

Subpart C—Dues Withholding**§ 251.301 Associations of management officials and/or supervisors.**

Dues withholding for associations of management officials and/or supervisors is covered in 5 CFR 550.331.

§ 251.302 All other organizations.

Under 5 CFR 550.311(b), an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency. Agencies may provide for the allotment of dues for organizations representing Federal employees under that section.

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 981**

[Docket No. A0-214-A7; FV-93-981-1]

Almonds Grown in California; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order (order) for California almonds. The amendments change order provisions regarding: five existing definitions in the order; Almond Board of California (Board) 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 making necessary conforming changes. These changes were favored by California almond producers in a mail referendum. The amendments will improve the administration, operation and functioning of the California almond marketing order program.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456, telephone: (202) 720-1509 or Fax (202) 720-5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing

Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102-B, Fresno, California 93721; (209) 487-5901 or FAX (209) 487-5906.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the Federal Register on August 17, 1993 (58 FR 43565). Recommended Decision and Opportunity to File Written Exceptions issued on March 22, 1995, and published in the Federal Register on April 6, 1995 (60 FR 17466). Secretary's Decision and Referendum Order issued October 23, 1995, and published in the Federal Register on October 30, 1995 [60 FR 55213].

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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.

The final rule was formulated on the record of a public hearing held in Modesto, California, on November 3, 4 and 5, 1993, to consider the proposed amendment of Marketing Order No. 981, regulating the handling of almonds grown in California, hereinafter referred to as the "order." Notice of the Hearing was published in the August 17, 1993, issue of the Federal Register (58 FR 43565).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Board, which is responsible for local administration of the program, and by five additional persons.

The Board's proposals pertained to: (1) Increasing its membership by two positions and changing Board nomination, selection, and operation procedures; (2) changing the term of office of its members from one to three years, and limiting the tenure of Board members; (3) changing the definitions of "cooperative handler," "to handle," "settlement weight," "crop year" and "trade demand"; (4) requiring handlers of California almonds to maintain program records in the State of California; (5) changing the advertising assessment credit program to allow credit for certain promotion costs incurred by handlers not previously authorized; (6) authorizing handlers to pay interest and/or late payment charges for past due assessments; (7) providing for continuance referenda every five years; (8) requiring handlers to submit grower lists to the Board; and (9) allowing multi-year contracting.

Five persons submitted additional proposals related to continuance referenda, Board composition and nomination procedures, organic almonds, regulatory provisions, advertising and promotion, assessments, compliance audits, the definition of grower, and research and reserve operations.

The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), proposed making such changes as are necessary to the order so that all of its provisions conform with the proposed amendment. USDA also proposed that continuance referenda be conducted on a periodic basis consistent with USDA's policy guidelines.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 22, 1995, filed with the Hearing Clerk, Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 8, 1995. Four exceptions were filed.

A Secretary's Decision and Referendum Order was issued on

October 23, 1995, directing that a referendum be conducted during the period January 8 through February 2, 1996, among producers of California almonds to determine whether they favored the proposed amendments to the order. In the referendum, 19 of the amendment proposals were favored by more than two-thirds of the producers voting in the referendum by number and volume.

Four of the amendment proposals failed to receive the two-thirds majority required for approval. They are: (1) Increase the Board representation from 10 to 12 members, increase the quorum size to eight members and specify the number of votes required to pass actions based on the number of members present, increase the required number of votes needed to recommend saleable and reserve percentages to the Secretary from six to eight, and require 10 affirmative votes when voting by methods other than at assembled meetings; (2) authorize the Board, with the approval of the Secretary, to reapportion grower and/or handler member representation on the Board based on the proportionate amounts of almonds handled by different segments of the industry in the event industry structure changes in future years; (3) authorize the Board, with approval of the Secretary, to exempt certified organic almonds from assessments used for marketing promotion; and (4) exempt from reserve requirements, that part of the crop which is sold as "certified organic almonds" under standards established by the Organic Foods Production Act of 1990. Since these amendments failed to obtain the two-thirds requirement, they are not contained in this document.

In addition, USDA has made modifications to sections 981.32, 981.33 and 981.40 regarding committee nominations, tenure and voting by mail, telegram, fax or other electronic means. These modifications were necessary because the amendment to increase Board membership failed.

The amendment to stagger terms of office for Board members passed in the referendum. The amendatory language set forth staggered terms for a 12-member Board. However, the rationale for staggered terms was not specifically related to a 12-member Board. Modifications were made to §§ 981.32 and 981.33 to base staggered terms of office on a 10-member Board.

