UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AMAA Docket No. 04-0002
	)	
Marvin D. Horne and Laura R. Horne, d/b/a Raisin Valley Farms, a partnership and d/b/a Raisin Valley Farms Marketing Association, a/k/a Raisin Valley Marketing, an unincorporated association	)	
	)	
and	)	
	)	
Marvin D. Horne, Laura R. Horne, Don Durbahn, and The Estate of Rena Durbahn, d/b/a Lassen Vineyards, a partnership,	)	
	)	**Order Granting Petition**
Respondents	)	**To Reconsider**

PROCEDURAL HISTORY

On December 8, 2006, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] issued a Decision and Order in which he found that Marvin D. Horne, Laura R. Horne, Don Durbahn, and Rena Durbahn, now deceased, acting together as partners doing

business as Lassen Vineyards,[1] at all times material to this proceeding, acted as a handler of raisins subject to the inspection, assessment, reporting, verification, and reserve requirements of the federal order regulating the handling of Raisins Produced from Grapes Grown in California (7 C.F.R. pt. 989) [hereinafter the Raisin Order]. The ALJ further found that Mr. Horne and partners violated the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], and the Raisin Order by failing to obtain inspections of acquired incoming raisins, failing to hold requisite tonnages of raisins in reserve, failing to file accurate reports, failing to allow access to their records, and failing to pay requisite assessments. Pursuant to 7 U.S.C. § 608c(14)(B), the ALJ assessed Mr. Horne and partners a $731,500 civil penalty and ordered payment of $523,037 for the dollar equivalent of raisins not held in reserve and $9,389.73 for owed assessments.

On January 4, 2007, Mr. Horne and partners filed a timely petition for review of the ALJ's Decision and Order. On April 11, 2008, I issued a Decision and Order in which I found Mr. Horne and partners violated the Raisin Order (7 C.F.R. §§ 989.66, .166) by failing to hold in reserve California Natural Sun-dried Seedless raisins and by failing to pay to the Raisin Administrative Committee [hereinafter the RAC] the dollar equivalent of the California raisins that were not held in reserve for crop year 2002-2003

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[1]In this Order Granting Petition To Reconsider, I refer to these respondents, as well as the partnership Raisin Valley Farms, as "Mr. Horne and partners" unless clarity dictates otherwise.

and for crop year 2003-2004. Furthermore, I found that Mr. Horne and partners violated section 989.80 of the Raisin Order (7 C.F.R. § 989.80) by failing to pay assessments to the RAC for crop year 2002-2003 and for crop year 2003-2004. In total, I found that Mr. Horne and partners committed 673 violations of the Raisin Order. I ordered Mr. Horne and partners to pay to the RAC $6,042.23 in assessments for crop years 2002-2003 and 2003-2004, and $183,006.51 for the dollar equivalent of the California raisins they failed to hold in reserve for crop years 2002-2003 and 2003-2004. Finally, I assessed a civil penalty of $202,600 against Mr. Horne and partners for their violations of the Raisin Order.

On May 12, 2008, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], filed Complainant's Petition to Reconsider the Decision and Order of the Judicial Officer [hereinafter the Petition to Reconsider]. In the Petition to Reconsider, the Administrator alleged that the calculation of the assessments owed to the RAC by Mr. Horne and partners, as well as the calculations for the value of the raisins that Mr. Horne and partners failed to hold in reserve are not correct and should be modified. On June 3, 2008, Mr. Horne and partners filed Respondents' Opposition to Plaintiff's [sic] Petition to Reconsider [hereinafter Opposition to Petition to Reconsider]. In their Opposition to Petition to Reconsider, Mr. Horne and partners argue four issues:

1. The Administrator's Petition to Reconsider fails to meet the requirements of section 1.146(a)(3) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary [hereinafter the Rules of Practice] (7 C.F.R. § 1.146(a)(3));

2. The Administrator's suggested calculations cannot be confirmed by resort to the evidence;

3. The proposed reconsideration is inconsistent with the law; and

4. A custom or "toll" packer of raisins does not "acquire" raisins.

The Raisin Order mandates record keeping and reporting requirements that are necessary for the implementation of the Raisin Order (7 C.F.R. §§ 989.73, .77). Without such reports and without access to the documents that support these reports, it is difficult for the Agricultural Marketing Service [hereinafter AMS] and the RAC to properly determine the volume of raisins handled as well as the assessments and other monies due. Mr. Horne and partners failed to provide necessary documents until just before the second portion of the hearing on May 23, 2006.

