their opinions heard and to vote on specific volume regulations and reserve pool recommendations and the economic repercussions that would result from them. Historically, given the impact that volume regulation had on the industry, Committee membership was intentionally established as the largest of all marketing orders with 47 members and 47 alternates to ensure equitable representation during the establishment of free and reserve percentages in Committee meetings.

Prior to its removal, volume regulation authorized the Committee to establish free and reserve percentages based on production levels and trade demand as a way to stabilize surplus by controlling the supply of California raisins. Under this regulation, a portion of total raisins produced would be free for handlers to acquire and dispose of in approved market channels, and the other portion would be held in reserve pools by the Committee. This prevented oversupply and volatile fluctuations in the market allowing raisin producers to sell a portion of their crop at a return above the cost of production. The other portion held in reserves was disposed by the Committee in different outlets under various reserve programs. Proceeds from the disposal of raisins held in reserves would be distributed to raisin producers when sold.

The contention with volume regulation stemmed from the disposal of raisins held in reserve. The hearing

record shows that raisin producers were not satisfied with the process whereby reserve raisins were sold in export channels. One witness testified that hundreds and hundreds of people attended meetings when volume regulation was being considered, but after the United States Supreme Court ruling that the reserve system was a taking, and the Order was subsequently amended to remove volume regulation authority, producers lost interest in attending meetings because there was no reserve program to discuss and vote on.

Quorum Requirements

Committee vacancies also increase the difficulty in achieving quorum at meetings with fewer members. Witnesses testified that the Committee often struggles to make quorum and staff must make phone calls to members the day of meetings to get attendance rates up. Further, record evidence shows one instance when quorum requirements were not met during the period shown on Table 1.

Currently under the Order, the quorum requirement is 25. It is a fixed number and is based on the number of Committee positions expected to be filled. Thus, unfilled Committee seats make it more difficult to reach quorum and increases the probability that quorum requirements may not be met when attendance levels are low. One witness testified that there were several meetings where they were barely enough members present to constitute a quorum and conduct Committee business. Another witness testified that the majority of vacant seats are allocated to independent producer alternates, and if these seats are not filled, the absence of a full member at a meeting increases the likelihood of not meeting quorum requirements due to there being no alternate to fill in for the absent member.

The record shows the Committee continued to struggle meeting quorum requirements despite ramping up outreach efforts. Witnesses testified that when quorum is not met, it reduces administrative effectiveness and efficiency and increases nonproductive costs, such as expenses associated with member travel and staff hours because full Committee meetings must be delayed and rescheduled.

Amendment 1—Reducing Committee Size

Reducing Committee size and reapportioning membership, including the elimination of the designated cooperative bargaining association member seat and the removal of

producer districts, along with lowering quorum requirements, would address the current issues concerning Committee vacancies, low attendance, and meeting quorum. Further, it would provide a cost savings, increase administrative efficiencies, continue to provide fair representation, and balance Committee membership with the overall size of the California raisin industry.

Decreasing the number of Committee seats would reduce the likelihood of position vacancies by making it easier to fill each seat. Table 1 shows an average of 41 members currently attend Committee meetings. Column 5 shows 30 full Committee members on average attend Committee meetings and column 7 shows an average of 11 alternate members, for a total of 41 members on average. Witnesses testified that reducing the committee size may help reduce Committee vacancies. Based on the current averages in Table 1, the Committee would have less difficulty filling 21 member and alternate seats.

Amendment 2—Lowering Quorum Requirements

This proposal also reduces quorum requirements from 25 to 14. Reducing quorum requirements is necessary to effectuate the proposed amendment, if implemented. The proposed quorum is 67 percent of voting membership (14 divided by 21 multiplied by 100). This is slightly higher than the current quorum which is 53 percent of voting membership (25 divided by 47 multiplied by 100). Witnesses testified that the higher voting percentage will provide for fair representation by ensuring both producer and handler members are in attendance at meetings to vote on formal recommendations. This also promotes transparency and representation by ensuring no single segment can dictate Committee operations and that all perspectives of the industry are considered when decisions are made. In addition, the probability of not meeting quorum requirements is also reduced with the smaller Committee, increasing administrative efficiencies, and providing a cost savings by decreasing the number of delayed and rescheduled meetings due to low attendance.

A reduced Committee size would also increase competitiveness in nominations and reduce nepotism. Witnesses testified that much of the industry is vertically integrated, where producers own or are employed by a packinghouse, making them handler-affiliated. In these situations, such a producer could occupy a producer or handler member seat, and in many instances it's a family member that

occupies the other seat. Thus, a smaller Committee size would reduce the chances of multiple family members serving due to increased competitiveness.

Amendment 3—Removing Producer Districts

Witnesses testified that many independent producer seats are filled with handler-affiliated producers and the addition of the unaffiliated independent producer member seat ensures fair representation by having a “true” producer on the Committee.