The amendment to authorize voting by mail, telegram, fax or other electronic means passed in the referendum and included a provision that at least 10 members must vote in favor of its passage or the proposition would be

defeated. This number was based on a 12-member Board. The record evidence indicated that requiring unanimous favorable decisions to pass actions by these methods was burdensome to the Board and delays and disruptions could be avoided by alleviating this requirement. The USDA modification to § 981.40 addresses this concern by requiring eight affirmative votes to pass a Board action.

Finally, USDA has made an additional conforming change to section 981.73 of the order. This section pertains to reports filed by handlers and when they are due to the Board. The conforming change will change the last reporting date from July 15 to August 15 and change the report's ending date from June 30 to July 31. Since the crop year will be changed in this formal rulemaking proceeding from July 1 to August 1, the third reporting period specified in the order should pertain to the end of the crop year. There is no additional burden anticipated on handlers in making this change.

The amended marketing agreement was subsequently mailed to all California almond handlers in the production area for their approval. The marketing agreement was not approved by almond handlers representing 50 percent or more of the volume of almonds handled by all handlers during the representative period of July 1, 1994, through June 30, 1995.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

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 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 the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the

proposed amendments to the order would have on small businesses.

During the 1993-94 crop year, approximately 115 handlers were regulated under Marketing Order No. 981. In addition, there are about 7,000 producers of almonds in the production area. The Act requires the application of uniform rules on regulated handlers.

The amendments to the order include changes to five definitions in the order. These definitions are cooperative handler, to handle, settlement weight, crop year, and trade demand. The changes to the definitions are intended to make them consistent with current industry practices. They are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

The change to the nomination procedures will require Board nominees to be nominated by January 20 rather than April 20 as currently provided. This will ensure that the new Board is seated prior to meetings where important decisions are made for the following year and will allow the Board to function more efficiently.

The change to the Board members' term of office from one year to three year staggered terms allows more continuity on the Board. This will allow the Board to focus more on long-term strategic goals and develop long-term approaches to problems in the industry.

The amendment to require those persons nominated to the Board to qualify prior to their selection to the Board is an administrative change. This change allows the selection process to take place in a more timely manner.

The amendment to add tenure requirements for Board members allows more persons the opportunity to serve as members on the Board. It will provide opportunity for new ideas and approaches to issues that the Board addresses each year.

The amendment to the creditable advertising provisions expands the promotional activities for which handlers may receive Credit-Back from their assessments. This will allow the Board to increase program flexibility for participating handlers.

The amendment to allow the settlement weight for unshelled almonds to be determined on the basis of representative samples will be more consistent with current industry practices.

The amendment to require handlers to maintain records in the State of California will improve the Board's administration of the program. It will also allow the Board to have the records available to them for compliance purposes. It is not expected that any

additional costs will be incurred by handlers to comply with this amendment.

The amendment to authorize interest and/or late payment charges on assessments paid late encourages handlers to pay their assessments on time. Assessments not paid promptly add an undue burden on the Board because the Board has ongoing projects and programs funded by assessments that are functioning throughout the year. This change is consistent with standard business practices and there will be no significant economic burden on small or large entities because the increase in prompt payments will economically benefit the Board and handlers.

The amendment to provide for periodic continuance referenda allows growers the opportunity to vote on whether to continue the operation of the almond marketing order.

The amendment to authorize handlers to transfer their reserve obligation to other handlers helps facilitate the operation of the reserve program by providing handlers more flexibility.

All these changes are designed to enhance the administration and functioning of the marketing order to the benefit of the industry. Accordingly, AMS has determined that the proposed revisions of the order will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to OMB for approval.

Order Further Amending the Order Regulating the Handling of Almonds Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and applicable rules of practice and procedure effective thereunder (7

CFR part 900), a public hearing was held upon the amendments to Marketing Order No. 981 (7 CFR part 981), regulating the handling of almonds grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, and hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby further amended, regulates the handling of almonds grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The order, as amended, as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of almonds grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective one day after publication.

A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program. The Board, producers, and handlers need as much time as possible to make plans to implement the amended order and discuss any needed changes to the regulations and Board operating procedures.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective one day after publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the Federal Register (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping almonds covered by the said

order, as amended, as hereby further amended) who, during the period July 1, 1994, through June 30, 1995, handled 50 percent or more of the volume of such almonds covered by said order, as amended, and as hereby further amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 1994, through June 30, 1995 (which has been deemed to be a representative period), have been engaged within the California production area in the production of such almonds for fresh market.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of almonds in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of almonds grown in California, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on March 22, 1995, and published in the Federal Register on April 6, 1995 (60 FR 17466) and in the Secretary's Decision issued on October 23, 1995, and published in the Federal Register on October 30, 1995 (60 FR 55213), shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

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. Section 981.14 is revised to read as follows:

§ 981.14 Cooperative handler.

