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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–3 FR]

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

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.

SUMMARY: This rule establishes 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 are 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: *Effective Date:* This final rule is effective December 2, 1999 through July 31, 2000. *Applicability Date:* This final rule applies during the period August 1, 1999, through July 31, 2000.

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SUPPLEMENTARY INFORMATION: This final rule 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 final 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 establishes 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 final rule establishes salable and reserve percentages for California almonds received by handlers during the 1999–2000 crop year. The percentages are 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, by a vote of seven in favor to three opposed. 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 x 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 indicate a supply for the 1999–2000 crop year of 827.2 million kernelweight pounds (marketable production adjusted for carryin and desired carryout), which exceeds 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 reportedly dropped significantly. This was attributed to larger than anticipated 1998 supplies, speculation within the marketplace, and the anticipated large 1999–2000 crop.

The salable percentage of 77.64 percent will 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) will result in a supply of 649 million kernelweight pounds. This supply will 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 will be withheld by handlers to meet their reserve obligation.

All or part of the reserve almonds may 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 may 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 will ultimately be considered average in size, and that next year's crop may be even larger due to new plantings, or expressing a preference for the industry to concentrate 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 will 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 final 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 establishes salable and reserve percentages applicable to California almonds received by handlers during the 1999–2000 crop year. The volume regulation percentages are 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 will 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 will now have the option to transfer their reserve withholding obligation to other handlers who can 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 will 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 will 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. As noted in the initial regulatory flexibility analysis, 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.

A proposed rule concerning this action was published in the **Federal Register** on August 10, 1999 (64 FR 43298). Copies of the rule were also sent to all almond handlers in the industry. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending September 9, 1999, was provided to allow interested persons to respond to the proposal.

Six comments were received during the comment period in response to the proposal. Five comments were opposed to the proposal and one was in favor.

The first commenter, an almond handler, was opposed to the reserve, stating that reserves do nothing to stabilize prices, and that based on historical data, prices are higher when reserves are not utilized. Using the current year as an example, the commenter noted that price levels have fallen since the Almond Board recommended implementing a reserve. The commenter also stated the almond industry ships less almonds in years of oversupply. Finally, the commenter stated that a study conducted by the University of California, Davis concludes that ''unallocated'' reserves do not work.

A review of historical data pertaining to almond prices and shipments indicates that price levels tend to be higher in years when reserves are not utilized, and lower in years when reserves are implemented. For instance, during the period from crop years 1990 through 1997, the average grower price for years when reserves were not implemented was $1.87 per pound. During the same period, when reserves were implemented, the grower price averaged $1.15 per pound. However, contrary to the commenter's assertions, the data also indicate that in reserve years, shipment levels and total supplies tend to be higher in reserve years than in non-reserve years. For example, during the same time period discussed above, in reserve years, shipments averaged 567 million pounds, while in non-reserve years, shipments averaged 529 million pounds. Lower price levels have occurred when supplies are higher, consistent with the inverse relationship between supplies and prices. In years of high production, if reserves were not implemented, it would be expected that the resulting larger available supplies would put further downward pressure on prices.

In addition, the commenter appears to attribute recent declines in price levels to the Board recommendation for salable and reserve percentages. The crop was initially estimated at 760 million pounds on May 9 of this year, leading to a Board recommendation for a reserve. The crop estimate was revised upwards to 830 million pounds on July 12, confirming the earlier projections, leading to a revised Board recommendation for a higher reserve percentage. Regardless of the Board's recommendations, it would be expected that price levels would decline as updated information confirming the existence of a record large crop becomes available.

Regarding the reference to a University of California, Davis study concerning ''unallocated reserves,'' a 1994 study conducted by economists from that university does indicate reserves are most effective if a portion of the crop is permanently removed from normal consumption channels. This is due to the fact that the demand for almonds is inelastic. Thus, removing a portion of the crop causes a reduction in the supply, resulting in a larger percentage increase in price than the decreased quantity demanded. The marketing order authorizes implementing a requirement to dispose of reserve product to non-competitive outlets. However, the order also provides for carrying forward reserve product into the following crop year in the event of a crop shortfall or increased trade demand needs. The order provides this flexibility to allow the industry to obtain additional information regarding the following year's crop size and trade demand needs prior to making a recommendation concerning the ultimate disposition of the reserve.