The evidence of record is that an unaffiliated independent producer member is a producer that has no ownership interest in a packinghouse. Such a producer would have no proprietary or employment affiliation to any cooperative marketing association, cooperative bargaining association, or a handler. In addition, in the event there are no qualified candidates to fill the unaffiliated independent producer member or alternate seats, this proposal also adds language to § 989.26 that ensures the designated unaffiliated member, and alternate seats are filled by any independent producer candidates not otherwise slated.

The removal of producer districts also ensures equitable representation on the Committee. Currently under the Order, three independent producer districts exist. All counties north of Fresno County, California, are represented in District No. 1, all counties south of Fresno County, California, are represented in District No. 2, and all of Fresno County, California, is represented in District No. 3. Independent producer members are apportioned as follows; one producer member each for Districts No. 1 and 2, and the remaining producer members to which independent and small cooperative producers are entitled in District No. 3. Separate nomination ballots are mailed to all three districts.

The record shows the decline in industry has directly impacted independent producer member nominations, leaving fewer eligible producers in some of the designated producer districts. Witnesses testified that the industry had more active producers competing for nominations before the decline. Witnesses further testified that the candidacy pool for independent producers has decreased, leading to continuous nominations of the same producers in Districts 1 and 2, resulting in inequitable representation in producer districts. One witness, identifying as a small producer, testified that this gives an unfair advantage to those much smaller producing regions

by providing automatic seats. This results in an imbalance where industry members in the larger District 3 have less representation, as they must compete for seats on the Committee. Meanwhile, producers in the smaller Districts 1 and 2 face less competition for a seat, giving them greater representation on the Committee that is disproportionate to their district size.

This proposed amendment would remove the requirement that independent producer members represent districts and would combine nominations for the three producer districts into one ballot instead of three individual ballots mailed to each district.

The record shows combining producer districts ensures fair representation. Witnesses testified that the removal of producer districts would increase competitiveness, allowing for a fair nomination process. This is because combining districts would expand the candidacy pool for each producer member position by increasing competition for nominations and would ensure all independent and small cooperative producers have an equal opportunity to be nominated. Combining districts would also lead to a reduced administrative burden and cost savings by reducing the number of separate nomination meetings required to be held and eliminating the tabulation of separate ballots for each district.

Further, this proposal would ensure independent producer member seats are filled in the event producer districts become too small to function adequately due to the significant decline in the number of producers in industry.

Amendment 4—Eliminating Cooperative Bargaining Association Member Seat

This proposal would also eliminate the designated cooperative bargaining association member seat from the restructured Committee. Some witnesses testified that the designated cooperative bargaining association member seat is no longer warranted after volume regulation was removed from the Order. Further, due to a significant decline in the RBA's raisin acquisition totals, a designated member seat would provide the RBA an outsized influence and perpetuate unequal representation on the Committee.

The evidence of record is that on August 14, 2022, the Committee voted 20 in support and 10 opposed on Proposals No. 1–3 and voted unanimously in favor of Proposal No. 4 when it was considered on August 16, 2023. Based on testimony, eight of the

ten members voting in opposition represented the RBA. Those members disagreed with the removal of the designated cooperative bargaining association member seat, but supported all other amendments proposed. One witness, representing the RBA, testified in opposition to the elimination of the designated cooperative bargaining association member seat at the hearing.

The RBA was established to provide California raisin producers with collective bargaining power when negotiating prices with handlers. Witnesses testified that, since the late 1940's, the industry was plagued with huge swings in production and low producer returns which led to the formation of the RBA. Under the RBA, producers leverage their collective strength to negotiate fair prices and ensure economic stability.

The record shows that successful collective bargaining requires strong industry representation and confidential pricing agreements. The witness representing the RBA testified that at one time the RBA represented approximately 40 percent of total raisin acquisitions, reflecting large industry representation. Several witnesses testified that the RBA manager was the only person who knew which handlers signed the pricing agreement, ensuring confidentiality. This would prevent free riders from benefiting from the RBA's agreements.

In 1967, volume regulation and Committee size were amended to provide inclusion and representation for the newly formed cooperative bargaining association, established in 1966. Committee size was increased by one member to represent the RBA because the preponderance of evidence, at that time, indicated the cooperative bargaining association had become a major entity in the raisin industry and should directly participate in marketing decisions.

Volume regulation was also modified to establish preliminary free percentages at an earlier date to give certainty as to the quantity to be released in free tonnage outlets, and to provide a basis for producers and handlers to negotiate an appropriate field price. Witnesses testified that the designated cooperative bargaining association member seat was reserved exclusively for the managerial officer of the RBA due to confidentiality of RBA pricing agreements and volume regulation.

Under volume regulation, not less than 65 percent of desirable free tonnage was released until the Committee had determined that field prices were firmly established, and open price contracts have been closed. Thus, a portion of free

tonnage was withheld until field prices were established, and the RBA manager was the only person that could supply the information as to whether or not the RBA had successfully bargained for a price.

The Committee also used the established field price negotiated by the RBA as a “base price” for export programs, such as the Raisin-Back or Cash-Back program. Witnesses testified, however, that these programs no longer exist after volume regulation authority was removed from the Order and, therefore, the environment in which the RBA manager was necessary to participate in Committee deliberations on volume regulation no longer exists.

