

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

[Docket No. HR-97-001]

#### Revisions of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

**SUMMARY:** This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by redelegating to the Administrator, Agricultural Marketing Service, authorities currently reserved to the Assistant Secretary for Marketing and Regulatory Programs under 7 CFR 2.79(b) that relate to marketing agreements and orders and commodity research and promotion programs.

EFFECTIVE DATE: July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Barbara Bryant, Legislative Analyst, Legislative Affairs Staff, Agricultural Marketing Service, United States Department of Agriculture, Room 3510—South Building, 1400 Independence Avenue SW, Washington, DC 20250, (202) 720-3203.

**SUPPLEMENTARY INFORMATION:** This rule redelegates to the Administrator, AMS, matters previously reserved to the Assistant Secretary for Marketing and Regulatory Programs that relate to marketing agreements and orders and commodity research and promotion laws. The Administrator, AMS, will assume responsibility for actions previously reserved to the Assistant Secretary for Marketing and Regulatory Programs which include (a) final actions on regulations for fruit and vegetable and dairy marketing agreements and orders; and (b) issuing, amending, terminating or suspending any marketing agreement or order, or any of

the numerous commodity research and promotions laws administered by AMS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12866 and E.O. 12988. Finally, this subject is not a rule as defined by Public Law No. 96-354, the Regulatory Flexibility Act, and thus, is exempt from the provisions of the Act.

#### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended to read as follows:

#### PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

**Authority:** Sec. 212(a), Pub. L. 103-354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

#### Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2. Section 2.79 is amended by removing and reserving paragraph (b).

Dated: July 8, 1997.

Michael V. Dunn,

*Assistant Secretary for Marketing and Regulatory Programs.*

[FR Doc. 97-18327 Filed 7-11-97; 8:45 am]

BILLING CODE 3410-01-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV97-981-3 IFR]

#### Almonds Grown in California; Revision to Requirements Regarding Inedible Almonds

AGENCY: Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document revises the administrative rules and regulations of the California almond marketing order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. This rule allows alternative methods of determining handlers' inedible disposition obligations in such instances. It will add flexibility to the order's rules and regulations and will help ensure that the integrity of the quality control provisions is maintained.

**DATES:** Effective on August 1, 1997. Comments received by August 13, 1997 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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:** Maureen Pello, Marketing Specialist, or 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: (209) 487-5901, Fax: (209) 487-5906. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling

of almonds grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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. This rule is not intended to have retroactive effect. 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 date of the entry of the ruling.

This rule revises the administrative rules and regulations of the California almond order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. The quantity of almonds required to be disposed of is the handler's inedible disposition obligation. However, there are times when an incoming inspection sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible weight to be determined. This rule provides handlers with the opportunity in such cases to substantiate to the Board the weight of almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Such information can often be obtained from

an outgoing inspection certificate. The inedible disposition obligation may then be based on that information. If a handler is only able to substantiate the approximate weight of almonds received, an inedible disposition obligation of 10 percent of the weight of almonds received in that particular lot may be applied, upon agreement between Board staff and the handler. The appropriate weight received can often be obtained from a weight masters certificate. In adding these procedures to the text of the rules and regulations, this rule will add flexibility to the rules and regulations and will help ensure that the integrity of the quality control provisions of the order is maintained. This change was unanimously recommended by the Board.

Section 981.42(a) of the almond order requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in any variety. Handlers are required to report such inedible determination for each lot received to the Board. Inedible kernels are those kernels, pieces, or particles of kernels with any defect scored as serious damage (excluding the presence of web and frass), or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Grades of Shelled Almonds, or which have embedded dirt not easily removed by washing. Edible kernels are kernels, pieces, or particles of almond kernels that are not inedible. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's incoming quality control provisions.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute such handler's inedible disposition obligation. Inedible kernels accumulated in the course of processing must be disposed of in non-human consumption outlets such as Board approved oil crushers, feed manufacturers, and animal feeders. Requiring handlers to meet this obligation helps to ensure that each handler's outgoing shipments of almonds are relatively free of almonds with serious damage, and the number of kernels with minor damage should be minimal. Thus, the intent of the order's inedible program is to help ensure that only quality almonds are ultimately shipped into market channels.

At a meeting on May 9, 1997, the Board recommended that § 981.442 of the order's administrative rules and regulations be revised to allow alternative methods of establishing handlers' inedible disposition obligations in certain instances. The Board recommended that this rule be in effect for the beginning of the 1997-98 crop year which begins on August 1, 1997.

Discussions at this and prior meetings of the Board's Quality Control Committee indicated that a considerable amount of activity occurs at handlers' facilities when handlers are receiving almonds from growers. For example, handlers may be receiving, moving, processing, and shipping several lots of almonds at a rapid pace. During this time, incoming inspection for some lots of almonds may be inadvertently missed due to the high level of activity. In addition, samples are occasionally lost or the size of the samples drawn are too small for kernel weight determinations. Board staff commented that there are instances where handlers notice that an error was made and contact the Board's staff in an effort to comply with the order's rules and regulations. Board staff also indicated that this is not a large problem but that it does occur occasionally.

Thus, the Board recommended that for any lot of almonds where a sample is not drawn, is lost, or is too small for the kernel weight to be determined, the handler may establish and substantiate, to the Board's satisfaction, the weight of the almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Adjusted kernel weight means the actual gross weight of any lot of almonds less the following: the weight of containers; moisture of kernels in excess of 5 percent; shells (if applicable); processing loss of 1 percent for deliveries with less than 95 percent kernels; and trash or other foreign material. In such instances, the handler's inedible disposition obligation will be based on that information. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between Board staff and the handler.

