

7 CFR Part 981**[Docket No. FV96-981-3IFR]****Almonds Grown in California; Change in Quality Control Requirements****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule changes the quality control requirements currently prescribed under the California almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule removes the exemption from inspection for the Peerless variety of almonds sold inshell. This change is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. In addition, this change will better reflect current industry practices because most almonds are already inspected, including the Peerless variety.

DATES: Effective August 21, 1996; comments received by September 19, 1996 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: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-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.

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." This 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.

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.

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 115 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, 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. The majority of handlers and

producers of California almonds may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule modifies language in the order's administrative rules and regulations to remove an exemption from inspection for the Peerless variety of almonds sold inshell as bleaching stock. It also modifies the definition of adjusted kernel weight so that adjusted kernel weight for the Peerless variety is based on actual weight, consistent with other almonds, rather than calculated with a predetermined conversion factor known as a shelling ratio. The majority of handlers already have all almonds inspected, including the Peerless variety. Therefore, this rule will better reflect current industry practice. In addition, this rule is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. Since virtually all of the Peerless almonds sold inshell are currently inspected, there is little or no impact expected on small businesses.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The almond marketing order authorizes quality control provisions which include a requirement that almonds must be inspected prior to processing to determine the percentage of inedible kernels in each lot, and to determine the adjusted kernel weight of almonds in each lot. Inedible kernels are reported to individual handlers and the Board, and handlers are required to dispose of a quantity of almonds equal to their inedible obligation as determined by the inspection. Inedible kernels are disposed of to non-human consumption outlets for such uses as animal feed or crushing into oil. Adjusted kernel weight is reported to handlers by the Federal-State Inspection Service (FSIS). Handlers are then required to report adjusted kernel weight to the Board, who uses the information to report industry statistics.

The rules and regulations under the marketing order currently exempt from inspection the Peerless variety of almonds used as bleaching stock and sold inshell. When the quality control regulations were initially implemented, it was determined there was no need to establish the percentage of inedible kernels of almonds sold inshell, which at that time were predominately of the Peerless variety, because inedible kernels could not be removed from

product sold inshell and thus could not be disposed of in non-human consumption outlets. Therefore, inshell almonds, including Peerless, are exempt from meeting the inedible disposition obligation. However, in order to determine the kernel weight of Peerless almonds sold inshell for reporting to the Board, a predetermined shelling ratio contained in the marketing order has been used in the absence of inspection. This shelling ratio converted the weight of inshell almonds to a shelled weight, or kernel weight. Over time, the total quantity and varieties of all almonds sold inshell have increased, while Peerless bleaching stock sales have declined. There has also been an increased desire and need to obtain an accurate product weight for growers, handlers, and the Board. Thus, it has become common industry practice to have inspections performed on Peerless almonds sold inshell, as with other varieties sold inshell, regardless of the inspection exemption.

Consistent with the Act, the almond marketing order was recently amended by a majority vote of producers to require that the weight of inshell almonds be determined by weighing a representative sample of such almonds. Previously, predetermined shelling ratios were used to determine the kernel weight. Thus, the shelling ratios were removed from the order. The purpose of the quality control amendments was to reflect current industry practices as referenced above, and to provide more accurate information for reporting purposes.

The amendments to the order necessitate conforming changes to the administrative rules and regulations. Section 981.442 of the quality control regulations is revised to remove an inspection exemption for Peerless inshell almonds. Thus, all almonds, regardless of form or variety, will be inspected.

In addition, § 981.401 is revised to remove the exemption for Peerless almonds from the definition of adjusted kernel weight. Currently, the adjusted kernel weight of Peerless inshell almonds is based on a predetermined weight contained in the shelling ratio table that was removed from the marketing order. Since Peerless inshell almonds will be required to have inspection, the actual kernel weight will be determined, thus providing an accurate weight.

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 a change to the quality control requirements 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) The marketing order amendments prompting these changes were implemented on July 1, 1996; (2) related issues were discussed in amendatory proceedings to the marketing order (including a public hearing) and amendments to the order were subsequently approved by producers; (3) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides 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.

§ 981.401 [Amended]

2. In § 981.401, the first sentence in paragraph (a) is amended by removing the words "Except for Peerless bleaching stock," and capitalizing the first letter in the word "adjusted", and by removing the last sentence; and by amending the first sentence in paragraph (b) by removing the words "Except for Peerless bleaching stock," and capitalizing the first letter of the word "the".

3. In § 981.442, paragraph (a)(1), the first sentence is amended by removing the words "except lots of Peerless variety designated as bleaching stock," and in paragraph (a)(4), the last sentence is revised to read as follows:

§ 981.442 Quality Control.

(a) * * *
(4) * * * For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.
* * * * *

Dated: August 14, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–21120 Filed 8–19–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. FV96–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Hazelnut Marketing Board under Marketing Order No. 982 for the 1996–97 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7