Two other comments submitted by growers/handlers of almonds are identical in content. These comments are opposed to implementing a reserve. The commenters indicate that they are currently selling almonds at, or less than, the cost of production and handling. Further, they stated that maintaining reserves adds costs and risks beyond those normally incurred in producing and marketing almonds. The commenters stated that large crops will continue in the future due to increased acreage and yields; thus, carrying forward reserve product into a future large crop year will compound the oversupply problem. The commenters believe handlers should individually deal with crop size, and that growers can adjust by pulling out orchards and planting something else. Finally, the commenters contend that the Board recommendation regarding the reserve was representative of only two handlers, while there are approximately 100 handlers in the industry. In response to these comments, the intent of a reserve is to maintain orderly marketing conditions in an attempt to stabilize supplies and prices. Profitably marketing a crop can best be achieved under stable conditions. Although there may be costs associated with maintaining a reserve, the anticipated benefits of more stable and orderly marketing conditions are expected to outweigh those costs.

Based on a review of historical data concerning almond acreage and yields, future crops are likely to continue to be large. Bearing acreage increased from

411,000 acres in 1990 to 460,000 acres in 1998, and non-bearing acreage increased from 32,400 acres to 113,000 acres during the same period. In addition, average yields have also increased over time due to improved varieties and production practices. During the 5-year period from 1980–1985, almond yields averaged 1,094 pounds per acre, while during the period from 1993–1998, the average yield was 1,405 pounds per acre. While production and yields can vary significantly from year to year due to weather and other factors, both are trending upwards.

With respect to compounding oversupply problems in the future, it was noted earlier that reserve product may either be disposed of in non-competitive markets or carried over to augment supplies during the following year. Decisions regarding ultimate disposition of the reserve will be made as additional market information and information on the following year's crop becomes available.

In response to the comments that growers can respond to oversupply conditions by pulling out orchards, the use of the authorized supply control features under the marketing order, combined with demand building activities, provides an alternative to such drastic measures. Unlike other crops where planting decisions can be made on an annual basis, tree crops require long-term commitment of resources and long-term investment.

Finally, in response to the comment concerning the Almond Board action, the Board is comprised of five grower members and five handler members. The Board is the constituted body under the marketing order charged with administering the provisions of the order and making recommendations to the Department. The Board is nominated by growers and handlers in the industry and represents the industry as a whole. Further, one of the purposes of Federal marketing orders is to benefit producers. Consistent with the provisions of the order, a majority of the members of the Board voted in favor of the recommendation.

Another comment was received from a grower of almonds on behalf of several family members who are also almond growers. This commenter claims that the current marketing situation is the worst in the almond industry since 1910, and projects a $500,000 to $600,000 loss for the family almond farming operations during the coming season. The commenter also stated that the anticipated reserve is not achieving the desired effect of promoting orderly marketing conditions.

The commenter offered several alternatives to correct the current industry situation, including requiring destruction of a certain percentage of each grower's acreage, restricting new plantings, government purchase of reserve almonds, and issuance of nonrecourse loans.

Taking into account the current marketing conditions in the almond industry, it would be premature to judge the effects of a reserve on the market situation at this time, as a reserve is just now being established and the ultimate disposition of the reserve will be determined in accordance with the provisions of the order.

Regarding the alternatives offered by the commenter, except for the option of a sale of reserve almonds to an agency, the proposals offered by the commenter are not authorized under the almond marketing order. The marketing order provides for a comprehensive regulatory scheme which comes in effect when a reserve percentage is fixed for a crop year. Accordingly, the alternatives, with one exception, exist outside of the marketing order program. Regarding a sale of reserve almonds to a government agency, as stated above, the ultimate disposition of the reserve will be determined in accordance with the provisions of the order.

Another comment from a grower of almonds opposed to the establishment of a reserve for the 1999–2000 crop year was received. This comment raised numerous issues. The commenter contends that the proposed rule either violates or does not meet the requirements of the Act and is inconsistent with or violates a number of other Federal statutes, regulations, and policies.

Next, the commenter stated that the same rationale for establishing a reserve was used in the proposed rule that has been used in past seasons. The commenter claims that there has been no analysis of the impact of reserves on the industry, including pricing effects, no analysis of the decreased variability of the alternating production cycles, and no correlation of variability data with acreage statistics and long range weather forecasts.

