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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99-981-3 PR]

Almonds Grown in California; Salable and Reserve Percentages for the 1999-2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999-2000 crop year. The almond marketing order (order) regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999-2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices.

DATES: Comments must be received by September 9, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable and reserve percentages may be established for almonds handled by handlers during the crop year. This rule would establish salable and reserve percentages for almonds received by handlers during the 1999-2000 crop year which runs from August 1, 1999, through July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on establishing salable and reserve percentages for California almonds received by handlers during the 1999-2000 crop year. The percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets. The 1999-2000 crop is estimated to be the largest crop on record. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices. This action was recommended by the Board at a meeting on July 12, 1999, by a vote of seven in favor and three opposed. Volume regulation was last implemented for California almonds during the 1994-95 crop year.

Section 981.47 of the order provides authority for the Secretary, based on recommendations by the Board and analysis of other available information, to establish salable and reserve percentages for almonds received by handlers during a crop year. The crop year runs from August 1 through July 31. To aid the Secretary in fixing the salable and reserve percentages, § 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand needs for the year, carryin inventory at the beginning of the year, and the desirable carryout inventory at the end of the crop year. Section 981.66 authorizes the disposition of reserve

almonds to certain outlets such as almond oil, almond butter, and animal feed.

The Board met on May 12, 1999, to review the projected crop estimate and marketing conditions for the 1999–2000 season. The day before the Board's meeting, the California Agricultural Statistics Service (CASS) issued its initial forecast for the 1999 almond crop at 760 million kernelweight pounds. Based on that estimate, the Board recommended salable and reserve percentages of 84.79 percent and 15.21

percent, respectively. The CASS revised its crop estimate upwards to 830 million pounds on July 8, 1999. Based on the updated crop estimate, the Board met on July 12 and revised its recommendation for salable and reserve percentages to 77.64 and 22.36 percent, respectively, again by a seven to three vote. The 830 million pound crop estimate represents a 60 percent increase over 1998–99 production, and is 10 percent larger than the previous record crop of 756 million pounds produced in 1997–98.

According to the CASS, although freezing temperatures in early April caused locally variable production losses, average yields are expected to be high due to excellent bloom and good weather during the pollination period. If realized, this will be the largest almond crop on record to date.

A tabulation of the estimates and calculations used by the Board as it considered recommending volume regulation for the 1999–2000 almond crop follows:

MARKETING POLICY ESTIMATES—1999 CROP
[Kernelweight basis]

	Million Pounds	Percent
Estimated production:		
1. 1999 Production	830.0	.....
2. Loss and Exempt—4.0% (Resulting from the removal of inedible kernels by handlers and losses during manufacturing)	33.2	.....
3. Marketable Production	796.8	.....
Estimated Trade Demand:		
4. Domestic	190.0	.....
5. Export	459.0	.....
6. Total	649.0	.....
Inventory Adjustment:		
7. Carryin 8/1/99	100.4	.....
8. Desirable Carryover 7/31/00 (available for early season shipments during 2000–2001)	70.0	.....
9. Adjustment (No. 8 minus no. 7)	– 30.4	.....
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9) (quantity of almonds from the marketable production necessary to meet trade demand needs)	618.6	.....
11. Reserve (No. 3 minus no. 10)	178.2	.....
12. Salable % (Item 10 divided by item 3 × 100)		77.64
13. Reserve % (100% minus item 12)		22.36

As specified in the marketing order, the Board considered the factors set forth in the preceding table in its deliberations. The available data indicates a supply for the 1999–2000 crop year of 827.2 million kernelweight pounds (marketable production adjusted for carryin and desired carryout), which will exceed estimated trade demand by 178.2 million kernelweight pounds. The estimated trade demand of 649 million kernelweight pounds represents 110 percent of the estimated shipments for the current crop year, and exceeds the record high shipments of 1997–98 by 36 million kernelweight pounds, or 6 percent.