Further, the record shows the RBA has diminished in influence due to a decline in membership and raisin acquisition totals. Such a decline in acquisition totals no longer warrants a designated seat based on proportional acquisition totals. The witness representing the RBA explained that the RBA faced many challenges with membership, such as compliance issues and contract violations, and has lost membership in part due to the substantial decline in the number of producers and acreage industrywide. The witness testified that one of the biggest factors contributing to low RBA membership is producers pulling raisin acreage out of production due to insufficient returns over the past 7 to 10 years, which has weakened representation and diminished raisin acquisitions under the RBA.

The record also shows the RBA faced difficulty negotiating prices due to foreign competitors depressing the price of raisins. The RBA witness testified to economic hardships due to foreign competition with production costs that are 20 to 30 percent lower. This weakens the RBA’s position to bargain because foreign countries are selling raisins at a lower price due to their low production costs. The witness further explained that if the RBA cannot get a fair price, it is disastrous for raisin producers and further accelerates the rate that producer pull raisins out of production. Additionally, the witness explained that more RBA members and increased member tonnage would provide greater leverage to negotiate, but overall acquisition totals have gone down. The record shows total RBA raisin acquisitions declined from 30 percent of the total industry acquisitions to 12.5 percent in the past 8 years.

Overall, witnesses testified that the elimination of the designated cooperative bargaining association seat would provide fair and equitable representation on the Committee

because membership would be based on a proportional share system. The record further shows that RBA producers will maintain seats on the Committee based on their proportional share of total acquisitions and could gain more seats if their total raisin acquisitions were to increase. This means that each industry marketing segment represented would be equal or proportionate to total raisins produced and/or acquired. Thus, the number of seats allocated to the RBA would be solely based on their share of total raisin acquisitions, similarly to other industry groups on the Committee. Further, if the cooperative bargaining association designated seat were to remain in the restructured Committee, it would provide an outsized or unequal representation because the cooperative bargaining association would be over-represented proportionally to the other industry segments on the Committee.

The witness representing the RBA contended that if the designated seat is eliminated, it would further diminish RBA’s ability to work on the behalf of raisin producers, that the Committee structure would be too overlaid with handler representation because the cooperative marketing association, Sun-Maid, would have 50 percent representation on the Committee, and that the RBA should continue to be involved in marketing discussions because they represent independent small producers. The designated cooperative bargaining association member seat, however, is not justified based on record evidence. With the removal of volume regulation authority from the Order and the decline in RBA member representation and acquisition totals, the cooperative bargaining association no longer warrants a designated seat.

Additionally, the record shows that much of the industry is vertically integrated, with many entities engaged as both a producer and a handler. The proposed restructured Committee accounts for and reflects these changes in industry composition over the years and the addition of the unaffiliated independent producer member seat would ensure independent producers have a voice on the Committee. The seat also helps to ensure the majority of Committee members represent producers and that there isn’t an unfair balance favoring handler representation on the Committee. Finally, all Committee meetings are open to the public and the RBA could continue to participate in Committee deliberations through allocated producer member seats.

The RBA witness discussed two alternatives for a new Committee size

and structure on the record. The witness suggested that Committee size should not be based on acquisition totals, that every handler should have a seat, and each segment of producers would choose how many producer representatives would serve on the Committee. AMS does not consider this a viable alternative because the witness did not provide any specifics for a proposed restructuring of the Committee. Further, since there are approximately 17 handlers, the alternative would likely result in a Committee size larger than the current size of the Committee. The second alternative proposed by the witness included keeping the designated seat for a total of 22 members and alternates. This is also not a viable alternative because the designated seat would provide the RBA with inequitable representation on the Committee because the seat would not be based on any proportional share of industry acquisitions.

Additionally, the hearing record shows that the Committee discussed several alternatives to the proposed Committee structure over several years before ultimately deciding 21 members and alternates would be an appropriate Committee size. Witnesses testified the Rulemaking Workgroup and Administrative Issues Subcommittee held in-depth discussions and reviewed a multitude of scenarios, proposals, and several reduction options, including 70, 60, and 50 percent size reductions in approximately 12 meetings between January 2020 and July 2023. Finally, one witness testified that the Committee size of 47 members and alternates was established in an era in the late 1940s when industry had approximately 5,000 to 7,000 producers. The current proposal to reduce the Committee size, given the diminished industry make-up, would actually create a Committee that is more representative of producers than as compared to the Committee historically. Thus, the proposed amendments discussed under Material Issue 1 would better align Committee membership with the overall size and configuration of the current California raisin industry by ensuring Committee composition is balanced with the size and needs of the industry.

For the reason stated above, § 989.26 “Establishment and membership” should be amended to reduce the number of Committee members from 47 to 21. Further, § 989.26 should be amended to eliminate the designated cooperative bargaining association member position. Sections 989.26(c) and 989.126(a)(1) should be amended to remove producer districts and to add a

new designated seat for an unaffiliated independent producer member, and § 989.38 “Procedure” should be amended to lower quorum requirements from 25 to 14.