I have spent considerable time examining the record in this proceeding. It appears that the document universe, entered into the record just prior to the second portion of the hearing, is likely missing some documents, while it contains duplicates of others. Determining exact volumes of raisins that flowed through Mr. Horne and partners' facility is difficult.

On June 19, 2008, I issued an Order Seeking Clarification in which I ordered the Administrator to explain how he reached the total weights used in calculating the amounts

owed by Mr. Horne and partners. On July 11, 2008, the Administrator filed Administrator's Response to the Judicial Officer's Order Seeking Clarification. The response provides guidance for me to use in determining the appropriate amounts owed by Mr. Horne and partners to the RAC for the assessments and for the dollar equivalent of California raisins that Mr. Horne and partners failed to hold in reserve. The Administrator's analysis explained how AMS reached the proposed assessment amounts and the amounts owed for raisins that Mr. Horne and partners failed to hold in reserve. The analysis contained a citation to each relevant exhibit noting the weight of the raisins sold on the invoice in the exhibit.

Finally, on August 4, 2008, Mr. Horne and partners filed Respondents' Submission Opposing the Administrator's Response to an Order Seeking Clarification. This filing was Mr. Horne and partners' opportunity to challenge the Administrator's numbers. Mr. Horne and partners did not challenge any of the weights or calculations presented in the Administrator's Response to the Judicial Officer's Order Seeking Clarification. Therefore, I find Mr. Horne and partners accept the Administrator's numbers as accurate and waive the opportunity to contest the numbers.

DISCUSSION

As I discussed in my April 11, 2008, Decision and Order, there are three components of the Order that mandate Mr. Horne and partners make monetary payments as a result of their violations of the Raisin Order (Decision and Order at 32-40). First, the

Raisin Order requires a handler, who fails to deliver reserve tonnage, to compensate the RAC, as follows:

> **§ 989.166 Reserve tonnage generally.**
>
> . . . .
>
> (c) *Remedy in the event of failure to deliver reserve tonnage raisins*. A handler who fails to deliver to the Committee, upon request, any reserve tonnage raisins in the quantity and quality for which he has become obligated . . . shall compensate the Committee for the amount of the loss resulting from his failure to so deliver.

7 C.F.R. § 989.166(c).

This provision of the Raisin Order leaves me no discretion on the matter and requires that I order Mr. Horne and partners to compensate the RAC for the reserve tonnage raisins they failed to deliver to the RAC. The Raisin Order also instructs me as to how to calculate the compensation owed by Mr. Horne and partners to the RAC.

> **§ 989.166 Reserve tonnage generally**.
>
> . . . .
>
> (c) *Remedy in the event of failure to deliver reserve tonnage raisins*. . . . The amount of compensation for any shortage of tonnage shall be determined by multiplying the quantity of reserve raisins not delivered by the latest weighted average price per ton received by producers during the particular crop year for free tonnage raisins of the same varietal type or types[.]

7 C.F.R. § 989.166(c).

Mr. Horne and partners argued in their Opposition to Petition to Reconsider that the Administrator's calculations cannot be confirmed by resort to the evidence (Opposition to Pet. to Reconsider at 2). Mr. Horne and partners' argument has some

validity for the 2002-2003 crop year, in that, without additional clarification, the determination of the weight of the raisins handled by Mr. Horne and partners for the 2002-2003 crop year, is difficult. Because of this difficulty, I ordered the Administrator to clarify his calculations of the weight of the raisins. The Administrator's Response to the Judicial Officer's Order Seeking Clarification provides the necessary clarification. Mr. Horne and partners were given the opportunity to respond to the Administrator's clarifications. Mr. Horne and partners filed Respondents' Submission Opposing the Administrator's Response to an Order Seeking Clarification. However, in this submission, Mr. Horne and partners do not challenge the Administrator's numbers and the exhibits that support the numbers. Therefore, I find Mr. Horne and partners accept the Administrator's process for determining the weight of raisins handled as accurate and Mr. Horne and partners waive any challenge to the Administrator's conclusions regarding the weight of the raisins.

