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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV00-981-1 FIR]

#### Almonds Grown in California; Release of the Reserve Established for the 1999-2000 Crop Year

**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 relaxing volume regulation percentages implemented under the California almond marketing order (order) during the 1999-2000 crop year (August 1 through July 31). The order regulates the handling of almonds grown in California and is locally administered by the Almond Board of California (Board). This rule continues the scheduled release of reserve almonds into normal salable channels. One-third of the reserve was released on May 2, 2000, the second-third was released on June 1, 2000, and the final-third will be released on July 1, 2000. Releasing the reserve is necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

**EFFECTIVE DATE:** July 26, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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 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.Guerber@usda.gov.

**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 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 is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable and reserve percentages may be established for almonds during any crop year. This rule continues the scheduled relaxation of the salable and reserve percentages for marketable California almonds during the 1999-2000 crop year, which began August 1, 1999, and ends July 31, 2000. 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity

is filed not later than 20 days after the date of the entry of the ruling.

The order regulates the handling of almonds grown in California and is locally administered by the Board. During the 1999-2000 season, handlers were required to withhold as a reserve, from normal competitive markets, 22.36 percent of the almonds which they received from growers. The remaining 77.64 percent of the crop could be sold by handlers to any market at any time. These percentages are referred to as reserve and salable percentages, respectively. This rule continues to relax this regulation on handlers by continuing the scheduled release of all almonds held as reserve for sale to normal market channels. This is necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs. This action was unanimously recommended by the Board at a meeting on April 10, 2000.

Section 981.47 of the almond marketing order provides authority for the Secretary, based on recommendations by the Board and the analysis of other available information, to establish salable and reserve percentages for almonds during a crop year. To aid the Secretary in fixing the salable and reserve percentages, § 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, trade demand needs for the year, carryin inventory at the beginning of the year, and the desirable carryout inventory at the end of the year. Reserve almonds may be disposed of in authorized reserve outlets, such as certified organic markets or for use in almond oil, almond butter, and animal feed. Reserve almonds can also be released for sale into normal marketing channels based on a revision of the aforementioned factors and other information. Authority for the Board to recommend revisions in the volume regulation percentages is provided in § 981.48 of the order. Such revisions must be recommended by May 15.

The Board met in May and July of 1999 to review projected crop estimates and marketing conditions for the 1999-2000 crop year. A record crop of 830 million kernelweight pounds was projected for the season. This would produce an estimated 796.8 marketable

kernelweight pounds after an adjustment for processing losses and exempt product. When combined with estimated carryin and adjusted for desired carryout, an estimated 827.2 million pounds was available for marketing during the 1999–2000 crop year. Trade demand was estimated by the Board at 649 million pounds; thus, a projected oversupply of almonds of about 178.2 million pounds existed for the 1999–2000 crop year. The Board

also considered other factors such as price levels and fluctuations, increased plantings and yields, and weather-related variations in production, and ultimately recommended establishment of a reserve for the 1999–2000 season. The Department established salable and reserve percentages of 77.64 and 22.36 percent, respectively, for almonds received by handlers during the 1999–2000 crop year, pursuant to a regulation

published in the **Federal Register** on November 2, 1999 (64 FR 59107).

The Board met on April 10, 2000, to consider disposition of the reserve. At that time, the Board evaluated marketing and other conditions in the industry, and recommended revisions to the marketing policy estimates initially used in establishing the reserve. A comparison of the initial estimates and revised estimates are contained in the following table.

**MARKETING POLICY ESTIMATES—1999 CROP**  
[Kernelweight basis in millions of pounds]

	07/12/99 initial estimates	04/10/00 revised estimates
Estimated Production:		
1. 1999 Production .....	830.0	827.4
2. Loss and Exempt—4.0% .....	33.2	33.1
3. Marketable Production .....	796.8	794.3
Estimated Trade Demand:		
4. Domestic .....	190.0	203.0
5. Export .....	459.0	492.0
6. Total .....	649.0	695.0
Inventory Adjustment:		
7. Carryin 8/1/99 .....	100.4	91.8
8. Desirable Carryover 7/31/00 .....	70.0	191.1
9. Adjustment (Item 8 minus item 7) .....	– 30.4	99.3
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9) .....	618.6	794.3
11. Reserve (Item 3 minus item 10) .....	178.2	0.0
12. Salable % (Item 10 divided by item 3 × 100) .....	<sup>1</sup> 77.64	100.0
13. Reserve % (100% minus item 12) .....	<sup>1</sup> 22.36	0.0

<sup>1</sup> Percent.