In addition to the factors included in the table, the Board considered additional information such as the weather-related variation in production from year to year, significant increases in recent almond plantings, and increased yields. These are the primary factors contributing to the projected oversupply situation. The Board also considered recent price fluctuations in its deliberations. In 1997, grower prices

averaged \$1.55 per pound; during the 1998–99 season, prices have reportedly dropped significantly. This has been attributed to larger than anticipated 1998 supplies, speculation within the marketplace, and the anticipated large 1999–2000 crop.

The proposed salable percentage of 77.64 percent would make 618.6 million kernelweight pounds of the marketable production available to handlers for sale to any market. Combining this figure with the carryin inventory from the 1998–99 crop year (100.4 million kernelweight pounds) and deducting the desired carryout inventory at the end of the 1999–2000 crop year (70.0 million kernelweight pounds) would result in a supply of 649 million kernelweight pounds. This supply would allow the industry to meet its trade demand needs of 649 million kernelweight pounds and allow for market growth. The remaining 22.36 percent, or 178.2 million kernelweight pounds, of the marketable production would be withheld by handlers to meet their reserve obligation.

All or part of the reserve almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1999–2000 trade demand needs or desirable carryover for use during the 2000–2001 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 2000, pursuant to § 989.48 of the order. Alternatively, all or a portion of the reserve almonds could be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal outlets for almonds.

As previously stated, 3 of the 10 Board members opposed the recommendation for volume regulation at both meetings where the percentages were recommended, with those in opposition commenting that this year's projected "large" crop would ultimately

be considered average in size, and that next year's crop would be even larger due to new plantings, or expressing a preference for seeing the industry concentrating on building demand rather than imposing a reserve. Observers at the Board meetings who were opposed to volume regulation commented that the industry should deal with increasing supplies by building demand through its promotional activities, rather than implementing reserves. Others suggested that it is more appropriate to manage market risks at the individual handler level through marketing tools such as forward contracting, rather than controlling supplies at the industry level.

After much discussion, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The long term goal of the almond industry is to increase almond consumption and demand, and the supporting Board members believe this can be best achieved in the presence of stable and orderly marketing conditions. These members believe that use of the reserve provisions of the order as a supply management tool, in conjunction with other marketing tools available in the order, can assist in accomplishing the industry's goals.

The "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) issued by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season for marketing orders using volume regulation. This rule would provide an estimated 719 million kernelweight pounds of California almonds for unrestricted sales (1999 crop salable production plus carryin from the 1998 crop) to meet increasing domestic and world almond consumption demand. This amount exceeds the estimated delivered sales for 1998-99 California almonds by about 22 percent. Thus, the Guidelines' goals are met.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Based on the most current data available, about 54 percent of the handlers ship under \$5,000,000 worth of almonds and 46 percent ship over \$5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service (NASS), and the total number of almond growers, the average annual grower revenue is approximately \$195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

Pursuant to § 981.47 of the order, this rule would establish salable and reserve percentages applicable to California almonds received by handlers during the 1999-2000 crop year. The volume regulation percentages would be 77.64 percent salable and 22.36 percent reserve. Salable almonds may be sold by handlers to any market at any time. Reserve almonds must be withheld by handlers or disposed of in authorized outlets such as almond oil, almond butter, and animal feed. Volume regulation is warranted this season because the marketable production estimate of 796.8 million kernelweight pounds combined with the 1998-99 carryin inventory of 100.4 million kernelweight pounds results in an available supply of about 897 million kernelweight pounds. After subtracting the desirable carryout of 70 million kernelweight pounds, the remaining supply of 827 million kernelweight pounds would be 178 million kernelweight pounds higher than the trade demand of 649 million kernelweight pounds. Volume regulation is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices, and should ultimately improve grower returns.

