



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AO-FV-16-0016; AMS-SC-16-0011; SC16-989-1]

Raisins Produced from Grapes Grown in California;

Secretary's Decision and Referendum Order on Proposed

Amendments to Marketing Order No.989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 989 (order), which regulates the handling of raisins produced from grapes grown in California and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. Five amendments proposed by the Raisin Administrative Committee (RAC or Committee), the agency responsible for local administration of the order, would: authorize production research; establish new nomination procedures for independent producer member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different markets; and add a continuance referenda requirement.

In addition, the Agricultural Marketing Service (AMS) proposed to: remove order language pertaining to volume

regulation and reserve pool authority; establish term limits for Committee members; and, 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.

These proposed amendments would update the order to reflect changes in the industry and potential future changes, and would improve the operation and administration of the order.

DATES: The referendum will be conducted from December 4 through 15, 2017. The representative period for the purpose of the referendum is August 1, 2016, through July 31, 2017.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Julie Santoboni, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail:

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Julie.Santoboni@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 14, 2016, and published in the April 22, 2016, issue of the **Federal Register** (81 FR 23650) and a Recommended Decision issued on May 3, 2017, and published in the May 31, 2017, issue of the **Federal Register** (82 FR 24882).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled, "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled

'Reducing Regulation and Controlling Regulatory Costs' "
(February 2, 2017).

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

Preliminary Statement

The proposed amendments are based on the record of a public hearing held on May 3 and 4, 2016, in Clovis, California. The hearing was held 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 of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on April 22, 2016 (81 FR 23650). The notice of hearing contained five proposals submitted by the Committee and three proposals by USDA.

The amendments in this decision would:

- (1) Authorize production research;
- (2) Establish new nomination procedures for independent producer member and alternate member seats;
- (3) Add authority to regulate quality;
- (4) Add authority to establish different regulations for different markets;

- (5) Add a continuance referenda requirement;
- (6) Remove order language pertaining to volume regulation and reserve pool authority;
- (7) Establish term limits for Committee members; and
- (8) 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.

Conforming changes and corrections proposed by USDA include: revising all references of "offgrade" to "off-grade"; revising all references of "nonnormal" to "non-normal"; and, revising all references to "committee" to "Committee". These corrections would result in consistent spelling of these terms throughout the order.

In addition, the words "Processed Products Standardization and Inspection Branch" in §§ 989.58(d) and 989.59(d) should be changed to "Specialty Crops Inspection Division." Similarly, "Processed Products Branch, Fruit and Vegetable Division" in § 989.102 should be changed to "Specialty Crops Inspection Division." These corrections would reflect the official name change of the AMS's inspection service office for fruit, vegetables and specialty crops.

Lastly, an additional correction has been added to change the amendatory language in § 989.55, 989.56, 989.65,

989.66, 989.67, 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401, from "remove" to "delete and reserve". This change would prevent the unintentional renumbering of remaining sections of the order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on May 3, 2017, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 30, 2017. One exception was filed.

The exception filed opposed the proposed amendment to establish term limits. The commenter, representing the Raisin Bargaining Association (RBA), stated that the RBA Board of Directors voted unanimously to use the association's block voting option to vote against the term limits proposal. The commenter reasoned that the RAC has an active and diverse membership, and that current RAC meetings are well attended and benefit from membership discussions. The commenter further argued that term limits, if implemented, would limit the industry's choice as to who may represent them on the RAC and would prevent experienced persons from continuing to participate. Lastly, the commenter stated that the RAC had also

unanimously voted against the term limits proposal in meetings held prior to the public hearing.

Currently, the term of office of each member and alternate member of the RAC is two years. There are no provisions related to term limits in the marketing order. USDA is proposing that members serve no more than four consecutive two-year terms, or a total of eight years. Once a member has served on the RAC for four consecutive terms, or eight years, the member could not serve as a member for at least one year before being eligible to serve again.

The USDA believes that all marketing order programs should include tenure limitations for Committee membership. Incorporating the proposed amendment into the order would uphold the intent of the 1982 USDA Fruit, Vegetable and Specialty Crop Marketing Order Guidelines, which resulted from a 1981 Presidential Task Force on Regulatory Relief study finding that tenure should be limited. Further, if implemented, term limits would increase the number of individuals in the industry with Committee experience and provide the Committee with new perspectives and ideas. Therefore, the proposal to add a provision for term limits to the order is not removed as a result of the filed exception.

Final Regulatory Flexibility Analysis

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 final 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 3,000 raisin producers in California. According to National Agricultural Statistics Service data presented at the hearing, the total value of production of raisins in the 2014/15 crop year is \$598,052,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides an average return per producer of \$199,950.67. A small producer as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually.