In arriving at these estimates, the Board revised its 1999–2000 crop estimate of 830 million pounds to 827.4 million pounds, and marketable production of 796.8 million pounds to 794.3 million pounds. The carryin on August 1, 1999, was initially estimated to be 100.4 million pounds. That figure was revised to reflect actual carryin of 91.8 million pounds. Thus, the total available supply for the 1999–2000 crop year is slightly lower than initially estimated.

Shipment figures for the year-to-date were analyzed. Through March 2000, total industry shipments of almonds were 525.5 million pounds, significantly higher than shipments for a comparable period in any prior year. Based on historical shipping patterns and shipments to date this season, the Board anticipates strong shipment levels to continue for the remainder of the season. Therefore, the Board revised its trade demand estimate from 649 million pounds to 695 million pounds.

A final crop estimate for the 2000–2001 crop year will not be available until June 29. A preliminary crop

estimate of 675 million pounds was issued by the California Agricultural Statistics Service (CASS) on May 11, 2000. The industry continues to believe that next year's crop will be significantly smaller than the current crop. Several factors have contributed to this conclusion. In addition to the usual pattern of a shorter crop following a large crop, the weather throughout the production area during the month of February was generally cool, rainy, and windy. During this period, almond trees were in bloom, and the weather conditions were not conducive to good flower pollination. Field observations since the bloom period confirm that the 2000–2001 crop will be significantly smaller, perhaps smaller than the preliminary estimate. It is believed that next year's crop will not provide a sufficient supply of almonds to meet trade needs and provide an adequate carryout at the end of the 2000–2001 crop year. Therefore, to provide more almonds to satisfy the current year's trade demand and to augment next year's supplies, the Board recommended

releasing the 1999–2000 crop year reserve. The Board also considered the timing of releasing reserve product to salable market channels. The Board determined that a gradual release schedule would best serve the industry. This would prevent a large quantity of almonds from being made available for sale by handlers immediately, which could put downward pressure on prices and create disorderly marketing conditions. Thus, the Board unanimously recommended releasing one-third of the reserve as soon as possible, one-third on June 1, 2000, and the final-third on July 1, 2000. The resulting salable and reserve percentages were 85.09 percent and 14.91 percent, respectively, on May 2, 2000; 92.55 percent and 7.45 percent, respectively, on June 1, 2000; and will be 100 and 0 percent, respectively, on July 1, 2000.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 105 handlers of California almonds who are subject to regulation under the marketing order and approximately 6,000 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000.

Based on the most current data available, about 54 percent of almond handlers ship under \$5,000,000 worth of almonds and 46 percent ship over \$5,000,000 worth on an annual basis. In addition, based on production and grower prices reported by the National Agricultural Statistics Service (NASS), and the total number of almond growers, the average annual grower revenue is approximately \$195,000. 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, excluding receipts from other sources.

Pursuant to §§ 981.47 and 981.49, during the 1999–2000 crop year, handlers were required to withhold as a reserve, from normal competitive markets, 22.36 percent of the almonds which they received from growers (64 FR 59107, November 2, 1999). The remaining 77.64 percent of the crop could be sold by handlers to any market at any time. Volume regulation was implemented because the available supply of almonds for the 1999–2000 crop year, adjusted by carryin and desired carryout, was estimated to be about 827 million pounds, which exceeded the estimated trade demand needs of about 649 million pounds.

Pursuant to § 981.48 of the order, this rule continues the scheduled release of reserve almonds. A total of 7.45 percent of the reserve was released on May 2, 2000, another 7.45 percent was released on June 1, 2000, and the final 7.45 percent will be released on July 1, 2000. Releasing the reserve is necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and

carryover needs. Shipment levels through March, 2000 and anticipated strong shipments for the remainder of the season led to an increased trade demand estimate from 649 million pounds to 695 million pounds. In addition, because a smaller 2000–2001 crop is expected, the industry would like to increase the amount of 1999–2000 carryout inventory from 70 million pounds to 191.2 million pounds to augment supplies during the next crop year. The timing of the releases was structured so that all 178 million pounds of reserve product would not enter the market at one time.