Regarding the impact of this rule on affected entities, the salable and reserve percentages would apply uniformly to all handlers in the industry, regardless

of size. There were some concerns expressed at the Board's meeting regarding the impact of a reserve on small handlers, specifically, that small handlers who do not have adequate storage facilities may have to rent such facilities to hold their reserve almonds. These are costs they would not otherwise incur. However, the costs of holding almonds in reserve would be borne proportionately throughout the industry. All handlers would be required to store reserve almonds in varying quantities, depending upon the total amount of almonds handled. Those with existing facilities would also incur storage costs, although those costs may be fixed costs spread over a longer period of time. In any event, costs associated with storing reserve product are expected to be more than offset by the benefits of orderly marketing. In addition, the order was amended in 1996 to allow handlers to transfer their reserve obligation to other handlers. Thus, handlers with no storage facilities would now have the option to transfer their reserve withholding obligation to other handlers who could store the reserve almonds.

Furthermore, almond production, like that of many agricultural commodities, can vary significantly from season to season due to a variety of factors. This in turn can contribute to wide fluctuations in prices. For example, California almond production over the past 10 years has varied from a low of 366.7 million kernelweight pounds in 1995 to a high of 756.5 million kernelweight pounds in 1997. Grower prices for the past 10 years, as reported by the NASS, have varied from a low of \$.93 per pound in 1990 to \$2.48 per pound in 1995.

In addition, returns to growers have reportedly decreased by as much as \$1.00 per pound since the beginning of the 1998-99 crop year. It is believed that a larger than anticipated 1998 crop, market speculation, and an estimated record 1999 crop have contributed to the depressed grower prices. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers and consumers. While the benefits of this rulemaking may be difficult to quantify, any stabilizing effects of volume regulation would impact both small and large handlers positively by helping them maintain orderly marketing conditions through supply management.

Regarding alternatives, the Board considered not recommending volume regulation this season. As previously mentioned, three Board members and some observers at the Board's meetings

expressed their view that the industry should continue to focus on increasing the demand for almonds rather than implementing a reserve. It was expressed that market risk can be managed by individual handlers through marketing tools such as forward contracting, rather than managing supply at the industry level. However, the majority of Board members supported the establishment of a reserve to help maintain orderly marketing conditions so that the industry can successfully manage the projected large 1999 almond crop. The Board also deliberated the merits of allocating the reserve to noncompetitive outlets or ultimately releasing part or all of the reserve as salable. The Board decided to delay this decision until next spring when additional information, including an estimate of the 2000–2001 crop, is available. However, handlers may sell reserve almonds to authorized reserve outlets at any time pursuant to an agency agreement as authorized in § 981.67 of the order, and receive credit against their withholding obligation.

This rule may impose some additional reporting, recordkeeping and other compliance requirements on both small and large handlers. Handlers who choose to divert their reserve almonds to authorized outlets would have to file certain reports with the Board. This requirement is the same as that applied during the 1991–92 and 1994–95 crop years when almond reserves were last established. Most of the industry's handlers handled almonds during those years and are thus familiar with the required reports. These reports have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0071. 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. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend and participate in Board deliberations. Like all Board meetings, the May 12 and July 12, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to

the Board. The Board's Reserve Committee met on April 1, May 11, and July 12, 1999, and presented its recommendations to the Board at meetings on May 12 and July 12, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposal. Thirty days is deemed appropriate because any salable and reserve percentages established based on this proposal should be implemented as soon as possible. The beginning of the 1999–2000 crop year is August 1. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. In Part 981, § 981.240 is added to read as follows:

§ 981.240 Salable and reserve percentages for almonds during the crop year beginning on August 1, 1999.

The salable and reserve percentages during the crop year beginning on August 1, 1999, shall be 77.64 percent and 22.36 percent, respectively.

Dated: July 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20499 Filed 8–9–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 98–096–1]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by establishing new program classifications and providing new or modified sampling and testing procedures for Plan participants and participating flocks. The proposed changes were voted on and approved by the voting delegates at the Plan's 1998 National Plan Conference. These changes would keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 12, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–096–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–096–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 200, Conyers, GA 30094–5104; (770) 922–3496.