

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D- USDA/OALJ/HCO
2024 APR 2 4:30 PM

In re:

Raisins Produced from Grapes Grown in
California; Proposed Amendments to
Marketing Order No. 989

AO Docket No. 23-J-0080
AMS-SC-23-0039

ORDER CERTIFYING TRANSCRIPT

Appearances:

On Behalf of the U.S. Department of Agriculture:

Rupa Chilukuri, Esq., and Samantha Dorsey, Esq., Office of the General Counsel, United States Department of Agriculture; and

With the Agricultural Marketing Service (“AMS”), United States Department of Agriculture: Christy Pankey, Agricultural Marketing Specialist; Sandi Dreisonstok, Agricultural Marketing Specialist; Barry Broadbent, Acting Branch Chief, Western Region Branch, Marketing Development Division; Marc McFetridge, Agricultural Economist, Specialty Crops Division; Jeremy Sasselli, Marketing Specialist; Kathie Notoro, Marketing Specialist; Matthew Pavone, Chief Rulemaking Services Branch, Market Development Division, Specialty Crops Program; Andrew Hatch, Deputy Director of Operations, Specialty Crops Program; and Michelle Sharrow, Director, Market Development Division, Specialty Crops Program.

On Behalf of the Raisin Administrative Committee:

Dori Williams, Director of Operations; and Debbie Powell, President/General Manager, Raisin Administrative Committee (“RAC”).

Pursuant to 7 C.F.R. § 900.10 and notice published in the Federal Register,¹ a hearing on proposals recommended by the Raisin Administrative Committee (“RAC”) to amend Federal Marketing Order No. 989 (Order) was held in Fresno, California, over a total of two (2) days,

¹ Marketing Order for Raisins Produced From Grapes Grown in California (M.O. No. 989); Hearing, 89 Fed. Reg. 2178 (Jan. 12, 2024).

from February 13-14, 2024.

On March 20, 2024, the Agricultural Marketing Service (“AMS”) and the RAC each filed proposed corrections to the record transcript of the hearing. No other proposed corrections have been filed or otherwise received from any participant, and no objections have been raised as to the proposed corrections. Upon my review those proposed corrections, except where changes from the proposed corrections are amended by bracket or noted parenthetically, the following corrections to the record transcript are hereby **ADOPTED**, as follows:

February 13, 2024

Page	Line	Correction
Cover		Strike “RAISIN PRODUCE” insert “RAISINS PRODUCED”
1	6	Strike “RAISIN PRODUCE” insert “RAISINS PRODUCED”
1	11/12	Insert “the” before “Office”
1	21	Capitalize “administrative”
2	6	Strike “Marketing” insert “Market”
2	7	Strike “Marketing” insert “Market”
2	[8]	Strike “Services” insert “Service”
5	7	Strike “Official” insert “Officials”
5	12	[Strike “Amendment” insert “Amendments”]
8	4[-5]	Remove “,” and insert “at” before “the”
8	7	Strike “a” insert “an”
8	8	Strike “mandatory” insert “amendatory”
8	11	Strike “00339” insert “0039”
8	13	Strike “programs” insert “program” and strike “and” insert “whose”
8	15	Strike “committee” insert “Committee”
8	19	Strike “in” insert “on”
9	8	Strike “alternative” insert “alternate”
9	15	Strike “affect” insert “effectuate”
10	8	Strike “interpret” insert “interrupt”
10	18	Strike “rule-making” insert “rulemaking”