This action is expected to have a positive effect on producers and handlers of almonds. It gradually removes the regulatory requirement that handlers hold product in reserve or sell it to reserve outlets. Handlers will be able to sell reserve almonds into normal markets at prevailing prices (currently in the range of \$1.15 per pound to \$1.60 per pound) as opposed to selling them into lower value reserve outlets (ranging from 8 to 15 cents per pound for oil or 4 to 5 cents per pound for animal feed). Although reserve almonds can be sold to organic markets or for use in the manufacture of almond butter at higher prices than other reserve outlets, the quantity that can be sold is limited because those markets are relatively small. Handlers and growers should be able to achieve higher total revenue for their product by selling to normal markets, because trade demand for almonds has increased significantly from early season estimates, and price levels have also improved in recent months.

Releasing reserve almonds into the market in three stages has helped ensure that a large supply of almonds is not available for sale by handlers at the same time, which could have created a temporary oversupply and had a negative impact on price levels. The staged release also helped to ensure that additional product will be available for carryin to the following crop year to augment anticipated short supplies. This action is intended to promote orderly marketing conditions for the remainder of the 1999–2000 crop year and also leading into the 2000–2001 crop year, for the benefit of producers and handlers, regardless of size.

One alternative considered was to release all of the reserve product to normal market channels as soon as possible. This alternative was not recommended because it was believed that too much product would be available at one time, creating a short-term oversupply situation, which could have negatively impacted prices and

market conditions. Another alternative considered was to release one-third of the reserve as soon as possible, and if the May 11, 2000, crop estimate issued by CASS for the 2000–2001 crop was less than 525 million pounds, to release the entire reserve as soon as possible after that. If the May crop estimate was more than 525 million pounds, this alternative would have released one-third of the reserve as soon as possible after May 11, and the final one-third on July 1, 2000. This was not recommended. The Board decided that three equal releases were preferable.

All the scenarios considered had the common goal of releasing all the 1999–2000 crop year reserve to the salable category. The Board ultimately recommended releasing one-third of the reserve as soon as possible (May 2, 2000), one-third on June 1, 2000, and the final one-third on July 1, 2000. The Board believed this would best achieve orderly marketing objectives. Adequate supplies should be available to meet market needs for the remainder of the crop year and for carryin to the next crop year, thus satisfying market needs and maintaining market and price stability.

This rule will not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to help reduce information requirements and duplication by industry and public sector agencies. 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 April 10, 2000, 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 Reserve Committee met on April 10, 2000, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

An interim final rule concerning this action was published in the **Federal Register** on May 1, 2000 (65 FR 25233). Copies of the rule were mailed by the Board's staff to all Board members and almond handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 15-day comment period which ended on May 16, 2000. One comment was received. The comment was submitted by the Board in support of the release, noting that the Board met on May 16, 2000, and reaffirmed its position to release the reserve in three stages.

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

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

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

#### **PART 981—ALMONDS GROWN IN CALIFORNIA**

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 65 FR 25233 on May 1, 2000, is adopted as a final rule without change.

Dated: June 19, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-16017 Filed 6-23-00; 8:45 am]

**BILLING CODE 3410-02-P**

### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 984**

**[Docket No. FV00-984-1 FR]**

#### **Walnuts Grown in California; Report Regarding Interhandler Transfers of Walnuts**

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

**ACTION:** Final rule.

**SUMMARY:** This rule will revise the administrative rules and regulations of the Federal marketing order for California walnuts (order) regarding reports of interhandler transfers of walnuts. The order regulates the handling of walnuts grown in California

and is administered locally by the Walnut Marketing Board (Board). Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule will require handlers to report such interhandler transfers on a separate form. This action will facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments.

**EFFECTIVE DATE:** August 1, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation 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.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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. Such 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.

This rule will revise the order's administrative rules and regulations regarding reports of interhandler transfers of walnuts. Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule will require handlers to report such interhandler transfers on a separate form. This action will facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. This action was unanimously recommended by the Board at a meeting on February 18, 2000.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

Section 984.59 of the order provides authority for handlers to transfer walnuts between handlers. Paragraph (a) of that section states that inshell walnuts may be sold or delivered by one handler to another for packing or shelling within California. In such cases, the receiving handler assumes marketing order obligations with respect to the transferred walnuts, including assessment and inspection requirements. Paragraph (b) of § 984.59 pertains to transfers of walnuts when volume regulation is in effect. Specifically, handlers may, for purposes of meeting their reserve obligation, acquire walnuts from other handlers. In such cases, the buying handler assumes marketing order obligations with respect to the transferred walnuts, including assessment, reserve, and inspection requirements. Paragraph (c) of § 984.59