Material Issue No. 2—Nomination Procedures for Independent and Small Cooperative Producers

Section 989.29 “Initial members and nomination of successor members” should be amended to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations. Currently no small cooperative marketing association exists within industry. This proposed amendment would remove the requirement that independent producers must be nominated specifically for either a full Committee seat or an alternate member seat. Further, in addition to the proposed amendment that would remove producer district representation by combining nominees for three separate districts into a single ballot, this amendment would eliminate the separate tabulation procedures for full member and alternate member nominations. The notification of nomination meetings would remain unchanged.

The evidence of record is that the Order was amended in 2018 to require separate nomination procedures as a method to increase independent producer nominations by ensuring independent producers interested in serving only as an alternate were not nominated as full members. At that time, the Committee believed providing this additional flexibility for independent producer nominations would encourage participation. However, a witness testified that separate nominations actually discouraged participation on the Committee. Witnesses testified that the number of alternate members attending meetings declined because nominees may have been under the notion that alternates did not need to attend every meeting, fueling low attendance rates and absenteeism.

The record further shows that the number of independent producers nominated did not increase but instead declined, evidenced by the increase in the number of vacant alternate positions shown in table 1 column 8. Witnesses testified that both full members and alternate members should attend meetings to stay informed on industry issues that may require a future vote, and that reverting back to the original nomination procedures for independent producers would streamline the nomination process and ensure alternate

seats are filled. The proposed nomination process would be streamlined because there would be one tabulation of votes instead of two separate tabulations, one for full members and one for alternate members. The Committee also believes that nominations would not be necessary with a smaller Committee size because with fewer seats, competitiveness in nominations would increase. Additionally, current average attendance rates in Table 1 show approximately 41 members would likely be able to serve. Table 1 column 5 shows 30 full Committee members on average attend Committee meetings and column 7 shows an average of 11 alternate members, for a total of 41 members on average.

This proposed amendment would remove language describing separate nomination procedures and add language stipulating one tabulation of ballots according to the highest number of votes for full member and alternate seats. With this revised process, an independent producer receiving the highest number of votes would be designated as the first independent producer member nominee. The producer receiving the second highest number of votes would be designated as the second independent producer member nominee. This tabulation process would continue until all independent producer member seats are nominated. The nominee then receiving the next highest number of votes would be designated as an alternate member nominee, with this process continuing until all seats are filled.

For the reasons stated above, § 989.29 “Initial members and nomination of successor members” should be amended to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

Material Issue No. 3—Marketing Policy and Quality Standards for Reconditioned Raisins

Section 989.54(a) “Marketing Policy” should be amended to remove factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5 “, considering the estimated world raisin supply and demand situation.”

Sections 989.24 “Standard raisins, off-grade raisins, other failing raisins, and raisin residual material” and 989.58 “Natural condition raisins” should be amended to add language clarifying the quality of successfully reconditioned raisins as standard raisins. This would add language that clarifies that

successfully reconditioned raisins that meet the Order’s minimum grade, quality, and condition standards are “standard raisins.”

Marketing Policy

The evidence of record is that factor number 4 and the latter portion of factor number 5 are no longer necessary factors to consider in the development of the annual marketing policy due to the removal of volume regulation authority from the Order. Additionally, the record shows the report relied upon to determine the estimated world raisin supply and demand under factor 5 is no longer published and that it would be cost prohibitive to solicit similar information from other sources. The Committee believes that factor 4 and part of factor 5 are market determinants no longer considered by the Committee and removal would increase administrative efficiencies by lessening the administrative burden and costs associated with researching and assembling data that is not needed.

The record shows factor number 4 and part of factor number 5 are unnecessary marketing policy considerations without volume regulation. Witnesses testified that the Committee has not considered a “desirable carryout” listed under Factor 4 since 2019. This is because the “desirable carryout” is the free tonnage inventory at the end of a crop year that would be considered desirable to carry over into the succeeding crop year to maintain continuity of sales until new crop raisins had become available. Witnesses also testified that the information for the latter part of factor 5 was obtained from USDA’s National Agricultural Statistics Service (NASS). NASS, however, discontinued its “Raisins: World Market and Trade Report”, in 2019. Further, the consideration of world raisin supply and demand was primarily to aid in the estimation of probable export market requirements for reserve raisins during a crop year under volume regulation. The Committee no longer establishes free and reserve tonnage percentages, thus factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5 “, considering the estimated world raisin supply and demand situation” are unnecessary under the current administration of the Order.

Additionally, record evidence shows that reports on world supply and demand may be obtained from other sources. Witnesses testified however, that such reports are expensive and, again, unnecessary after the removal of volume regulation authority from the

Order. Removing factor 4 and the latter part of factor 5 would allow the Committee to focus on pertinent factors to be considered in formulating its marketing policy, instead of considering factors the Committee believes are unnecessary, thereby reducing administrative burden and increasing efficiency. For the reasons stated above, § 989.54(a) “Marketing Policy” factor number 4 “An estimated desirable carryout at the end of the crop year;” and the latter part of factor number 5 “, considering the estimated world raisin supply and demand situation” should be removed.