The Administrator did not challenge my findings regarding the weight of the raisins handled by Mr. Horne and partners in the 2003-2004 crop year. Furthermore, Mr. Horne and partners did not challenge the numbers I used in calculating the reserve tonnage for the 2003-2004 crop year. Therefore, I find that the Administrator and Mr. Horne and partners accept, as accurate, the weights used by me in my April 11, 2008, Decision and Order for the 2003-2004 crop year.

The final component necessary for the calculation of the value of the raisins Mr. Horne and partners failed to hold in reserve is the "latest weighted average price per ton received by producers during the particular crop year for free tonnage raisins of the same varietal type or types." (7 C.F.R. § 989.166(c).) In my April 11, 2008, Decision and Order, I used the "producer price" to calculate the reserve payment requirement. The Administrator argues that the appropriate price is the "announced price" found in the January 10, 2003, letter to the RAC from the Raisin Bargaining Association (CX 583). In *Lion Raisins, Inc. v. United States*, 416 F.3d 1356, 1360 (Fed. Cir. 2005), the United States Court of Appeals for the Federal Circuit held that the "market price for free-tonnage raisins, or the field price, is not set by the RAC, but is determined through a private bargaining process carried out between producers' and handlers' bargaining associations." The Administrator's "announced price" (CX 583 at 2) meets the Federal Circuit's definition of market price; therefore, I use the "announced price" found in the January 10, 2003, letter as the price for calculating the value of the raisins that Mr. Horne and partners failed to hold in reserve.

In the 2002-2003 crop year, Mr. Horne and partners packed out 1,266,924 pounds of raisins (Exhibit B to the Administrator's Response to the Judicial Officer's Order Seeking Clarification). Applying the shrinkage factor of 0.93857 (CX 92 at 6) for weight loss during processing, Mr. Horne and partners received 1,349,844.9769 pounds of raisins in the 2002-2003 crop year. The reserve obligation for the 2002-2003 crop year was

47 percent (CX 88 at 2-3). Mr. Horne and partners' reserve obligation for that crop year was 634,427.1392 pounds (.47 x 1,349,844.9769 = 634,427.1392). The announced price for raisins was $745 per ton (CX 583 at 2-3). Therefore, for the 2002-2003 crop year, Mr. Horne and partners owe $236,324.13 to the RAC for compensation for failing to deliver any reserve raisins to RAC (634,427.1392 pounds divided by 2,000 pounds per ton = 317.2136 tons; 317.2136 tons x $745 per ton equals $236,324.13).

Similarly, for the 2003-2004 crop year, Mr. Horne and partners packed out 1,965,650 pounds of raisins (CX 3-CX 56). These raisins included natural seedless raisins and other varieties. Applying the 2003-2004 shrinkage factor for each variety indicates that Mr. Horne and partners received 2,066,066 pounds of raisins in the 2003-2004 crop year. Of the 2,066,066 pounds of raisins received, 2,037,196 pounds were natural seedless raisins subject to the 30 percent reserve obligation (CX 161). Mr. Horne and partners' reserve obligation for the 2003-2004 crop year was 611,159 pounds (.30 x 2,037,196 = 611,158.8). The announced price for raisins was $810 per ton (CX 583 at 2-3). Therefore, for the 2003-2004 crop year, Mr. Horne and partners owe $247,519.40 to the RAC for compensation for failing to deliver any reserve raisins to the RAC (611,159 pounds divided by 2,000 pounds per ton = 305.5795 tons; 305.5795 tons x $810 per ton equals $247,519.40). The total amount owed to the RAC by Mr. Horne and partners for failing to deliver any reserve raisins to RAC is $483,843.53.