The commenter also stated that current low price levels are not indicative of disorderly marketing, but rather are a reflection of industry structure and the conduct of handlers with regard to open price contracting. The commenter is of the view that the open price system has allowed handlers to take full advantage of smaller growers. The commenter further stated that current low prices are a function of lack of market price information to the industry. The comment asserted there has been no evaluation of non-bearing almond acreage and improved yields and speculated whether the Department was ignoring this impact or merely giving special treatment to handlers interests in the industry that would give the handlers increased profits while furthering the problems of small growers. In addition, the commenter claims that crop forecasting models indicate there is a 98 percent chance that next year's crop will be larger than the current year's crop, and this has not been considered. Also, there has been no analysis conducted concerning the impact of reserves stimulating production.

The commenter stated that establishment of a reserve would preempt and conflict with Sections 58301 and 58302 of the California Food and Agricultural Code because it will enable handlers to withhold payment to growers on product held in reserve. Further, section 608c(7) of the Act is cited as a statutory requirement that a reserve cannot be established unless it declares that failure to pay a grower for the reserve portion of his or her crop is an unfair trade practice and is prohibited.

The commenter stated that if a reserve is established, it should require that the reserve be held within the State of California. The commenter adds that a reserve would be unfair to growers who incurred a crop loss due to frost. Growers, some of which lost up to 70 percent of their crop, should be exempt from reserve requirements if they suffered 30 percent or more crop loss. Furthermore, a reserve would be unfair to growers who withheld their 1998–99 crop from delivery to handlers until the 1999–2000 crop year in anticipation of improved prices or to guard against reduced production in 1999–2000.

Finally, the commenter stated that the almond marketing order was recently approved by only 27 percent of the State's producers in a continuance referendum, and that there would have been stronger support if the ballot in the continuation referendum would have been split to have the reserve provisions voted on separately.

In response to these comments, the Department disagrees that establishment of salable and reserve percentages do not meet the requirements of the Act and are in conflict with other Federal statutes, regulations, and policies. The establishment of salable and reserve percentages in the action is consistent with applicable law, including the provisions of the Act, order, and regulations governing this program.

The Department has considered and evaluated economic data regarding the potential impact of reserves on the almond industry, as well as information pertaining to acreage statistics and production cycles. In accordance with the provisions of the order, the Board is required to provide to the Department specific information to aid the Department in fixing salable and reserve percentages. Economic studies indicate that the demand for almonds is inelastic. Therefore, a reduction in supply would result in a proportionately larger increase in price levels for the product. This would result in an increase in total revenue to the industry. With respect to acreage statistics, as previously stated, the Department is aware that both bearing and non-bearing almond acreage has increased significantly in recent seasons, and, therefore, future production levels may be expected to continue to increase. This is not an unusual response to a pattern of high price levels as experienced in recent years in the almond industry.

Further, regarding production cycles, a review of historical data indicates that almond production patterns do not display a true pattern of an alternate bearing characteristic. While there appears to be a general pattern of short crops followed by large crops and vice-versa, instances of two consecutive short or large crops have occurred.

The commenter refers to a purported ''crop projection model'' that indicates there is a 98 percent or greater chance that the 2000–2001 California almond crop will equal or exceed the 1999–2000 crop. Thus, a large carryin of reserve product from the 1999 crop, when combined with a large crop the following year, will put further downward pressure on prices. The Department is unaware of any study that contains such findings regarding the probability of the 2000–2001 crop size. In addition, even if this assertion is assumed to be valid, reserve product from the 1999 crop reserve will not necessarily increase the supply the following year. As previously discussed, under the almond marketing order, reserve may be carried into the following crop year, or removed permanently from normal market channels. If the latter course is taken, that reserve product would not add to the following year's supply. A decision regarding ultimate disposition of reserve product does not need to be made until information concerning the following year's crop is known.

In response to the commenter's claims that low price levels are the result of handler pricing practices and lack of market price information, there may be indeed other factors that can contribute to disorderly marketing. The commenter believes that the combination of poor prices for other crops, the flow of dollars from the Freedom to Farm Act, the lack of information of prices on movement by variety, grade, size, and terms of sale are elements of disorder. The commenter also raises the issue of foreign plantings in connection with an analysis of the production stimulation effects of implementing reserves. However, the Department is not aware of any studies conducted which have attempted to address that issue. While the marketing order and its provisions may not be able to address every possible contingency in the almond industry, it does, however, authorize use of volume control as a means of helping to foster orderly marketing conditions. By establishing a reserve, the industry would be utilizing a tool available to it in an attempt to achieve its goals.