Cooperative handler means any handler as defined in § 981.13 of this Subpart which qualifies for treatment as a nonprofit cooperative association as defined in Section 54001, *et seq.* of the California Food and Agricultural Code. The Board, with the approval of the Secretary, may modify this definition, if necessary.

3. Section 981.16 is revised to read as follows:

§ 981.16 To handle.

To handle means to use almonds commercially of own production or to sell, consign, transport, ship (except as a common carrier of almonds owned by another) or in any other way to put almonds grown in the area of production into any channel of trade for human consumption worldwide, either within the area of production or by transfer from the area of production to points outside or by receipt as first receiver at any point of entry in the United States or Puerto Rico of almonds grown in the area of production, exported therefrom and submitted for reentry or which are reentered free of duty. However, sales or deliveries by a grower to handlers, hullers or other processors within the area of production shall not, in itself, be considered as handling by a grower.

4. Section 981.18 is amended by removing the word "and" at the end of paragraph (b); removing the period and adding ", and" at the end of paragraph (c); and adding a new paragraph (d) to read as follows:

§ 981.18 Settlement weight.

* * * * *

(d) For inedible kernels as defined in § 981.8.

5. Section 981.19 is revised to read as follows:

§ 981.19 Crop year.

Crop year means the twelve month period from August 1 to the following July 31, inclusive. Any new crop almonds harvested or received prior to August 1 will be applied to the next crop year for marketing order purposes. The first crop year after the implementation of this amendment shall be a 13-month period.

6. Section 981.21 is revised to read as follows:

§ 981.21 Trade demand.

Trade demand means the quantity of almonds (kernelweight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all

handlers during a crop year for distribution worldwide.

7. Section 981.31 is revised to read as follows:

§ 981.31 Membership representation.

Membership of the Board will be determined in the following manner:

(a) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a)(1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Those growers who market their almonds through cooperative handlers; and

(2) Those growers who market their almonds through other than cooperative handlers.

(b) Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (b) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) Cooperative handlers; and

(2) All handlers, other than cooperative handlers.

(c) One member and an alternate shall be selected from nominees submitted by each of the following groups designated in paragraphs (c) (1) and (2) of this section, or from among other qualified persons belonging to such groups:

(1) The group of cooperative handlers or the group of handlers other than cooperative handlers, whichever received for their account more than 50 percent of the almonds delivered by all growers as determined by December 31 of the then current crop year; and

(2) Those growers whose almonds were marketed through the handler group identified in paragraph (c)(1) of this section.

8. Section 981.32 is amended by revising paragraph (a) and amending paragraph (b)(2) by removing the date "March 31" and adding in its place the date "December 31" to read as follows:

§ 981.32 Nominations.

(a) *Method.* (1) Each year the terms of office of three of the members elected pursuant to Section 981.31 (a) and (b) shall expire, except every third year when the term of office for two of those members shall expire. Nominees for each respective member and alternate member shall be chosen by ballot delivered to the Board. Nominees chosen by the Board in this manner shall be submitted by the Board to the Secretary on or before February 20 of each year together with such information as the Secretary may

require. If a nomination for any Board member or alternate is not received by the Secretary on or before February 20, the Secretary may select such member or alternate from persons belonging to the group to be represented without nomination. The Board shall mail to all handlers and growers, other than the cooperative(s) of record, the required ballots with all necessary voting information including the names of incumbents willing to accept renomination, and, to such growers, the name of any person proposed for nomination in a petition signed by at least 15 such growers and filed with the Board on or before January 20. Distribution of ballots shall be announced by press release, furnishing pertinent information on balloting, issued by the Board through newspapers and other publications having general circulation in the almond producing areas.

(2) Nominees for the positions described in Section 981.31(c) shall be handled in the same manner as described in paragraph (a)(1) of this section except that those terms of office shall expire annually.

* * * * *

9. Section 981.33 is revised to read as follows:

§ 981.33 Selection and term of office.

(a) Members and their respective alternates for positions open on the Board shall be selected by the Secretary from persons nominated pursuant to § 981.32, or, at the discretion of the Secretary, from other qualified persons, for a term of office beginning March 1. Members and alternates shall continue to serve until their respective successors are selected and qualified.