10	23[-24]	(Correction Rejected) ²
12	5	Strike “Services” insert “Service”
12	16	Strike “Marketing” insert “Market”
12	22	Strike “Services” insert “Service”
12	23	Strike “Marketing” insert “Market”
16	21	Strike “not to” insert “may”
16	22	Strike “necessarily collaborative” insert “unnecessarily corroborative”
19	10	Insert “time” after “same”
24	1	Strike “supports” insert “support”
24	7	Strike “texts” insert “text”
25	5	Insert “pertinent” before “people”
26	17	Strike “Ag” insert “Agriculture”
26	21	Strike “marketing-order” insert “marketing order”
39	4	Strike “type” insert “types”
39	18	Strike “with” insert “which”
41	11	Strike “including” insert “include”
41	13	Strike “contest” insert “contests”
42	6	Strike “Chili” insert “Chile”
42	14	Strike “.” insert “?”
51	17-18	Insert “about” after “speaking”
53	14	Replace “hydrator” with “dehydrator”
56	1	Replace “forum” with “quorum”
56	20	Insert “a” before “certain”
61	8	Replace “moving” with “move”
62	13	Insert “a week” after “back”
64	19	Strike “RBI” insert “RBA”
64	22	Strike “RBI” insert “RBA”
64	25	Strike “RBI” insert “RBA”
65	6	Strike “RBI” insert “RBA”

² AMS’s proposed correction to Tr. 10:23 is rejected as unnecessary because it does not change or add to the meaning of the text in context.

66	3	Strike “as” insert “is”
67	10-11	Strike “So the current regulations has written base producer presentation on acquisitions?” insert “So the current regulations as written are based on producer representation of acquisitions?”
67	20	Strike “1990” insert “1990’s”
70	20	Replace “proposed” with “proposal”
73	20	Strike “with” before “32 years”
74	5	Strike “225,000” and insert “255,000”
76	25	Strike “meetings” insert “meeting”
78	22	Replace “rational” with “rationale”
78	23	Strike “committee” insert “Committee”
79	8	Strike “989.54(a)4” insert “989.54(a)(4)”
79	14	Strike “989.54(a)5” insert “989.54(a)(5)”
79	23	Strike “deviated” insert “differentiated”
81	17	Strike “deliberation” insert “deliberations”
82	16	Insert “a” before “70”
89	21	Strike “committee” insert “Committee”
90	7	Strike “test” insert “text”
90	19	Strike “January” insert “June”
91	2	(Correction Rejected) ³
93	3	Strike “alternative” insert “alternate”
96	9	Strike “vertical” insert “vertically”
97	8	Strike “committee” insert “Committee”
98	9	Strike “RAC” insert “RBA”
98	9	(Correction Rejected) ⁴
99	7	Strike “seats” insert “seat”
106	16	Strike “4A” insert “4(a)”
106	21	Strike “no”
110	9	Strike “committee” insert “Committee”

³ AMS’s proposed correction to Tr. 91:2 is rejected as unnecessary because it does not change or add to the meaning of the text in context.

⁴ RAC’s proposed correction to Tr 98:9 is rejected.

111	8	Strike “committee” insert “Committee”
111	9	Strike “committee” insert “Committee”
115	25	Strike “bargain” insert “bargaining”
117	3	Strike “according” insert “accordingly”
119	14	Strike “networked” insert “reworked” ⁵
121	15	Strike “bargain” insert “bargaining”
121	20	Strike “conditioned” insert “reconditioned”
127	15	Strike “history being all” insert “historical”
129	24	Strike “say’s” insert “say”
131	18	Strike “only” before “the”
131	25	Strike “bargain” insert “bargaining”
133	11	Strike “administrative issues” insert “Administrative Issues”
140	21	Strike “has” insert “have”
[141]	13	Strike “appropriated” insert “appropriate”
145	9	Strike “group” insert “crop”
145	10	Strike “have” insert “had a”
147	17	Insert “A.” before “Well”
148	16	Strike “that” insert “that’s” after “and”
153	19	Insert “how” after “about” and insert “of” after “cost”
153	23	Insert “of” after “cost”
154	10	Strike “complex” insert “collapse”
154	14	Strike “scored” insert “soared”
157	10	Strike “earnings” insert “acres”
158	9	Insert “of” before “work”
159	9	Strike “on” insert “in”
160	25	Strike “Keister” insert “Kister”
161	22	Strike “Ms.” Insert “Mr.”
162	13	Strike “Keister” insert “Kister”
169	18	Strike “own his” insert “his own”
170	1	Strike “examination” insert “examine”

⁵ This correction was proposed and accepted by both RAC and AMS.