The commenter contends that establishment of a reserve conflicts with California State law. The issue of grower-handler payments, and open price contracts is raised again; however, the almond marketing order does not regulate grower-handler payments or such contracts. If State laws regarding grower-handler payments are in some way violated, then one could look to those statutes for appropriate remedies.

In response to the comment regarding holding reserve product within the State of California, when salable and reserve percentages are in effect, the marketing order requires handlers to withhold from handling a certain percentage of the product received from growers. By definition, shipping product outside the State of California constitutes handling under the almond marketing order.

The marketing order contains no provisions to protect growers from losses due to freeze damage or other natural disasters. Establishment of a reserve is based on collective industry data, and is applied to all handlers equally. While there may be growers who suffered crop losses during the season, other government sponsored programs may be available to recompense growers for such losses, such as crop insurance programs.

If growers withheld product from delivery to handlers during the 1998 season and deliver the product to handlers in the current season, that product will be subject to reserve requirements in accordance with provisions of the order. While growers may have taken such action in anticipation of improved prices or reduced production levels in 1999, they did so based upon their own initiative.

In response to the comment regarding continuation referendum results, 90 percent of the almond growers voting in the February 1999 referendum voted to continue the order. In addition, 88 percent of the volume represented in the referendum voted for continuance. Approximately 27 percent of the State's almond producers voted in the referendum. The Department cannot control this aspect of the voting process and tabulates the results based on the voters who participate in the process, consistent with the requirements of the Act. Finally, continuance referendums have been and are conducted to determine the support of an industry as to the marketing order program established for that commodity. To look at individual provisions is more a function of the marketing order amendatory process.

One comment was received in support of establishing salable and reserve percentages for the 1999–2000 crop year. The commenter presented data regarding world almond supplies and consumption over the most recent 5-year period, and projections for the current year. Also summarized were the high price levels for almonds experienced in the mid-1990's, which was attributed to world demand chasing limited supplies.

The commenter pointed out that reserves have been used in the almond industry in ten of the years during the period from 1980 through 1998, and attributed the use of reserves as a successful tool to manage supplies while increasing demand for almonds. Stable supplies resulted in less market volatility, thus encouraging new product development and expansion of markets for existing products.

The commenter indicated that in reserve years, the industry actually shipped more than the trade demand figure established by the Board.

The commenter also referenced a study conduced by the University of California, Davis indicating that the demand for almonds is inelastic. A practical application of the effect of inelastic demand on prices and supplies of almonds was presented.

Concluding remarks in the comment support the use of supply management as a short-term tool while building long-term consumption and demand for the product.

Members within the industry may have differences of opinion regarding the concept of volume control under the marketing order, as well as its effectiveness and these differences can be and are reflected in Board and

Committee discussions, as well as the comments received in response to the proposed rule. However, a majority of Board members favored the recommendation, and even those opposed indicated they would support the Board's recommendation.

After reviewing the comments received and other available information, the Department has concluded that issuing this rule is appropriate. Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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 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: October 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28301 Filed 10–28–99; 3:22 pm]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999—21]

11 CFR Parts 100 and 114

Definition of ''Member'' of a Membership Organization

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On July 30, 1999, the Commission published the text of revised regulations defining who qualifies as a ''member'' of a membership organization for purposes of the Federal Election Campaign Act. 64 FR 41266. The Commission announces that these rules are effective as of November 2, 1999.

EFFECTIVE DATE: November 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR 100.8(b)(4), 100.8(b)(4)(iv), and 114.1(e), defining who qualifies as a ''member'' of a membership organization. The revisions largely address the internal characteristics of an organization that, when coupled with certain financial or organizational attachments, are sufficient to confer membership status.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These revisions were transmitted to Congress on July 27, 1999. Thirty legislative days expired in the Senate on October 12, 1999, and in the House of Representatives on October 18, 1999.

Announcement of Effective Date: Revised 11 CFR 100.8(b)(4), 100.8(b)(4)(iv), and 114.1(e), as published at 64 FR 41266 (July 30, 1999), are effective as of November 2, 1999.

Dated: October 27, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–28475 Filed 11–1–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–199–AD; Amendment 39–11395; AD 99–22–17]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and 340B series airplanes, that requires removal of certain main landing gear downlock and brake hydraulic swivel brackets and replacement with new, redesigned brackets. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the downlock or brake swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main hydraulic system, as well as the loss of nose wheel steering operation, extension and retraction capability of landing gear and flaps, and operation of the propeller brake (if installed).

DATES: Effective December 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal