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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV97-981-2 FR]

#### Almonds Grown in California; Interhandler Transfers of Reserve Obligations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations under the California almond marketing order to authorize interhandler transfers of reserve obligations. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule will allow the Board to implement authority contained in the marketing order to authorize handlers to transfer reserve withholding obligations to other handlers. It will provide handlers with an additional option to satisfy reserve obligations. This rule will enhance the utility and flexibility of the volume control regulations while benefiting producers, handlers, and consumers.

**EFFECTIVE DATE:** This rule becomes effective November 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, Fax: (202) 720-5698; or Martin Engeler, 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 or Fax: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the "order." The 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 rule implements regulations authorizing interhandler transfers of reserve obligations. Sections 981.45 through 981.60 set forth the authority to implement volume control regulations under the order by establishing salable and reserve percentages of almonds. Annually, the Board meets to review projected crop estimates and marketing conditions for the coming season. Variations in production can cause wide fluctuations in prices. These swings in

supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers.

If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers are required to refrain from selling to normal market outlets a quantity of almonds equal to the reserve percentage. This percentage becomes the handlers' reserve withholding obligation. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to secondary reserve outlets to satisfy their reserve obligation. The last season a reserve was in effect was during the 1994-95 crop year.

Section 981.55 of the order was amended by final order dated June 26, 1996 (61 FR 32917) to include a provision that allows handlers to transfer reserve withholding obligations to other handlers. Prior to the amendment to the order, § 981.55 authorized only the transfer of almonds (not reserve almonds) or reserve credits to other handlers. Reserve credits are issued to handlers when they dispose of almonds to secondary outlets in satisfaction of their reserve obligation. Handlers can transfer excess credits to other handlers. Receiving handlers can use the credit to meet all or a portion of their reserve obligations. This section of the order further states that the terms and conditions implementing the provision must be recommended by the Board and approved by the Secretary. Adding a third option by amendment to the order was intended to provide more flexibility for handlers in satisfying their reserve obligation.

At a Board meeting held on February 18, 1997, the Board unanimously recommended implementing the third option under § 981.55 concerning reserve withholding obligation transfers by making appropriate changes to the rules and regulations. This rule will enhance the utility and flexibility of the volume control regulations. It will provide handlers with an additional method of satisfying reserve obligations.

Currently, § 981.455 contains three paragraphs setting forth rules and regulations regarding interhandler transfers of almonds. These paragraphs set forth procedures for (1) transferring

non-reserve almonds; (2) transferring reserve credits; and (3) transferring inedible almond obligations. This rule will add a new paragraph including procedures for transferring reserve withholding obligations.

This rule will expand the options available to handlers in the event a reserve is implemented. The ability to transfer reserve obligations will particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve inventory or disposing of product to secondary outlets will be reduced. This rule will provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

The objective of the reserve provisions is to keep a certain quantity of almonds off the market in order to maintain market stability. The additional flexibility in the reserve provisions is expected to improve compliance among handlers, which in turn will maintain the integrity of the volume control regulations.

In order to ensure that adequate procedures are in place to monitor transfer of reserve obligations among handlers, ABC Form 11, which currently covers interhandler transfers of reserve credits, will be modified. New information will be added to the form to properly document reserve obligation transfers. Almond handlers wanting to transfer their reserve obligation to another handler will complete one portion of revised Form 11 and forward the form to the receiving handler. The receiving handler will complete their portion of the form and submit it to the Board. Authorized Board personnel will review, and if appropriate, approve the transfer. The Board will then submit copies of the forms to involved parties.

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 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 million of almonds and 42 percent ship over \$5 million 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.

Sections 981.45 through 981.60 of the almond marketing order provide authority to implement volume control regulations by establishing salable and reserve percentages of almonds. If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers must refrain from selling to normal market outlets a quantity of almonds equal to the reserve percentage. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to lower value reserve outlets to satisfy their reserve obligation. These lower value outlets are primarily crushing for oil and animal feed.

Section 981.55 of the order provides authority for the interhandler transfer of almonds and reserve credits. This section was recently amended to include authority for interhandler transfer of reserve obligations. This rule will implement the authority to transfer reserve withholding obligations by revising Section 981.455 of the administrative rules and regulations accordingly. This rule will provide another option, in addition to those that appear in that section, for handlers to satisfy their reserve obligations. The ability to transfer reserve obligations will particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve

inventory or disposing of product to secondary outlets will be reduced. This rule will provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

In past years, handlers either had to maintain product in inventory or dispose of it in approved reserve outlets to satisfy their withholding obligation, as discussed earlier. Those handlers choosing to maintain product in inventory must locate storage facilities and incur storage costs they may not otherwise incur, until the reserve is lifted.