The Raisin Order also requires that each handler contribute to the costs associated with operating the RAC, as follows:

> **§ 989.80 Assessments.**
>
> (a) Each handler shall, with respect to free tonnage acquired by him, . . . 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. . . . Such handler's pro rata share of such expenses shall be equal to the ratio between the total free tonnage acquired by such handler . . . during the applicable crop year and the total free tonnage acquired by all handlers . . . during the same crop year.

7 C.F.R. § 989.80(a). The assessment rate was established at $8 per ton (CX 90).

As noted in this Order Granting Petition to Reconsider, *supra*, for the 2002-2003 crop year, Mr. Horne and partners received 1,349,844.9769 pounds of natural seedless raisins. The reserve obligation for the 2002-2003 crop year was 47 percent; therefore, the free tonnage was 53 percent (CX 88 at 2). Mr. Horne and partners' free tonnage for natural seedless raisins in that crop year was 715,417.8378 pounds (.53 x 1,349,844.9769 = 715,417.8378). In addition, Mr. Horne and partners received 25,523.0198 pounds of other variety raisins. There was no reserve requirement for those raisins; therefore, all of those other variety raisins were subject to the assessment. Mr. Horne and partners' assessment obligation for the 2002-2003 crop year for natural seedless raisins is $2,861.67 (715,417.8378 pounds divided by 2,000 pounds per ton = 357.7089 tons; 357.7089 tons x $8 per ton = $2,861.67). The assessment obligation for the other varieties is $102.09 (25,523.0198 pounds divided by 2,000 pounds per ton =

12.7615; 12.7615 tons x $8 per ton = $102.09). The total assessment owed for the 2002-2003 crop year is $2,963.76.

Mr. Horne and partners received 2,066,066 pounds of raisins in the 2003-2004 crop year. Of the 2,066,066 pounds of raisins received, 2,037,196 pounds were natural seedless raisins subject to the 30 percent reserve obligation (CX 161). The free tonnage of natural seedless raisins was 1,426,037.2 pounds (.70 x 2,037,196 = 1,426,037.2). In addition, there were 28,870 pounds of other varieties which were all free tonnage (2,066,066 - 2,037,196 = 28,870). Thus, the total free tonnage for the 2003-2004 crop year was 1,454,907.2 pounds. At an assessment rate of $8 per ton, Mr. Horne and partners' assessment obligation for the 2003-2004 crop year is $5,819.63 (1,454,037.2 pounds divided by 2,000 pounds per ton = 727.4536 tons; 727.4536 tons x $8 per ton = $5,819.63). The total assessment due to the RAC by Mr. Horne and partners for the 2002-2003 crop year and the 2003-2004 crop year is $8,783.39.

The third monetary payment resulting from Mr. Horne and partners' violations of the Raisin Order are civil penalties. The AMAA authorizes civil penalties for violations of marketing orders, such as the Raisin Order, issued under the AMAA.

> **§ 608c. Orders**
> . . . .
>
> **(14) Violation of order**
>
> . . . .
>
> (B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order may be assessed a civil penalty by the Secretary not

> exceeding $1,000 for each such violation. Each day during which such violation continues shall be deemed a separate violation[.] . . . The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has the handler's principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.

7 U.S.C. § 608c(14)(B) (Supp. V 2005).[2]

As neither Mr. Horne and partners nor the Administrator challenged the amount of the civil penalties imposed in my April 11, 2008, Decision and Order, those civil penalties stand. As discussed in my April 11, 2008, Decision and Order, I find Mr. Horne and partners committed the following violations:

- Twenty violations of section 989.73 of the Raisin Order (7 C.F.R. § 989.73) by filing inaccurate reporting forms with the RAC on 20 occasions.

- Fifty-eight violations of section 989.58(d) of the Raisin Order (7 C.F.R. § 989.58(d)) by failing to obtain incoming inspections of raisins on 58 occasions.

- Two violations of section 989.80 of the Raisin Order (7 C.F.R. § 989.80) by failing to pay assessments to the RAC in crop year 2002-2003 and crop year 2003-2004.