Reconditioned Raisins

The evidence of record is that negative impressions about reconditioned raisins has adversely impacted the sales of such reconditioned fruit. Successfully reconditioned raisins meeting minimum grade, quality, and condition standards under the Order, however, should not be differentiated from other standard raisins. The Committee believes the additional language clarifying the quality of reconditioned raisins as standard raisins would improve efficiencies by streamlining the sales process. Further, this language would help to overcome existing obstacles experienced in the marketing of California raisins and achieve increased sales and sustained growth.

To dispel misconceptions about the quality of reconditioned raisins, this proposal would add a paragraph to § 989.58 explaining that all raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labeled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets. Further § 989.24(b) would be amended to clarify that off-grade raisins successfully reconditioned are standard raisins.

The record shows that handlers are adjusting to the decline in raisin production over the past two decades by optimizing sales to meet customer demand. One witness testified there is a greater need to eliminate the differentiation and stigma associated with reconditioned raisins because the volume of production has declined. There is a negative impression in the raisin market that the quality of reconditioned raisins that have been reworked and reinspected to meet the Order’s minimum grade requirements, however, is somehow diminished. This

is evidenced by past sale specifications, from both government and outside customer requests, that the product cannot be reconditioned fruit.

Negative impressions associated with reconditioned raisins often revolve around concerns regarding their perceived inferior quality compared to non-reconditioned raisins that meet minimum grade requirements. The record shows, however, that reconditioning is the process of removing defective raisins from a lot, with the end result being a lot comprised of natural condition raisins that meet the Order’s requirements. Currently, raisins that fail incoming inspections, or other off-grade raisins, are either disposed in eligible non-normal outlets, returned to the producer, or reconditioned. Witnesses testified that most off-grade raisins are reconditioned by the handler, but sometimes they are returned to producers for reconditioning.

Witnesses further testified that the negative label attached to reconditioned raisins stems from the misconception about the reconditioning process and final product. Witnesses explained that handlers apply different reconditioning processes, ranging from minimally invasive to more intense processes. Such processes are highly dependent on the defects identified within a specified lot. Minimal processes include shaking or vibrating raisins on a conveyor system to remove foreign material or drying raisins with excessive moisture on trays to an acceptable level. A more intense process includes washing and drying to remove moldy or fermented raisins. During this process raisins are placed in a hot water bath that travels along augers and mold belts, removing defective raisins. Raisins that remain are then transferred to a tray and re-dried. Essentially, all reconditioning processes remove defective raisins to improve the grade and quality of the lot to meet incoming inspection requirements. Further, off-grade raisins returned to the producer and reconditioned by them before being shipped back to the handler are not classified as reconditioned raisins. Witnesses testified that raisins reconditioned on producer premises have no designation that the lot was reconditioned, thus including language that clarifies that successfully reconditioned raisins are standard raisins provides for fair marketing practices. Further, the record shows that reconditioning techniques have improved over the years.

Witnesses also testified that the negative misconception of reconditioned raisins is from an outdated categorization for

reconditioned fruit when volume regulation was authorized under the Order. Under volume regulation, raisins reconditioned by handlers were held in a separate reserve pool, and at that time, handlers didn’t always successfully recondition product held in the pool. Witnesses testified that today, processors must ensure raisins meet the Order’s minimum grade requirements, because outlets under volume regulation were removed from the Order and no reserve pool for reconditioned raisins currently exists.

The record shows the addition of clarifying language to the Order would help to dispel the negative perception associated with reconditioned raisins, streamlining the sales of such fruit by reducing unnecessary friction points in the purchase of reconditioned raisins. Additionally, the USDA specifications for commodity purchases no longer distinguish between reconditioned and non-reconditioned raisins that meet minimum grade requirements. For the reasons stated above, §§ 989.24 “Standard raisins, off-grade raisins, other failing raisins, and raisin residual material” and 989.58 “Natural condition raisins” should be amended to add language clarifying the quality of successfully reconditioned raisins as standard raisins.

Material Issue No. 4—Contribution Authority and Patent/Trademark Authority

Sections §§ 989.63 “Contributions” and 989.64 “Patents, copyrights, trademarks, inventions, product formulations, and publications” should be added to establish authority to accept voluntary contributions and authority related to the ownership of, and rights to, intellectual property and the collection of rents/royalties from the same. This new authority would also provide directions for disposition of any intellectual property developed through funds received by the Committee should the Order be terminated.