(b) The term of office of members of the Board shall be for a period of three years beginning on March 1 of the years selected except where otherwise provided. However, for the initial eight members of the Board selected pursuant to this section and to paragraphs (a) and (b) of § 981.31, two members shall serve for a term of one year; three members shall serve for a term of two years; and three members shall serve for a term of three years. For the initial terms of office, at the time of nomination under § 981.32, the Board shall make this designation by lot. The term of office for the two members selected under paragraph (c) of § 981.31 shall always be for a period of one year.

(c) Board members may serve for a total of six consecutive years. Members who have served for six consecutive years must leave the Board for at least one year before becoming eligible to serve again. A person who has served

less than six consecutive years on the Board may not be nominated to a new three year term if his or her total consecutive years on the Board at the end of that new term would exceed six years. This limitation on tenure shall not include service on the Board prior to implementation of this amendment and shall not apply to alternate members.

10. Section 981.34 is revised to read as follows:

§ 981.34 Qualification and acceptance.

(a) Any person to be selected as a member or alternate of the Board shall, prior to such selection, qualify by providing such background information as necessary and by advising the Secretary that he/she agrees to serve in the position for which nominated. Grower members and alternates shall be growers or employees of growers, and handler members and alternates shall be handlers or employees of handlers. In the event any member or alternate ceases to be qualified for the position for which selected, that position shall be deemed vacant.

(b) The Board, with approval of the Secretary, may establish additional eligibility requirements for grower members on the Board.

11. Section 981.40 is amended by revising paragraph (c) to read as follows:

§ 981.40 Procedure.

* * * * *

(c) *Voting by mail, telegram, fax or other electronic means.* The Board may vote by mail, telegram, fax or other electronic means upon written notice to all members, or alternates acting in their place, including in the notice a statement of a reasonable time, not to exceed 10 days, in which a vote by mail, telegram, fax or other electronic means must be received by the Board for counting. Voting by mail, telegram, fax or other electronic means shall not be permitted at any assembled meeting of the Board. When a proposition is submitted for vote by mail, telegram, fax or other electronic means, at least eight members of the Board must vote in favor of its passage or the proposition shall be defeated.

* * * * *

§ 981.41 [Amended]

12. In section 981.41, paragraph (c) is amended by removing the colon and all text following the words "15 percent" in the last sentence and adding in its place a period.

§ 981.47 [Amended]

13. Section 981.47 is amended by removing the words "either domestic or" in the third sentence.

14. Section 981.49 is amended by removing ";" and" in paragraph (e) and adding a period in its place, by adding "and" at the end of paragraph (d); by removing paragraph (f) and by revising paragraph (b) to read as follows:

§ 981.49 Board estimates and recommendations.

* * * * *

(b) The estimated handler carryover and the estimated reserve inventory as of July 31;

* * * * *

15. Section 981.55 is amended by designating existing undesignated text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 981.55 Interhandler transfers.

* * * * *

(b) When salable and reserve percentages are in effect, any handler may transfer reserve withholding obligation to other handlers. Terms and conditions implementing this provision must be recommended by the Board and approved by the Secretary.

16. Section 981.60 is amended by revising paragraph (b) to read as follows:

§ 981.60 Determination of kernel weight.

* * * * *

(b) *Almonds for which settlement is made on unshelled weight.* The settlement weight for unshelled almonds shall be determined on the basis of representative samples of unshelled almonds reduced to shelled weight.

17. Section 981.61 is amended by revising the last sentence to read as follows:

§ 981.61 Redetermination of kernel weight.

* * * Weights used in such computations for various classifications of almonds shall be:

(a) For unshelled almonds, the kernelweight based on representative samples reduced to shelled weight;

(b) For shelled almonds, the net weight; and

(c) For shelled almonds used in production of almond products, the net weight of such almonds.

§ 981.62 [Removed]

18. Section 981.62 is removed.

§ 981.66 [Amended]

19. Section 981.66 is amended by removing paragraphs (b) and (d), redesignating paragraph (c) as paragraph (b), redesignating paragraph (e) as paragraph (c), redesignating paragraphs (f) and (g) as paragraphs (d) and (e), and by amending newly designated paragraph (c) by removing all references to the date "September 1" everywhere it

appears and adding in its place "December 31".

§ 981.67 [Amended]

20. Section 981.67 is amended by removing all references to the date "September 1" and adding in its place "December 31".