- Five hundred ninety-two violations of sections 989.66 and 989.166 of the Raisin Order (7 C.F.R. §§ 989.66, .166) by failing to hold

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[2]Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under the AMAA (7 U.S.C. § 608c(14)(B)) for each violation of a marketing order, by increasing the maximum civil penalty from $1,000 to $1,100 (7 C.F.R. § 3.91(b)(1)(vii) (2005)).

raisins in reserve and by failing to pay the RAC the dollar equivalent of the raisins not held in reserve.

- One violation of section 989.77 of the Raisin Order (7 C.F.R. § 989.77) by failing to allow AMS to have access to their records.

The appropriate civil penalties for these violations are: (1) $300 per violation for filing inaccurate reporting forms, in violation of 7 C.F.R. § 989.73, for a total of $6,000; (2) $300 per violation for the failure to obtain incoming inspections, in violation of 7 C.F.R. § 989.58(d), for a total of $17,400; (3) $1,000 for the failure to allow access to records, in violation of 7 C.F.R. § 989.77; (4) $300 per violation for the failure to pay the assessments, in violation of 7 C.F.R. § 989.80, for a total of $600; and (5) $300 per violation for the failure to hold raisins in reserve, in violation of 7 C.F.R. §§ 989.66, .166, for a total of $177, 600. The total civil penalties assessed against Mr. Horne and partners for violating the Raisin Order in the 2002-2003 and 2003-2004 crop years is $202,600. I conclude that civil penalties in these amounts are sufficient to deter Mr. Horne and partners from continuing to violate the Raisin Order and will deter others from similar future violations.

Mr. Horne and partners did not seek reconsideration of my April 11, 2008, Decision and Order; however, they did file an Opposition to Petition to Reconsider. In their opposition, Mr. Horne and partners raised four points:

1. that the Administrator's Petition for Reconsideration fails to meet the requirements of section 1.146(a)(3) of the Rules of Practice (7 C.F.R. § 1.146(a)(3));

2. that the Administrator's suggested calculations cannot be confirmed by resort to the evidence;

3. that the proposed reconsideration is inconsistent with the law; and

4. that a custom or "toll" packer of raisins does not "acquire" the raisins.

Mr. Horne and partners argue that the Petition for Reconsideration failed to meet the requirements of section 1.146(a)(3) of the Rules of Practice (7 C.F.R. § 1.146(a)(3)), in that "there is no section of the Petition devoted to a description of errors made." (Opposition to Pet. to Reconsider at 1.) The Rules of Practice do not require a specific format for petitions to reconsider. The only requirement is that the "petition must state specifically the matters claimed to have been erroneously decided and the alleged errors must be briefly stated." (7 C.F.R. § 1.146(a)(3).) The Administrator's Petition to Reconsider clearly meets that requirement. It was easy to discern, from the Petition to Reconsider, the errors that the Administrator claimed I made in my April 11, 2008, Decision and Order. I find that the Administrator's Petition to Reconsider meets the requirements of the Rules of Practice.

Next, Mr. Horne and partners claim "that the Administrator's suggested calculations cannot be confirmed by resort to the evidence." While I agree that the Administrator's filings do not present the image of clarity – which is why I ordered the Administrator to provide clarification – I found that I was able to follow the transactions identified in Exhibits A and B to the Administrator's Response to the Judicial Officer's

Order Seeking Clarification. Therefore, using Exhibits A and B to the Administrator's response, I was able to determine the volume of raisins that flowed through Mr. Horne and partners' facility and the tonnage of raisins that they failed to hold in reserve, as well as the assessments and the payments in lieu of reserve raisins that Mr. Horne and partners owed to the RAC.