Therefore, a majority of raisin producers are considered small entities under SBA's standards.

According to the industry, there were 23 handlers for the 2015/16 crop year. A small agricultural service firm as defined by the SBA is one that grosses less than \$7,500,000 annually. Based on Committee data, 13 handlers would be considered small entities under SBA's standards. Slightly more than half of the industry's handlers are considered small entities under SBA's standards.

The production area regulated under the order covers the state of California. Acreage devoted to raisin production in the regulated 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 2000/01 crop year. Since then, bearing acreage for raisins has decreased 32 percent to 190,000 acres in 2014/15. As a result, the total production of raisins reached a high during the 2000/01 crop year of 484,500 tons (dried basis). Since the 2000/01 crop year, total production for raisins has decreased 32 percent to 328,600 tons in 2014/15.

During the hearing held May 3 and 4, 2016, 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 or a significant economic impact on a substantial number of small agricultural producers or firms.

Material Issue Number 1 – Authorize production research.

The proposal described in Material Issue 1 would amend § 989.53 to authorize production research.

Currently, the California Raisin Marketing Board (CRMB) is the funding source for production research for the California raisin industry. Three years ago, payments of assessments to the CRMB were suspended due to the results of litigation. Without funding the CRMB has been unable to conduct any new production research projects. If amended, this proposal would authorize the RAC to conduct production research without having to rely on the CRMB.

Witnesses supported this proposal and stated that future research could potentially impact producers in many ways, such as reducing pesticide usage or the development of new varieties that are less labor intensive. Production research would provide the raisin industry the ability to meet the needs of the ever changing domestic and international markets. According to a witness's testimony,

the benefits of the proposed amendment would outweigh any costs.

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, and not have a significant impact on a substantial number of small entities.

Material Issue Number 2 – Authorize separate nominations for independent producer member and independent producer alternate member seats.

The proposal described in Material Issue 2 would amend §§ 989.29 and 989.129 to authorize separate nominations for independent producer members and independent producer alternate member seats.

Currently, the RAC 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 witnesses' testimony, the purpose of the proposal is to increase the participation of independent producers willing to participate on the Committee. Full

participation would give the independent producers their represented voice on RAC decisions.

In conclusion, it is determined that the benefits of increased Committee participation by independent producers would outweigh any costs associated with the implementation of the proposed amendment. The costs of implementing this proposal would be minimal, and would not have a significant impact on a substantial number of small entities.

Material Issue Number 3 – Add authority to regulate quality.

The proposal described in Material Issue 3 would amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality. A corresponding change would also revise the heading prior to § 989.58 to include quality.

Currently, §§ 989.58 and 989.59 of the order state that the Committee has the authority to recommend grade and condition standards regulation under the order. The attribute "quality" is not specifically mentioned. The proposed amendment would add language to include "quality" as an attribute that can be regulated under the order.

According to a witness, the proposed amendment would give the Committee flexibility to ensure consumer safety by setting quality standards for residue levels for herbicides, pesticides or fungicides. The quality

standards would be equally applied to all handlers of raisins within the U.S.; some handlers are already testing for certain types of fungicides so the increased costs would be minimal.

It is determined that the additional costs incurred to regulate quality would be greatly outweighed by the increased flexibility for the industry to respond to changing quality regulations, increased consumer safety, and other benefits gained from implementing this proposal. The costs of implementing this proposal would not have a significant impact on a substantial number of small entities.

Material Issue Number 4 – Add authority to establish different regulations for different markets.

The proposal described in Material Issue 4 would amend § 989.59 to add authority to establish different regulations for different markets.

The order does not currently allow for different quality or grade standards to be applied to different foreign markets. The language in the order only has two classifications for grade and condition standards, Grade A or Grade B. The current grade and condition standards are consistent across all markets.

The proposed amendment would give the Committee the authority to develop regulations for individual foreign markets that would be best suited for that specific destination. This proposal would give the industry flexibility to tailor product attributes to meet the foreign consumer profile and the customer demands for each individual market.

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. The costs of implementing this proposal would not have a significant impact on a substantial number of small entities.

Material Issue Number 5 – Continuance referenda.

The proposal described in Material Issue 5 would amend § 989.91 to require continuance referenda.

The proposed amendment would require the USDA to conduct a continuance referenda between year five and year six for the first referendum and every six years thereafter to assure that the order is responsive to industry needs and changing circumstances. A witness testified that a continuance referenda is the best tool for assuring that the order remains responsive to the needs of the industry. While a continuance referenda will not directly improve

producer returns, it will indirectly assure that the industry believes that the order is operating in the producer's best interest.