This would allow the Committee to accept voluntary contributions that would be free from any encumbrances by the donor, and to develop intellectual property, including patents, copyrights, trademarks, inventions, product formulations, or publications, through the use of Order funds. Additionally, such funds, including funds received from the licensing or use of intellectual property developed, shall only be used to pay expenses authorized under the Order. Further, all intellectual property developed through the use of funds received by the Committee would be the property of the U.S. government. Ownership and related rights of

intellectual property developed through funds collected by the Committee and funds contributed by another organization or person, would be determined by agreement between the Committee and the person or organization contributing funds towards the development of such intellectual property stipulating the above. Similarly, should any intellectual property be licensed to the Committee, the related rights to such licensure would be determined by agreement between the Committee and the person or organization permitting licensure. The Committee believes the addition of authorities to receive voluntary contributions and to develop intellectual property under the Order would generate revenue for the industry through the marketing of California raisins and provide funding for additional research and promotion and other activities under the Order.

The evidence of record is that the Committee may soon enter into a sublicensing agreement with the California Department of Food and Agriculture (CDFA) for intellectual property rights to the California Dancing Raisins after film producers interested in remaking a movie about the characters contacted the Committee.

The CDFA is the owner of the intellectual property rights to the California Dancing Raisins. Witnesses testified that the characters were developed under the California State Marketing Order by the California Raisin Marketing Board (CRMB). The CRMB, however, was subsequently terminated and ownership of all intellectual property under the CRMB reverted to the State of California. The CDFA is currently seeking to sublicense, or transfer, the characters, and other intellectual property, to the Committee. Such arrangement would be by a separate agreement between the parties.

Witnesses testified that voluntary contribution authority would allow the Committee to receive funds if the characters were to be sublicensed in the future. Currently, the Order does not include provisions that enable the Committee to receive and use funds, such as donations, gifts, or contributions from individuals, businesses, or other entities. This proposed amendment would provide the authority to accept voluntary contributions, such as rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of intellectual property. Witnesses also testified that the amendments would solidify the authority to use the characters and avoid future litigation.

The record shows that the addition of voluntary contributions and intellectual property is not uncommon. Witnesses testified that most marketing orders have developed their own logos and sublicense them out for use. Further, many research and promotion programs include language pertaining to voluntary contributions. Witnesses also testified that the addition of voluntary contributions and intellectual property rights has the broadest of industry support with almost total unanimity.

Additionally, the proposed amendments would not only be used for the California Dancing Raisins specifically, but it would also create the opportunity for the industry to benefit from the development of intellectual property moving forward. The language related to the ownership and rights of intellectual property developed under the Order would provide that the Committee may develop intellectual property in the future. This may lead to brand recognition, increases in consumer demand, better returns, and greater market share, making California raisins more competitive worldwide.

For the reason stated above, §§ 989.63 “Contributions” and 989.64 “Patents, copyrights, trademarks, inventions, product formulations, and publications” should be added to establish authority to accept voluntary contributions and authority related to the ownership of, and rights to, intellectual property and the collection of rents/royalties from the same.

Material Issue No. 5—USDA Conforming Change

Based on record evidence, USDA is recommending the following conforming change to the Order; revise § 989.129 to replace the word “ballot” with “vote.” USDA is also recommending minor punctuation changes to § 989.64 for clarity and readability.

USDA proposes to revise § 989.129 to replace the word “ballot” with “vote.” The word “ballot” replaced “vote” as part of the Order amendment in 2018 that separated nomination procedures for independent producers. Material issue No. 2 proposes to undo the requirement for separate nomination procedures. This proposal would revert the text back to its original language before separate nominations were implemented in the 2018 amendment.

USDA proposes to make minor punctuation changes to § 989.64 for clarity and readability. These changes would not change the meaning of the section. USDA proposes to add a semicolon after the last reference to “Committee” in § 989.64(a) and delete

the comma after “publication” in § 989.64(d).

Small Business Considerations

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 1,500 producers of California raisins. According to NASS data presented at the hearing, the total value of production for the 2022/23 crop year of raisins was \$381,780,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides a return per producer of \$254,520. Small agricultural producers of raisins are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$4.0 million (NAICS code 111332, Grape Vineyards) (13 CFR 121.201). Therefore, a majority of raisin producers would be considered small entities under SBA’s standards.

According to the record, there were 17 handlers for the 2022–2023 crop year. Small agricultural service firms are defined as those whose annual receipts are equal to or less than \$34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201). To make a similar computation for handlers, the first step is to estimate a representative handler price received per pound for packaged raisins. Recent USDA purchases under the Commodity Procurement Program provide such an estimate. For the most recent raisin crop year used by the Committee (August 2022–July 2023), the average price paid for packaged raisins purchased by the USDA for food assistance programs was \$1.56 per pound. The annual receipts for handlers can be calculated by taking the USDA average purchase price and multiplying it by the total number of shipments as reported by the Committee for the 2022–2023 crop year ($\$1.56 \times 414,898,000 \text{ LB}$) which equals \$647,240,880. Taking the calculation for the annual receipts by handlers and dividing by the number of handlers provides an estimated annual receipt per handler ($\$647,240,880$ divided by 17), which equals \$38,072,993. Based on

the SBA definition of an agricultural service firm having less than \$34 million in annual receipts, there is a mix of both large and small raisin handlers.

The production area regulated under the Order covers the State of California. Acreage devoted to raisin production in the production 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 2000–2001 crop year. Since then, bearing acreage for raisins has decreased almost 53 percent to 133,000 in 2021–2022. Total production of raisins reached a high during the 2000–2001 crop year of 2,921,000 tons (green tons) but has decreased 65 percent to a total production of raisins of 1,010,000 tons in 2021–2022.

During the hearing held February 13 and 14, 2024, 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 on small agricultural producers or firms.

Estimated Economic Impact of Amending Committee Membership Size and Composition

The proposal described under Material Issue No. 1 would amend § 989.26 by reducing Committee membership from 47 to 21 members. Corresponding changes would also be made to § 989.126. The proposal would also remove producer district representation in § 989.26(c) and add an unaffiliated independent producer member seat to § 989.126(a)(1). Corresponding changes would also remove §§ 989.22 and 989.122 and references to producer districts in §§ 989.29(b)(2), 989.126(a), and 989.129. In addition, Proposal No. 1 would eliminate the designated bargaining association seat in § 989.26. Corresponding changes would also remove the reference to the bargaining association position in § 989.30. Lastly, Proposal No. 1 would amend § 989.26 by lowering quorum requirements from 25 to 14.

Witnesses supported this proposal and stated that reducing the size of the Committee would make conducting business more efficient. These witnesses' statements are supported by the data collected by NASS showing that bearing acreage for raisins has decreased almost 53 percent since the 2000–2001 season.

Currently, the Committee is structured to have 47 members and 47 alternates, where quorum is met when at least 25 members attend. A witness testified that, from April 2019 through June 2023, Committee meeting participation averages only 33 out of the 47 members in attendance. Witnesses testified that the number of raisin producers has declined from approximately 3,500 during the 2000–2001 season to approximately 1,500 during the 2022–2023 season. Reducing the number of members on the Committee will bring representation into balance with the overall size of the industry.

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, and may even create efficiencies that would reduce administrative costs.

Estimated Economic Impact of Removing Separate Nomination Procedures

The proposal described under Material Issue No. 2 would amend § 989.29 to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

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

According to witness testimony, the purpose of the proposal is to eliminate the requirements for separate nominations for independent producers and create greater competition for all Committee positions. When the raisin industry had more producers, the Committee believed designating separate nominations for independent producers ensured that independent producers' concerns were part of Committee discussions. As the raisin industry has evolved, separate nominations for independent producers have fueled low attendance rates and absenteeism at Committee meetings.

In conclusion, it is determined that the benefits of eliminating the requirements for separate nominations for independent producers would outweigh any costs associated with the implementation of the proposed amendment.

Estimated Economic Impact of Updating Marketing Policy and Quality Standards for Reconditioned Raisins

The proposal described under Material Issue No. 3 would, in § 989.54(a), remove factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5, “, considering the estimated world raisin supply and demand situation”. Proposal No. 3 would also amend §§ 989.24 and 989.58 by adding language to clarify the quality of reconditioned raisins as “standard raisins.”

Currently, many customers believe reconditioned raisins differ from raisins that were not reconditioned, even though both raisins have met the same quality standard. The Committee believes that there is an impression in the raisin market that the quality level of reconditioned raisins is lower than standard raisins. Clarifying standard raisins as any raisins that have been inspected and meet the Order's minimum requirements, regardless of whether the fruit has been reconditioned or not, would remove any negative quality impression that is associated with reconditioned raisins.

According to a witness, the proposed amendment would streamline the sales process and would have a positive impact for raisin handlers and producers. Currently, USDA does not distinguish between reconditioned or standard raisins when purchasing for feeding programs.

It is determined that the benefits gained from implementing this proposal would outweigh additional implementation costs incurred, if any.

Estimated Economic Impact for Adding Contribution Authority and Patent/ Trademark Authority

The proposal described under Material Issue 4 would add § 989.63 to establish the authority to accept voluntary contributions and add § 989.64 to establish authority related to ownership of, and rights to, intellectual property and add authority for the collection of rents/royalties from the same.

The Order does not currently allow for the Committee to accept voluntary contributions or have ownership of, and rights to, intellectual property. This proposal would allow for the Committee to generate additional income outside the collection of handler assessments.

According to a witness, the Committee has been approached recently with the opportunity to generate revenue from the trademarked Dancing Raisins. Adding the authority

to own, and to exercise the rights of, intellectual property would allow the Committee to receive income from patents, copyrights, trademarks, inventions, publications, or product formulations. Such authority would allow the Committee to collect additional income from the Dancing Raisins and any other intellectual property owned or controlled by the Committee. The additional income could benefit the raisin industry by, for instance, supporting future research as determined by the Committee.

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.

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.

Committee 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 Committee deliberations on all issues. All Committee meetings, and the hearing, were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory 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 that are part of the Federal marketing order for California raisins (7 CFR part 984) are approved under OMB No. 0581-0178 Vegetables and Specialty Crops. Some changes in those requirements are anticipated as a result of this proceeding. Such changes 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 § 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

No briefs were filed. 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 produced from grapes 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. All written exceptions received within the comment period will be considered, and a producer referendum may be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 989 as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601-674.

§ 989.22 [Removed and Reserved]

■ 2. Remove and reserve § 989.22.

■ 3. Amend § 989.24 by revising paragraph (b) to read as follows:

§ 989.24 Standard raisins, off-grade raisins, other falling raisins, and raisin residual material.

* * * * *

(b) *Off-grade raisins* means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins: *Provided*, That raisins which are certified as off-grade raisins shall continue to be such until successfully reconditioned as standard raisins or become “other failing raisins.”

* * * * *

■ 4. Revise § 989.26 to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 21 members of whom 12 shall represent producers, 8 shall represent handlers and 1 shall be a public member.

(a) The producer members shall be selected as follows:

(1) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year. (2) Producer members representing cooperative bargaining association(s) shall be members of such association(s), and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(3) All other producer members, who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraphs (a)(1) or (2) of this section and shall be selected as designated in the rules and regulations.

(b) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the

product, rounded to the nearest whole number, obtained by multiplying 8 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(c) The public member shall be nominated by the Committee and selected by the Secretary as public member.

(d) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they are an alternate.

■ 5. Amend § 989.29 by revising paragraphs (a) and (b)(1) and (2) to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 2026, and until their respective successors have been selected and qualified.

(b) * * *

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (a)(3) and (b): *Provided*, That member and alternate member nominations by independent handlers and cooperative marketing

association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins.

(ii) Each such producer whose name is offered in nomination 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. The producer candidate receiving the highest number of votes shall be designated as the first member nominee for a member position in which they qualify, the second highest shall be designated as the second member nominee for a member position which they qualify, until nominees for all producer member positions have been filled. Similarly, after all producer member positions have been filled, the producer candidate receiving the highest number of votes shall be designated as the first alternate member nominee for a member position in which they qualify, the second highest shall be designated as the second alternate member nominee for a member position in which they qualify, until nominees for all alternate member positions have been filled.

(iii) In the event there are no qualified candidates for any designated producer member or alternate member positions, such positions may be filled by other producer candidates not otherwise nominated for a position.

(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.

* * * * *

■ 6. Revise § 989.30 to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, and public members and alternate members in the number specified in § 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, or handlers.

§ 989.38 [Amended]

■ 7. Amend § 989.38 by removing the numeral “25” and adding in its place the numeral “14”.

§ 989.54 [Amended]

■ 8. Amend § 989.54 by:

- a. Removing paragraph (a)(4);
- b. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(4) through (8), respectively; and
- c. Removing in newly redesignated paragraph (a)(4), the text “, considering the estimated world raisin supply and demand situation”.

■ 9. Amend § 989.58 by adding paragraph (g) to read as follows:

§ 989.58 Natural condition raisins.

* * * * *

(g) *Quality reconditioned raisins.* All raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards established pursuant to this section, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labelled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets.

■ 10. Add § 989.63 to read as follows:

§ 989.63 Contributions.

The Committee may accept voluntary contributions: *Provided*, That such contributions shall only be used to pay expenses authorized under § 989.79. Furthermore, contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

■ 11. Add § 989.64 to read as follows:

§ 989.64 Patents, copyrights, trademarks, inventions, product formulations, and publications.

(a) Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart shall be the property of the U.S. Government, as represented by the Committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Committee; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Committee; and may be licensed subject to approval by the Secretary.

(b) Upon termination of this subpart, § 989.92 shall apply to determine disposition of any property, including patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart.

(c) Should patents, copyrights, trademarks, inventions, product formulations, or publications be developed through the use of funds collected by the Committee under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization contributing funds towards the development of such patents, copyrights, inventions, trademarks, product formulations, or publications in a manner consistent with paragraph (a) of this section.

(d) Should any patents, copyrights, trademarks, inventions, product formulations, or publications be licensed to the Committee by another person or organization, the rights and obligations regarding such licensed patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization permitting licensure in a manner consistent with paragraph (a) of this section.

§ 989.122 [Removed and Reserved]

■ 12. Remove and reserve § 989.122.

■ 13. Revise § 989.126 to read as follows:

§ 989.126 Representation of the Committee.

(a) Pursuant to § 989.26(a)(3), and commencing with the term of office beginning May 1, 2026, apportionment of independent and small cooperative producers shall be:

(1) One producer member, selected from and representing all producers, who is unaffiliated with any handler (including, but not limited to, ownership, employment, or agent of any handler, and whose family members are similarly unaffiliated with any handler); and

(2) The remaining producer member(s) selected from and representing all other independent and small cooperative producers.

(b) Pursuant to section § 989.26(b)(2), and commencing with the term of office beginning May 1, 2026, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handler(s) other than major cooperative marketing association handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year; and

(2) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

■ 14. Revise § 989.129 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 vote for a nominee for each producer member position and one vote for a nominee for each producer alternate member position on the Committee which is to be filled. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or 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.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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