21. Section 981.70 is amended by revising the first sentence to read as follows:

§ 981.70 Records and verification.

Each handler shall keep records which will clearly show the details of his or her receipts of almonds, withholdings, sales, shipments, inventories, reserve disposition, advertising and promotion activities, as well as other pertinent information regarding his or her operation pursuant to the provisions of this part: *Provided*, that, such records shall be kept in the State of California. * * *

22. A new section 981.76 is added before the undesignated center heading "Expenses and Assessments" to read as follows:

§ 981.76 Handler List of Growers.

No later than December 31 of each crop year, each handler other than a cooperative handler (hereinafter, referred to as independent handler) governed by this Subpart shall, upon request, submit to the Board a complete list of growers who have delivered almonds to such independent handler during that crop year.

23. Section 981.81 is amended by adding a new paragraph (e) to read as follows:

§ 981.81 Assessment.

* * * * *

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

24. Section 981.90 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and by amending newly designated paragraph (b)(3) by removing the date "June 1" and adding in its place "July 1" and adding a new paragraph (b)(2) to read as follows:

§ 981.90 Effective time, suspension, or termination.

* * * * *

(b) * * *

(2) The Secretary shall conduct a referendum as soon as practical after the end of the fiscal year ending two years after implementation of this amendment, and at such time every fifth year thereafter, to ascertain whether continuation of the order is favored by growers who have been engaged in the production of almonds for market within the State of California during the current crop year.

* * * * *

§ 981.467 [Amended]

25. In section 981.467, paragraph (a) is amended by removing the date "July 1" and adding in its place "August 1" and by removing the words "export or" and "or both," from the second sentence in paragraph (a).

§ 981.472 [Amended]

26. In section 981.472, paragraph (a) is amended by removing the dates "July 1 to August 31" and adding in its place "August 1 to August 31."

981.73 [Amended]

27. Section 981.73 is amended by removing the date "July 15" and adding in its place "August 15" and by removing the date "June 30" and adding in its place "July 31".

Dated: June 19, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-16304 Filed 6-25-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[Docket No. AO-79-2; FV95-985-4]

Spearmint Oil Produced in the Far West Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for spearmint oil produced in the Far West. The Department of Agriculture (Department) proposed this amendment, which was favored by spearmint oil producers in a referendum. Previously, the order included in the regulated production area the States of Washington, Idaho, Oregon, and portions of Utah, Nevada, Montana, and California. This amendment redefines the "production area" to remove the portions of the States of Montana and California. This amendment is designed to improve the administration, operation, and function of the Far West spearmint oil program.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT:

Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2522-S, Washington, D.C. 20090-6456, telephone (202) 720-5127; or Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807, telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing was issued on October 4, 1995, and published in the Federal Register on October 11, 1995 (60 FR 52869). Notice of Public Hearing: Correction was issued on November 8, 1995, and published in the Federal Register on November 13, 1995 (60 FR 57144). A Notice of order filed on proposed rulemaking was issued on November 30, 1995, and published in the Federal Register December 5, 1995 (60 FR 62229). The Emergency Final Decision and Referendum Order was issued on February 13, 1996, and published in the Federal Register on February 20, 1996 (61 FR 6329).

This administrative action is governed by the provision of sections 556 and 557 of title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, 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 Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 *et seq.*) 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 in equity to review the Secretary's ruling on the

petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Spokane, Washington, on November 14, 1995, to consider the proposed amendment of Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West, hereinafter referred to as the "order." The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained an amendment proposal recommended by the Department.

The Department proposed this action to determine if portions of both the States of California and Montana should continue to be regulated under the order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Assistant Secretary for Marketing and Regulatory Programs on February 13, 1996, filed with the Hearing Clerk, Department of Agriculture, an Emergency Final Decision and Referendum Order, directing that a referendum be conducted during the period March 2 through March 15, 1996, among all known producers of spearmint oil produced in the Far West. The proposed amendment was favored by more than the requisite two-thirds of spearmint oil producers voting in the referendum. Based upon the referendum and other available information the Department determined that the "production area," the area regulated under the order, no longer include portions of the states of California and Montana.

There is no amended marketing agreement effective with this amendment of the order. The original order was published in the April 14, 1980, Federal Register (45 FR 25040), as a final rule. At that time, a marketing agreement was not approved by spearmint oil handlers representing 50 percent or more of the volume of spearmint oil handled by all handlers during the representative period.

The information collection requirements contained in the order and regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and have been assigned OMB numbers 0581-0065 for Far West spearmint oil.