Mr. Horne and partners' third point is that "the proposed reconsideration is inconsistent with the law." Mr. Horne and partners are challenging the constitutionality of the Raisin Order. As I discussed in my April 11, 2008, Decision and Order, I have no authority to determine the constitutionality of the various statutes administered by the United States Department of Agriculture. *Califano v. Sanders*, 430 U.S. 99, 109 (1977) ("Constitutional questions obviously are unsuited to resolution in administrative hearing procedures"); *Robinson v. United States*, 718 F.2d 336, 338 (10th Cir. 1983) ("The agency is an inappropriate forum for determining whether its governing statute is constitutional"). Therefore, Mr. Horne and partners' questioning of the constitutionality of the Raisin Order falls on legally deaf ears. I need not point out to Mr. Horne and partners that the Court of Federal Claims recently found the arguments made in this appeal to be unavailing. *Evans v. United States*, 74 Fed. Cl. 554 (2006). The United States Court of Appeals for the Federal Circuit affirmed the Court of Federal Claims Decision, 250 F. App'x 231 (2007), and the Supreme Court of the United States denied a

petition for certiorari, 128 S. Ct. 1292 (2008). Until the appropriate court instructs me otherwise, I will treat the Raisin Order as constitutional, as I believe it to be.

As I discussed in my April 11, 2008, Decision and Order, the reference to Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. §§ 3001-3006) provides Mr. Horne and partners little solace. They argue that it exempts them from handler obligations under the Raisin Order because they were attempting to promote the policy of that statute. The ALJ found this argument "patently specious" and I agree. The Farmer-to-Consumer Direct Marketing Act does not exempt raisin producers from the requirements of the Raisin Order.

Furthermore, the type of activity that the Farmer-to-Consumer Direct Marketing Act sought to encourage was the farmers market where farmer and consumer could come together directly and avoid middlemen. Mr. Horne and partners presented no evidence that their activities, in fact, supported the goals of the Farmer-to-Consumer Direct Marketing Act. Mr. Horne and partners sold raisins in wholesale packaging and quantities, frequently to candy makers and other food processors as ingredients for other food products. Mr. Horne and partners showed no connection between their business activities and the goals of the Farmer-to-Consumer Direct Marketing Act. Therefore, even if the Farmer-to-Consumer Direct Marketing Act exempted raisin producers from the mandates of the Raisin Order – which it does not – Mr. Horne and partners failed to demonstrate compliance with the goals of the Farmer-to-Consumer Direct Marketing Act.

The final issue raised by Mr. Horne and partners is whether a custom or "toll" packer of raisins "acquires" the raisins. This issue was discussed in my April 11, 2008, Decision and Order. A handler becomes a "first handler" when he "acquires" raisins, a term specifically and plainly defined by the Raisin Order:

> **§ 989.17 Acquire.**
>
> *Acquire* means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him: . . . *Provided further*, That the term shall apply only to the handler who first acquires the raisins.

7 C.F.R. § 989.17.

The record demonstrates that Mr. Horne and partners, in their operation of the packing house known as Lassen Vineyards, were first handlers who acquired raisins during crop years 2002-2003 and 2003-2004. Mr. Horne and partners' arguments that they did not acquire raisins are unavailing in light of the plain meaning of the language of the Raisin Order defining the term "acquire." Moreover, if there were any ambiguity, the interpretation given by the United States Department of Agriculture, both at the time of the issuance of the Raisin Order and in subsequent correspondence with the Hornes, is clear, straightforward, of long-standing, and controlling. *See Barnhart v. Walton*, 535 U.S. 212 (2002); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The 1949 recommended decision regarding the raisin growers' request for the Raisin Order, which was adopted as part of the Secretary of Agriculture's final decision, explained the language employed and clarified that:

> The term "acquire" should mean to obtain possession of raisins by the first handler thereof. The significance of the term "acquire" should be considered in light of the definition of "handler" (and related definitions of "packer" and "processor"), in that the regulatory features of the order would apply to any handler who acquires raisins. Regulation should take place at the point in the marketing channel where a handler first obtains possession of raisins, so that the regulatory provisions of the order concerning the handling of raisins would apply only once to the same raisins. Numerous ways by which handlers might acquire raisins were proposed for inclusion in the definition of the term, the objective being to make sure that all raisins coming within the scope of handlers' functions were covered and, conversely, to prevent a way being available whereby a portion of the raisins handled in the area would not be covered. Some of the ways by which a handler might obtain possession of raisins include: (i) Receiving them from producers, dehydrators, or others, whether by purchase, contract, or by arrangement for toll packing, or packing for a cash consideration[.]

14 Fed. Reg. 3083, 3086 (June 8, 1949).

This interpretation is consistent with testimony at the hearing conducted to consider the need of the raisin industry for a marketing order and its appropriate terms:

> Q Mr. Hoak, suppose a packer stems, cleans, and performs other operations connected with the processing of raisins for a producer and then the producer sells the raisins to another packer. Under this proposal, which person should be required to set the raisins aside?
>
> A The man who performs the packing operation, who is the packer.
>
> Q Mr. Hoak, I believe that you have testified earlier that the term "packer" should include a toll packer. By that do you mean that it should include a person who takes raisins for someone else for a fee?

A That is right.

Q Also, did I understand you to say that that person should be the one who would be required to set aside or establish the pools under the regulatory provisions?

A That is right. He is the man who would be held responsible for setting aside the required amount of raisins.

Q I take it that that man would not have title to any raisins insofar as he is a toll packer; is that correct?

A That is right.

ALJ Decision and Order, App. A.

These excerpts from the recommended decision and the hearing transcript were sent to an attorney representing Mr. and Mrs. Horne on April 23, 2001. Apparently, they believe their personal interpretation of the term "acquire" as used in the Raisin Order should take precedence over the plain language of the Raisin Order and the interpretation of its meaning that was conveyed to them by the United States Department of Agriculture. The decision of Mr. Horne and partners not to follow the United States Department of Agriculture's interpretative advice, and, instead, to play a kind of shell game with interlocking partnerships and a marketing association to try to conceal their role as first handler, only shows that they acted willfully and intentionally when they decided not to file accurate reports, not to hold raisins in reserve, not to have incoming raisins inspected, not to pay assessments, and not to allow inspection of their records for verification purposes.

In simple terms, Mr. Horne and partners, as a matter of law, acquired raisins, as first handlers, when raisins arrived at the processing/packing facility known as Lassen Vineyards. Their arguments that title to the raisins never transferred from the grower to Mr. Horne and partners under California law is unavailing. California law does not control, the Raisin Order does. Under the Raisin Order, the term "acquire" is a term of art that does not encompass an ownership interest but rather physical possession. Mr. Horne and partners obtained physical possession of – thus they "acquired" – raisins when a grower brought raisins to the facility.

For the foregoing reasons, I grant the Administrator's Petition to Reconsider and issue the following Order.

ORDER

1. Marvin D. Horne, Laura R. Horne, Don Durbahn, Lassen Vineyards, a partnership, and Raisin Valley Farms, a partnership, jointly and severally, are assessed a $202,600 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

Frank Martin, Jr.
United States Department of Agriculture
Office of the General Counsel
Marketing Division
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to Mr. Martin within 100 days after this Order becomes effective.

2. Marvin D. Horne, Laura R. Horne, Don Durbahn, Lassen Vineyards, a partnership, and Raisin Valley Farms, a partnership, jointly and severally, are ordered to pay to the RAC $8,783.39 in assessments for crop years 2002-2003 and 2003-2004, and $483,843.53 for the dollar equivalent of the California raisins they failed to hold in reserve for crop years 2002-2003 and 2003-2004. Payments of the $8,783.39 for owed assessments and of the $483,843.53 for the dollar equivalent of the California raisins that were not held in reserve shall be sent to the RAC within 100 days after this Order becomes effective.

3. This Order shall become effective on the day after service on Marvin D. Horne, Laura R. Horne, Don Durbahn, Lassen Vineyards, a partnership, and Raisin Valley Farms, a partnership.

RIGHT TO JUDICIAL REVIEW

Marvin D. Horne, Laura R. Horne, Don Durbahn, Lassen Vineyards, a partnership, and Raisin Valley Farms, a partnership, have the right to obtain review of the Order in this Order Granting Petition To Reconsider in any district court of the United States in which they are inhabitants or have their principal place of business.[3]

Done at Washington, DC

September 18, 2008

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William G. Jenson
Judicial Officer

[3] 7 U.S.C. § 608c(14)(B).