This change will add flexibility to the order and will help ensure that the integrity of the order's quality control provisions is maintained. The Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. Thus, the Board's recommended 10 percent disposition obligation for lots of almonds where an inedible weight was

not determined exceeds historical averages. This should provide a disincentive for handlers to purposely avoid inspection, while providing handlers an opportunity to maintain compliance with order requirements.

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 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 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.

Currently, about 58 percent of the handlers ship under \$5,000,000 worth of almonds and 42 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, and the total number of almond growers, the average annual grower revenue is approximately \$156,000. 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.

This rule revises the administrative rules and regulations of the almond order regarding inedible almonds. Section 981.42(a) of the order requires handlers to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's incoming quality control provisions.

Under § 981.442(a)(4) of the order's administrative rules and regulations, handlers are required to dispose of a

quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible in non-human consumption outlets. However, there are times when a sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible kernel weight to be determined. This rule revises § 981.442(a)(4) to allow a handler's inedible disposition obligation in such cases to be based on documentation provided by the handler, to the satisfaction of Board staff. If sufficient documentation is not available, an inedible disposition obligation of 10 percent of the received weight may be applied. This change adds flexibility to the regulations while maintaining the integrity of the order's quality control provisions. This rule was unanimously recommended by the Board and will be in effect beginning with the 1997-98 season which begins on August 1, 1997.

Regarding the impact of this rule on handlers and growers in terms of cost, providing handlers with the option of accepting an inedible disposition obligation based on appropriate documentation or accepting an obligation of 10 percent for lots where a sample was not drawn, was lost, or was too small for an inedible weight to be determined are options that will be made available to all handlers, both large and small. Handlers receive lower prices for inedible almonds that must be sold in non-human consumption outlets as opposed to edible almonds that can be sold in normal market channels. For example, handlers receive about 28-35 cents per pound for almonds used for crushing into oil and about 2-3 cents per pound for almonds used for animal feed. Price levels for sales of edible almonds to normal market outlets vary significantly from year to year depending on available supplies and market conditions and can range from \$1.00-\$3.00 per pound. If inedible almonds were allowed to be sold in normal market channels, consumer and buyer satisfaction would likely decrease because poor quality almonds were being made available. Buyers would likely purchase fewer almonds and demand for almonds would thus decline, which would in turn decrease returns to growers and handlers, both large and small.

Thus, this rule will add flexibility to the rules and regulations and help ensure that the integrity of the order's quality control provisions is maintained. As previously mentioned, the Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. The Board's recommended 10

percent disposition obligation for lots where an inedible weight was not determined exceeds historical averages. This rule also provides handlers an opportunity to maintain compliance with order requirements.

An alternative to this change would be to not incorporate these options into the order's administrative rules and regulations. Thus, in cases where an inedible disposition obligation was inadvertently not obtained, such handlers would be considered to be out of compliance with order requirements and subject to penalties under the Act. However, the Board determined that it would be in the industry's best interest to provide alternative methods of determining inedible disposition obligations. This will allow handlers additional options in the rules and regulations to remain in compliance with order requirements and the integrity of the order's incoming quality control program will still be maintained.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0071. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the May 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on April 23, 1997, and discussed this inedible disposition obligation issue in detail. That meeting was also a public meeting 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 information impacts of this action on small businesses.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on revising the requirements regarding inedible almonds currently prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule provides for alternative methods of determining handlers' inedible disposition obligations; (2) this rule should be in effect at the beginning of the crop year which begins on August 1, 1997, so that all handlers are provided the same opportunities under the order; (3) this change was unanimously recommended by the Board at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides for a 30-day comment period and any comments received will be considered prior to finalization of this rule.

#### 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.

2. In § 981.442, paragraph (a)(4) is amended by designating the existing text as paragraph (i) and adding a new paragraph (ii) to read as follows:

#### § 981.442 Quality Control.

(a) \* \* \*

(4) \* \* \*

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe.

If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

\* \* \* \* \*

Dated: July 8, 1997.

**Sharon Bomer Lauritsen,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 97–18392 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. A0–214–A7; FV93–981–1]

#### Almonds Grown In California; Order Amending the Marketing Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Correction of final rule.

**SUMMARY:** This document contains a correction to the final rule published on June 26, 1996, (FR Doc. 96–16304). The final rule amended the marketing order (order) for California almonds and made corresponding changes to the administrative rules and regulations administered under the order.

**EFFECTIVE DATE:** July 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule amended the order for California almonds. The amendments changed order provisions regarding: five definitions in the order; Almond Board of California nomination procedures, terms of office, qualification procedures, eligibility requirements, voting and tenure requirements; modifying creditable advertising provisions; revising volume control procedures; requiring handlers to maintain records in the State of California; authorizing interest or late payment charges on assessments paid late; providing for periodic continuance referenda; and made necessary conforming changes. That rule overlooked a change to an administrative reporting regulation which corresponded to the change made to the crop year definition. This rule makes that change.

#### Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

#### List of Subjects in 7 CFR Part 981

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

Accordingly, 7 CFR part 981 is corrected by making the following correcting amendments:

#### 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.

#### § 981.472 [Corrected]

2. In § 981.472, paragraph (a) is amended by removing the date “June 30” and adding in its place “July 31”.

Dated: July 8, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–18391 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 1220

[No. LS–97–005]

#### Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 1994. These adjustments are required by the Soybean Promotion and Research Order (Order) and result in an increase in Board membership from 59 to 62 effective with the Secretary's 1998 appointments.

**EFFECTIVE DATE:** August 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, STOP 0251; Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456; telephone 202/720–1115.