For these reasons, it is determined that the benefits of conducting a continuance referenda would outweigh the potential costs of implementing this proposal. The costs of implementing this proposal would be minimal, and would not have a significant impact on a substantial number of small entities.

Material Issue Number 6 – Remove volume regulations and reserve pool authority.

The proposal described in Material Issue 6 would amend the order to remove volume regulation and reserve pool authority. This would include: deleting and reserving §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257, and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173, and 989.210; and re-designating § 989.70 as § 989.96. Corresponding changes would also remove the following headings: "Volume Regulation" prior to § 989.65; "Volume Regulation" prior to § 989.166; and, "Subpart-Schedule of Payments" prior to § 989.401.

The proposed amendment would remove all authority for the RAC to establish volume restrictions and a reserve pool. On June 22, 2015, the United States Supreme Court, in *Horne v. USDA*, ruled that the application of the marketing order's reserve pool authority to the Hornes was a taking under the Fifth Amendment to the U.S. Constitution. By a July 16, 2015, letter to the RAC, USDA stated, "In light of the *Horne* decision, the U.S. Department of Agriculture has decided not to authorize the reserve program of the Federal marketing order for California raisins for the foreseeable future, effective immediately."

One witness explained that bearing acres have declined the past ten years that supports the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the order's reserve pool authority has not been utilized since 2010.

The proposal would be a relaxation of regulations, for this reason, it is determined that no significant impact on

small business entities is anticipated from this proposed change.

Material Issue Number 7 – Establish term limits.

The proposal described in Material Issue 7 would amend § 989.28 to establish term limits.

The proposed amendment would establish term limits of up to four consecutive two-year terms for members only, not alternate members. If implemented, in no event would any member serve more than eight consecutive years on the Committee. The proposal for term limits would conform the order to other existing programs. USDA strives to maintain continuity in the service of its members.

According to a witness's testimony, term limits in other marketing orders have generally proven to have the intended impact of increased participation and diversity. For these reasons, it is determined that the benefits of the proposal would outweigh the potential costs of implementation.

The costs attributed to these proposed changes are minimal; therefore, there will not be a significant impact on a substantial number of small entities.

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.

RAC 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 RAC deliberations on all issues. All RAC meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

Current information collection requirements for Part 989 are approved by OMB, under OMB Number 0581-0189 - "Generic OMB Fruit Crops." No changes are anticipated in these requirements as a result of this proceeding. Should any such changes become necessary, they 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.

AMS is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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.

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 section 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.

Findings and Conclusions; Discussion of Exception

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the May 31, 2017, issue of the **Federal Register** are hereby approved and adopted.

One exception was filed in opposition to the proposal to implement term limits. The commenter reasoned that the RAC has an active and diverse membership, and that current RAC meetings are well attended and benefit from membership discussions. The commenter further argued that term limits, if implemented, would limit the industry's choice as to who may represent them on the RAC and would prevent experienced persons from continuing to participate.

The USDA believes that all marketing order programs should include tenure limitations for Committee membership. Incorporating the proposed amendment into the order would

uphold the intent of the 1982 USDA Fruit, Vegetable and Specialty Crop Marketing Order Guidelines, which resulted from a 1981 Presidential Task Force on Regulatory Relief study finding that tenure should be limited.

Ruling on Exception

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exception filed to the Recommended Decision was carefully considered in conjunction with the recorded evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exception, such exception is denied.

Marketing Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Raisins Produced from Grapes Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of

referenda (7 CFR 900.400-407) to determine whether the annexed order amending the order regulating the handling of raisins produced from grapes grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of raisins in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2016, through July 31, 2017.

The agents of the Secretary to conduct such referendum are hereby designated to be Jeffrey Smutny and Kathie Notoro, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 2202 Monterey St., Ste. 102B, Fresno, California 93721-3129; telephone: (559) 487-5901; or fax: (559) 487-5906, or E-mail: Jeffrey.Smutny@ams.usda.gov or Kathie.Notoro@ams.usda.gov, respectively.

**Order Amending the Order Regulating the Handling of Raisins
Produced from Grapes Grown in California¹**

Findings and Determinations

¹ This order shall not become effective unless and until the requirements of §900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing 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.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 989, regulating the handling of raisins produced from grapes grown in California. Upon the basis of the record, it is found that:

(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 in the same manner as, and are 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 that 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 produced from grapes grown in the production area; and

(5) All handling of raisins produced from grapes 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.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued on May 3, 2017, and published in the May 31, 2017, issue of the **Federal Register** (82 FR 24882) will be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989 – RAISINS PRODUCED BY GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

SUBPART A – [AMENDED]

2. Designate the subpart labeled “Order Regulating Handline” as subpart A.

3. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

Producer means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

4. Revise § 989.28 to read as follows:

§ 989.28 Term of office.