Storage costs vary, depending upon factors such as the type of facilities utilized and quantities involved. These costs are generally in the range of one cent per pound per month, with additional charges for moving product into and out of storage facilities. These costs could be incurred for approximately six to eighteen months depending on the ultimate disposition of the reserve.

Those handlers choosing to dispose of their reserve to approved outlets may save on storage costs, but receive a lower return on the sales than they may receive if sold in normal market channels if the reserve is ultimately released. Price levels for almonds used for crushing into oil are in the range of 28 to 35 cents per pound, while animal feed brings about two to three cents per pound. Price levels for sales to normal market outlets vary significantly from year to year depending on available supplies and market conditions, and can range from \$1 to \$3 per pound. The additional option that will be provided by this rule will allow handlers to make arrangements to transfer their reserve obligation to other handlers. Handlers will be able to choose the most cost effective method of satisfying their reserve obligations that best suits their operations. This rule will provide more flexibility if volume control regulations under the almond marketing order are issued.

A current form is being revised for handlers to supply the transfer information to the Board for its approval. The current form (ABC Form 11) provides for handlers to transfer reserve credits. Information will be added to this form to collect information on transfers of withholding obligation. No additional burden will be added to the form because handlers will choose one of the options on the form. The form's current burden time of 5 minutes will not be changed. This action will not impose any significant additional reporting or recordkeeping requirements on either small or large almond

handlers. The benefits of providing another tool to the industry to assist them in making business decisions far outweigh the estimated 5 minutes it will take to complete the form. Further, any additional reporting may be offset by reduced reporting for those handlers choosing to utilize this option in lieu of other options available for satisfying reserve obligations. 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. Information generated by State, Federal, and private sector reports pertains to almonds in general and does not contain specific producer and handler information. Therefore, such information would not be detailed enough to be used for the specific purposes required under the order.

The amendment to the marketing order was voted on in a referendum and was overwhelmingly supported by almond growers. This rule will establish procedures to implement the amendment that authorized transfers of reserve obligations. There are no alternatives that would result in the additional flexibility sought by the industry.

In addition, 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 on all issues. Like all Board meetings, the February 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Board itself is composed of ten industry members, of which five are handlers and five are growers.

A proposed rule concerning this action was issued by the Department on April 4, 1997, and published in the **Federal Register** on April 10, 1997 (62 FR 17569). It was also made available through the Internet by the Office of the Federal Register. A 60 day comment period was provided to allow interested persons to respond to the proposal. No comments were received.

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.

The proposed rule regarding the interhandler transfer of almonds also announced the AMS's intent to request a revision to the currently approved information collection requirements issued under the marketing order. The 60 day comment period was also provided to allow interested persons the opportunity to respond to the notice. No comments were received on the information collection requirements.

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 approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0071.

#### 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 § 981.455, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

#### § 981.455 Interhandler transfers.

\* \* \* \* \*

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to § 981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

\* \* \* \* \*

Dated: October 23, 1997.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 97-28630 Filed 10-28-97; 8:45 am]

BILLING CODE 3410-02-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

RIN 3150-AF69

#### Information Collection Requirements; Statutory and Technical Amendments; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a notice appearing in the **Federal Register** on October 6, 1997 (62 FR 52184). This action is necessary to correct an erroneous instruction.

**EFFECTIVE DATE:** October 6, 1997.

#### FOR FURTHER INFORMATION CONTACT:

David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555-0001, telephone (301) 415-7162.

**SUPPLEMENTARY INFORMATION:** On page 52188, in the second column, instruction number 24 is corrected to read, "24. In § 60.8, paragraph (a) is revised to read as follows:".

Dated at Rockville, MD, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

**David L. Meyer,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 97-28620 Filed 10-28-97; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 792

#### Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA amends its rules regarding subpoenas seeking nonpublic records or the testimony of NCUA employees. The rule provides procedures, requirements and information on how the NCUA will handle these matters and expressly prohibits any disclosure or testimony except as provided by the rule. The rule also amends the current rule regarding release of NCUA records that are exempt from disclosure under the Freedom of