174	15	Strike “pressures” insert “producers”
175	1	Strike “a” insert “the”
176	4	Strike “recommendation” insert “representation”
182	17	Strike “another” insert “one”
183	21	Strike “committee” insert “Committee”
187	10	Strike “RBA” insert “RAC”
193	20	Strike “long” insert “large”
202	3	Strike “a” insert “any”
204	16	Strike “of” insert “to”
210	6	Strike “support” insert “supported”
217	12	Strike “MR. CROWE” insert “MR. SPATE”
217	17	Strike “MR. SPADE” insert “MR. SPATE”
217	24	Strike “MR. SPADE” insert “MR. SPATE”
224	21	Strike “compliance” insert “complacency”
226	3	Strike “2015” insert “2018”
226	11	Strike “Malcomb” insert “Malcolm”
227	5	Strike “limit” insert “eliminate”
230	8	(Correction Rejected) ⁶
230	18	Strike “MR. SPADE” insert “MR. SPATE”
[229]	22	Strike “ERA” insert “hearing”
230	24	Strike “MR. SPADE” insert “MR. SPATE”
233	25	Strike “unit” insert “unite”
238	18	Strike “limitation” insert “elimination”
240	17	Strike “oversees” insert “overseas”
246	4	Strike “total” insert “totals”
246	13	Strike “bargain” insert “bargaining”
247	16	Strike “committee” insert “Committee”
253	9	Strike “packagers” insert “packers”
278	13	Strike “version” insert “for”

⁶ AMS’s proposed correction to Tr 230:8 is rejected as the proposed corrected text could not be found.

279	23	Strike “here” insert “year”
280	21	Strike “market-order” insert “marketing order”
286	14	Strike “US” insert “USDA”
289	6	Strike “THE WITNESS” insert “MR. CROWE”
292	5	Strike “definitely” insert “definition”
293	25	Strike “list” insert “lists”

February 14, 2024

<u>Page</u>	<u>Line</u>	<u>Correction</u>
Cover		Strike “RAISIN PRODUCE” insert “RAISINS PRODUCED”
299	5	Strike “RAISIN PRODUCE” insert “RAISINS PRODUCED”
300	5	Strike “Services” insert “Service”
300	7	Strike “Marketing” insert “Market”
300	8	Strike “Services” insert “Service”
300	9	Strike “Marketing” insert “Market”
302	4, 6, 7	Under “REC’D” insert 308, in each case
304	16	Strike “Defer” insert “I’ll defer”
306	12	Strike “market” insert “marketing”
306	19	Strike “questioning” insert “questions”
308	19	Before “.” Insert, “so admitted” ⁷
310	14	Insert “raisins” after “reconditioned”
313	4	Strike “rains” insert “raisins”
315	14	Strike “come” insert “comes”
332	21	Strike “my” insert “the”
334	16	Strike “convey” insert “conveyor”

⁷ The text at Tr 308:19-22 is clearly intended that Exhibits 27, 28, and 29 were admitted into the record with the caveats as to weight to be given them stated there, even if the hearing reporter did not pick up that I said “so admitted” or words to that effect. Thus, I have made the above transcript correction. As indicated in that section of transcript when asked if there were objections, no party stated any. And the February 21, 2024 Order on Post-Hearing Submissions and Notifications to the Hearing Clerk pursuant to 7 C.F.R. § 900.10, issued just a week after the hearing states, at p. 2, ¶ 7, “No exhibits were introduced but not accepted into the record.” Nevertheless, out of an abundance of caution, I specifically rule here that Exhibits 27, 28, and 29 were/are admitted to the record.

347	21	Strike "THE CLERK" insert "MR. KISTER"
347	24	Strike "THE WITNESS" insert "MR. KISTER"
353	9	Strike "regs" insert "rents"
353	19	Strike "bill"
355	19	Strike "the" insert "a"
357	5	Strike "come" insert "came"
358	13	Insert "earn" before "revenue"
359	2	Strike "Actually." insert "Exactly."
359	7	Strike "have" insert "has"
359	21	Strike "intellect." insert "intellectual."
359	22	Strike "order" insert "orders"
360	18	Strike "continued" insert "discontinued"
363	21	Strike "actually?" insert "exactly?"