(a) The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years; Provided, That each such member and alternate member shall continue to serve until their successor is selected and has qualified.

(b) Representatives may serve up to four consecutive, two-year terms of office. In no event shall any representative serve more than eight consecutive years on the Committee. For purposes of determining when a representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment. This limitation on tenure shall not apply to the service of alternate members.

5. In § 989.29:

a. Revise paragraph (b) (2) (ii);

- b. Redesignate paragraph (b) (2) (iii) as paragraph (b) (2) (iv);
- c. Add a new paragraph (b) (2) (iii); and
- d. Revise newly redesignated paragraph (b) (2) (iv).

The revisions and addition read as follows:

§ 989.29 Initial members and nomination of successor members.

(b) ***

(2) ***

(i) ***

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

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member seat may be nominated to fill vacant alternate member seats. Member seat nominees shall indicate, prior to the

nomination vote, whether they are willing to accept nomination for an alternate seat in the event they are not nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(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. In § 989.53(a), revise the introductory text and remove the text that follows paragraph (a) (5) to read as follows:

§ 989.53 Research and development.

(a) General. The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

7. In § 989.54:

a. Remove paragraphs (a) through (d) and (g);

b. Remove paragraph (e) (4);

c. Redesignate paragraphs (e) (5) through (e) (10) as (e) (4) through (e) (9), respectively;

d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and

e. Revise newly redesignated paragraphs (a) introductory text, (a) (1), (a) (4), (a) (5) and (c).

The revisions read as follows:

§ 989.54 Marketing policy.

(a) Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy,

the Committee may give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

(c) Publicity. The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator,

handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

§§ 989.55 and 989.56 [Removed and reserved].

8. Sections 989.55 and 989.56 are removed and reserved.

9. Revise the undesignated heading prior to § 989.58 to read as follows: "Grade, Quality, and Condition Standards".

10. In § 989.58, revise paragraphs (a), (b), (d)(1), (e)(1), and (e)(4) to read as follows:

§ 989.58 Natural condition raisins.

(a) Regulation. No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the Committee may establish, with the approval of the Secretary, in applicable rules and regulations: Provided, That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: And provided further, That a handler may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system established

pursuant to rules and regulations recommended by the Committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) Changes in minimum grade, quality, and condition standards for natural condition raisins. The Committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

(d) ***

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of off-grade raisins as described in paragraph (e) (2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of standard raisins as described in §989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d) (2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d) (3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the Committee may establish with the approval of the Secretary, acquired or received for disposition in eligible non-normal outlets. Except as otherwise provided in this section, prior to blending

raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards:

Provided, That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the Committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the Committee a copy of such certification, together with such other documents or records as the Committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The Committee may require that raisins held on memorandum receipt be re-inspected and certified as a condition for their acquisition by a handler.

(e) ***

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the Committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e) (2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if

stemmed, adjusted to natural condition weight) after they have been reconditioned.

11. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) Regulation. Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade quality, and condition standards established by the Committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: Provided, That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. And provided further, That a handler

may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

(b) The Committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

(d) Inspection and certification. Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then

applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the Committee a copy of such certificate together with such other documents or records as the Committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the Committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) Inter-plant and inter-handler transfers. Any handler may transfer from his plant to his own or another handler's plant within the State of California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the Committee a report of such transfer, except that transfers between plants owned or

operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(g) Exemption of experimental and specialty packs. The Committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

12. Amend § 989.60 by revising paragraph (a) to read as follows:

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the Committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade raisins, free from any or all regulations, for uses in non-normal outlets.

13. Section 989.61 is revised to read as follows:

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the Act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the Act.

14. Remove the undesignated heading "Volume Regulation" prior to § 989.65.

§§ 989.65 - 989.67 [Removed and reserved].

15. Sections 989.65, 989.66, and 989.67 are removed and reserved.

16. Redesignate § 989.70 as § 989.96.

§§ 989.71 - 989.72 [Removed and reserved].

17. Sections 989.71 and 989.72 are removed and reserved.

18. Amend § 989.73 by revising paragraph (b) to read as follows:

§ 989.73 Reports.

