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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (collectively "FLRA") amend the FLRA's regulations relating to the Freedom of Information Act (FOIA), in order to implement certain changes mandated by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The regulatory changes in this rule will provide for expedited processing of information requests, as required by the EFOIA.

EFFECTIVE DATE: The regulation shall become effective May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Johnson, Attorney-Advisor, Office of the Solicitor, Federal Labor Relations Authority, (202) 482-6620.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority proposed revisions to Parts 2411 of its FOIA regulations (5 CFR part 2411), which were published in the **Federal Register** on November 14, 1997 (62 FR 61035). Public comment was solicited on the proposed changes. However, no written comments were received in response to the notice of proposed rulemaking.

Through the EFOIA, Public Law 104-231, 110 Stat. 3048, Congress amended the FOIA, 5 U.S.C. 552 *et seq.*, to address, among other things, the expedited processing of requests for information. Specifically, Congress required agencies to promulgate regulations under which requests for

expedited processing would be considered, and mandated that agencies grant such requests upon a showing of compelling need.

Pursuant to the EFOIA, the FLRA's amended regulations provide for expedited processing of initial requests that demonstrate a *compelling need*, and allow for expedited processing in other cases when the agency determines it is warranted. Additionally, the amended regulations instruct FOIA officers to notify the requester within ten (10) calendar days whether or not expedited processing has been granted. If denied, any appeals made must be processed expeditiously. The amended regulations will reflect these changes through modifications to § 2411.8, including a retitling of the section and the addition of a new paragraph (b).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2411, as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 2411.8 is revised to read as follows:

§ 2411.8 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Dated: April 13, 1999.

Solly Thomas,

Executive Director.

[FR Doc. 99-9622 Filed 4-15-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99-981-1 FR]

Almonds Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the administrative rules and regulations of the California almond marketing order (order) pertaining to reporting requirements. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the terms of the order, almond handlers are required to report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds received by them for their own account within seven prescribed reporting periods per year. This rule

changes the reporting procedures to require handlers to report this information to the Board monthly, or 12 times per year. Additional, more accurate and timely information will thus be available to the Board and industry, facilitating improved decision making and program administration.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This 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 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 final rule revises the administrative rules and regulations pertaining to reporting requirements under the California almond order. This rule changes the reporting procedures to require handlers to report their receipts of almonds from growers on a monthly basis rather than seven times per year as currently prescribed. This change was unanimously recommended by the Board at a meeting on September 16, 1998.

Section 981.72 of the order provides authority for the Board to require handlers to report to the Board their receipts of almonds from growers. Section 981.472 of the order's administrative rules and regulations currently requires that each handler report to the Board, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account within seven prescribed reporting periods per year. The report must be submitted to the Board by the 5th calendar day after the close of the following applicable periods—August 1 to August 31; September 1 to September 30; October 1 to October 31; November 1 to November 30; December 1 to December 31; January 1 to March 31; and April 1 to July 31.

The crop year under the almond order runs from August 1 through July 31 of the following year. Most almonds are harvested by growers and received by handlers during the fall months. Thus, handlers have been required to report their almond receipts to the Board on a monthly basis from August through December, and then just twice for the remainder of the crop year.

California almond production has increased significantly in recent years. Between 1983 and 1992, the average size of the almond crop was about 465 million pounds. Since 1992, the average size of the almond crop has grown to about 570 million pounds. With the increase in crop size, more almonds than anticipated are being received by handlers from January through July. Information collected from handlers on