I hereby certify that to the best of my knowledge and belief, the transcript of the testimony given during the hearing is a true rendition of the testimony, except for any remaining obvious or immaterial spelling and any typographical or grammatical errors, and with the corrections as adopted hereinabove.⁸

I further certify that the record includes the following exhibits, which were each received into evidence at the indicated transcript page, as follows, and that these exhibits are all the exhibits as introduced at the hearing:

⁸ Given the circumstances of this proceeding, I find that it would be counterproductive for the Hearing Clerk to note the corrections on the "hard copy" of the transcript; therefore, I find the Hearing Clerk need not follow the specifications set forth to that effect in 7 C.F.R. § 900.10. The above-referenced corrections that are adopted herein are deemed to be a part of the transcript as if the Hearing Clerk had actually noted those corrections on a hard copy, and a copy of this Order Certifying Transcript shall accompany any and all official copies of the transcript in this matter.

February 13, 2024

<u>Exhibit</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
1	Federal Register Notice	24	24
2	Certificate of Mailing	24	24
3	Certificate of News Release	24	24
4	Certificate of Official Notice	24	24
5	Testimony of Marc McFetridge, Agricultural Economist from the U.S. Department of Agriculture, Agricultural Marketing Service, Specialty Crops Program, Market Development Division Prepared for the Hearing on Proposed Amendment of Marketing Agreement and Order No. 989	29	33
6	U.S. Raisins, Crop Years: 2000 through 2022, Source: Noncitrus Fruits and Nuts 2022 Summary, NASS, May 2023	29	33
7	General Introduction by Monte Schutz	36	71
8	Raisin Grape Acreage History	36	71
9	California Raisins Brochure	37	71
10	Dried Grape Imports to the U.S., Source: Trade Data Monitor (2020 forward), Global Trade Atlas (prior to 2020)	37	71
11	Land IQ Technical Memorandum Dated March 27, 2023	37	71
12	Debbie Powell's Description of Proposed Amendments-General	72	125
13	Debbie Powell Testimony Exhibit A, Raisin Administrative Committee History of Minutes Where Rulemaking was Addressed	72	125
14	Debbie Powell Testimony Exhibit B, Raisin Administrative Committee Minutes of the Raisin Administrative Committee August 17, 2022	72	125
15	Debbie Powell Testimony Exhibit C, 9 Point Justification	72	125

16	Debbie Powell Testimony Exhibit D, Raisin Administrative Committee Full Committee Meeting Attendance History August 2019 Through June 2023	72	125
17	Debbie Powell Testimony Exhibit E, Raisin Administrative Committee Number of Vacancies Based on Election Results	73	125
18	Debbie Powell Testimony Exhibit F, Based on 2022-2024 Crop Year Current/Proposed Members	73	125
19	Raisin Packers 2023/2024 Season Administrative Committee; Raisin Dehydrators 2023/2024 Season Administrative Committee	73	125
20	Written Testimony of Steve Kister	128	168
21	Testimony of Gerald Chooljian for the Raisin Marketing Order 989	175	196
22	Raisin Administrative Committee Circular No. 5, 2005/2006 Crop Year, January 30, 2006	175	196
23	USDA Testimony 2/13/2024 prepared by Jeff Milinovich	197	217
24	Steven Spate Testimony	217	231
25	Raisin Bargaining Association Topics of Discussion and Concern RE: RBA Seat Removal On RAC	232	276
26	Written Testimony in Support Of Marketing Policy Changes And Amendments, Richard Crowe	277	296

February 14, 2024

<u>Exhibit</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
27	Article entitled "California Leads in raisin production," Arnand N. Kasimatis	303	308 ⁹
28	Top Raisin Producing Countries	304	308 ¹⁰

⁹ See *supra* note 8.

¹⁰ See *supra* note 8.

29	Ag MRC, a National Information Resource for Value Added Agriculture	304	308 ¹¹
30	Richard Sahatjian, Ag MRC Quality Standards for Reconditioned Raisins	309	346
31	Re: RAC formal rule proposal #4: Add Contribution Authority and Patent/Trademark Activity, Steve Kister	349	361

Pursuant to the schedule established at the hearing and stated in the February 21, 2024 Order on Post-Hearing Submissions and Notifications to the Hearing Clerk pursuant to 7 C.F.R. § 900.10, all briefs shall be filed with the Hearing Clerk **by 4:30 p.m. Eastern 20 business days after this certification is posted on the AMS website.**

Copies of this Certification of Transcript shall be sent to the parties by the Hearing Clerk.