(b) Acquisition reports. Each handler shall submit to the Committee in accordance with such rules and procedures as are prescribed by the Committee, with the approval of

the Secretary, certified reports, for such periods as the Committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

- (1) The total quantity of standard raisins acquired;
- (2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and
- (3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the Committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the Committee, each handler shall furnish to the Committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

19. Section 989.79 is revised to read as follows:

§ 989.79 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be

incurred by it during each crop year, for the maintenance and functioning of the Committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The Committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to §989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the Committee not more than 5 days if warranted by a late crop.

20. In § 989.80, revise paragraphs (a) through (c) to read as follows:

§ 989.80 Assessments.

(a) Each handler shall pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the Committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the Committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the Committee. Each handler shall pay such additional assessment to the Committee upon demand. In order to provide funds to carry out the functions of the Committee, the Committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The

payment of assessments for the maintenance and functioning of the Committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 989.82 [Removed and reserved].

21. Section 989.82 is removed and reserved.

22. Section 989.84 is revised to read as follows:

§ 989.84 Disposition limitation.

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

23. In § 989.91:

a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and;

b. Add a new paragraph (c).

The addition to read as follows:

§ 989.91 Suspension or termination.

(c) No less than five crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such termination shall be announced on or before the end of the crop year.

SUBPART B – Administrative Requirements

24. Designate the subpart labeled “Administrative Rules and Regulations” as subpart B and revise the heading as shown above.

25. Section 989.129 is revised 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 ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: (a) Owns and farms land resulting in his or its ownership of such grapes produced thereon; (b) rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or (c) 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 in its district.

§ 989.154 [Removed and reserved].

§ 989.156 [Removed and reserved].

26. Sections 989.154 and 989.156 are removed and reserved.

27. Amend §989.158 by revising paragraph (c)(4)(i) to read as follows:

§ 989.158 Natural condition raisins.

(c) ***

(4) ***

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including e-mail. Natural condition raisins which have been reconditioned shall continue to be

considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

28. Remove the undesignated heading "Volume Regulation" prior to § 989.166 is removed.

§989.166 - 989.167 [Removed and reserved].

29. Sections 989.166 and 989.167 are removed and reserved.

30. In § 989.173:

a. Remove paragraphs (b) (2) (ii), (f), and (g) (1) (ii);

b. Redesignate paragraph (b) (2) (iii), (g) and (g) (1) (iii) as paragraphs (b) (2) (ii), (f) introductory text and (f) (1) (ii), respectively; and

c. Revise paragraphs (a), (b) (2) (i), newly redesignated paragraph (b) (2) (ii), (c) (1), (d) (1), (d) (1) (v), newly redesignated paragraph (f) (1) (ii), (f) (2) (i) and (f) (3).

The revisions read as follows:

§ 989.173 Reports.

(a) Inventory reports. Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. Provided,

That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary and which the Committee shall specify in its request.

(b) ***

(2) ***

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

(c) ***

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within the State of California between plants of any such handler

and from such handler to other handlers): Provided, That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

(d) ***

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

(f) ***

(1) ***

(i) The quantity of raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(ii) ***

(2) ***

(i) The total net weight of the standard raisins acquired during the reporting period; and

(3) Disposition report of organically-produced raisins.

No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

SUBPART C – Supplementary Requirements

31. Designate the subpart labeled “Supplementary Regulations” as subpart C and revise the heading as shown above.

32. In § 989.210:

a. Remove paragraphs (b), (c) and (e);

b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and

c. Revise newly redesignated paragraph (b).

The revision to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(b) Assessments. Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

34. Sections 989.221 and 989.257 are deleted and reserved.

SUBPART D – [AMENDED]

35. Designate the subpart labeled “Assessment Rates” as subpart D.

36. The subpart heading “Subpart-Schedule of Payments” prior to § 989.401 is removed.

37. Section 989.401 is removed and reserved.

SUBPART E – [AMENDED]

38. Designate the subpart labeled “Conversion Factors” as subpart E.

SUBPART F – [AMENDED]

39. Designate the subpart labeled “Quality Control” as subpart F.

SUBPART G – [AMENDED]

40. Designate the subpart labeled “Antitrust Immunity and Liability” as subpart G.

41. In part 989 all references of “offgrade” are revised to read “off-grade”.

42. In part 989 all references to "nonnormal" are revised to read "non-normal".

43. In part 989 all references to "committee" are revised to read "Committee".

44. In the list below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
989.58 (d)	Processed Products Standardization and Inspection Branch	Specialty Crops Inspection Division
989.59 (d)	Processed Products Standardization and Inspection Branch	Specialty Crops Inspection Division
989.102	Processed Products Branch, Fruit and Vegetable Division	Specialty Crops Inspection Division

Dated: September 19, 2017

Bruce Summers
Acting Administrator
Agricultural Marketing Service

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