The Hearing Clerk shall also email copies to the following persons:

Rupa Chilukuri, Esq.
Attorney for AMS, USDA
Office of the General Counsel
rupa.chilukuri@usda.gov

Samantha Dorsey, Esq.
Attorney for AMS, USDA
Office of the General Counsel
samantha.dorsey@usda.gov

Matthew Pavone, Chief
Rulemaking Services Branch
Market Development Division
Specialty Crops Program/AMS/USDA
matthew.pavone@usda.gov

Christy Pankey, Marketing Specialist
Rulemaking Services Branch
Market Development Division
Specialty Crops Program/AMS/USDA
christy.pankey@usda.gov

Barry Broadbent, Acting Regional Director
West Region Branch
Market Development Division
Specialty Crops Program/AMS/USDA
barry.broadbent@usda.gov

Michelle Sharrow, Director
Market Development Division
Specialty Crops Program/AMS/USDA
michelle.sharrow@usda.gov

Christopher Purdy, Deputy Administrator
Specialty Crops Program/AMS/USDA
christopher.purdy@usda.gov

Carl Purvis, Deputy Public Affairs Director
Public Affairs Office, AMS/USDA
carl.e.purvis@usda.gov

¹¹ See *supra* note 8.

Andrew Hatch, Deputy Director of Operations
Specialty Crops Program/AMS/USDA
andrew.hatch@usda.gov

Marc McFetridge
Agricultural Economist
Specialty Crops Program/AMS/USDA
marc.mcfetridge@usda.gov

Debbie Powell, President/General Manager
Raisin Administrative Committee
debbie@raisins.org; info@raisins.org

Monte Schutz, Chairman
Raisin Administrative Committee
[REDACTED]

Steve Kister
[REDACTED]

Gerald Chooljian
gchooljian@delreypacking.com

Jeff Milinovich
Milinovich.jeff@cencalraisin.com

Steven Spate
[REDACTED]

Dwayne Cardoza
[REDACTED]

Richard Crowe
[REDACTED]

Richard Sahatjian
rsahatjian@victorpacking.com

Done at Washington, D.C., this 2nd day of April 2024

CHANNING
STROTHER
Digitally signed by
CHANNING STROTHER
Date: 2024.04.02
16:11:48 -04'00'

Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031-S
1400 Independence Ave SW
Washington, DC 20250-9203
Phone: 1-202-720-4443
Fax: 1-844-325-6940
sm.oha.HearingClerks@usda.gov

CERTIFICATE OF SERVICE

Raisins Produced from Grapes Grown in California
Docket: 23-J-0080

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the ORDER CERTIFYING TRANSCRIPTS has been furnished and was served upon the following parties on April 3, 2024, by the following:

USDA (OGC) – Electronic Mail

Rupa Chilukuri, OGC
Rupa.Chilukuri@usda.gov
Samantha Dorsey, OGC
Samantha.Dorsey@usda.gov
Donna Erwin, OGC
Donna.Erwin@usda.gov
Carla Wagner, OGC
Carla.Wagner@usda.gov

USDA (AMS) - Electronic Mail

Andrew Hatch, AMS
Andrew.Hatch@usda.gov
Matthew Pavone, AMS
Matthew.Pavone@usda.gov
Michelle Sharrow, AMS
Michelle.Sharrow@usda.gov
Christy Pankey, AMS
Christy.Pankey@usda.gov
Barry Broadbent, AMS
Barry.Broadbent@usda.gov

Respectfully Submitted,

CAROLINE HILL

Digitally signed by CAROLINE
HILL
Date: 2024.04.03 10:57:41 -04'00'

Caroline Hill, Hearing Clerk
USDA/Office of Administrative Law Judges
Hearing Clerk's Office, Rm. 1031-S
1400 Independence Ave., SW
Washington, DC 20250-9203