

§ 1631.13 [Amended]

7. In section 1631.13 amend paragraph (c) by removing the number "10" and adding in its place the number "20".

§ 1631.14 [Amended]

8. In section 1631.14 amend the first sentence of paragraph (a) and the second sentence of paragraph (b) by removing the phrase "plus 16 percent" and adding the phrase "plus 23.5 percent" in its place.

9. Section 1631.18 is revised to read as follows:

§ 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[FR Doc. 98-20876 Filed 8-4-98; 8:45 am]

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

[Docket No. FV98-981-1 FR]

Almonds Grown in California; Revision of Requirements Regarding Quality Control Program

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 the quality control program. The 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, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to accepted users of such product. Accepted users are approved annually by the Board. This rule clarifies conditions upon which accepted users' status may be denied or revoked by the Board. This rule will help to ensure that inedible almonds are removed from human consumption channels, thereby

maintaining the integrity of the quality control provisions of the order.

EFFECTIVE DATE: This final rule becomes effective August 6, 1998.

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: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. 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, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This final 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 a quality control program under the California almond order. This rule was unanimously recommended by the Board, and clarifies conditions under which the Board may deny or revoke the status of accepted users of inedible almonds.

Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Handlers are required to report such inedible determination for each lot received to the Board. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's quality control provisions.

Section 981.442 of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute such handler's inedible disposition obligation. Handlers are required to deliver inedible kernels accumulated in the course of processing to Board-approved accepted users of such product in order to satisfy the disposition obligation. Accepted users then dispose of inedible kernels to non-human consumption outlets. Because inedible kernels are considered unfit for human consumption, requiring handlers to meet this obligation helps to ensure that each handler's outgoing shipments of almonds are relatively free of almonds with serious damage, and the number of kernels with minor damage should be minimal.

Accepted users of inedible almonds file an application with the Board specifying certain terms and conditions with which they will voluntarily abide. The application also indicates they will dispose of the inedible almonds received from handlers in one or more of the following manners: crushing into oil; manufacturing into animal feed; or feeding directly to animals. The Board staff reviews and approves accepted user applications on an annual basis.

Section 981.442(a)(7) of the rules and regulations lists eligibility criteria for accepted users. These criteria are applied by the Board when reviewing and approving accepted users. However, the regulations do not specifically address when the Board may deny or revoke accepted user status. Situations

have occurred in the past wherein accepted users have failed to completely meet these conditions, and the Board could not be assured the inedible almonds were being disposed of in non-human consumption outlets.

The Board met on March 25, 1998, and unanimously recommended adding language to § 981.442(a)(7) of the administrative rules and regulations stating that an accepted user's status may be denied or revoked if the eligibility requirements are not met or if the terms and conditions agreed to in the accepted user application are not met. The Board recommended that this change be made effective by the beginning of the crop year (August 1, 1998), or as soon as possible thereafter, so that this action coincides with the approval cycle for accepted user applications.

This change provides a clear foundation of understanding between the Board, handlers, and accepted users. This action will assist in maintaining the integrity of the Board's quality control program by providing clear authority to deny or revoke accepted user status. This will help to ensure inedible almonds are properly disposed of in non-human consumption outlets, which is in the interest of producers, handlers, and consumers.

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 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 \$5,000,000 worth of almonds and 42 percent ship over \$5,000,000 worth 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.

There are currently 23 accepted users of inedible almonds approved by the Board. Accepted users may enter into a voluntary agreement with the Board to function as an outlet to which handlers can ship inedible almonds to satisfy an order obligation. While data concerning these entities is limited, based on a review of the quantity of inedible almonds delivered to each entity, it is believed that the majority may be classified as small entities.

This rule revises the quality control provisions of the administrative rules and regulations issued under the California almond order. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to accepted users of such product. Accepted users are approved annually by the Board.

Section 981.442(a)(7) of the order's administrative rules and regulations provides criteria which accepted users must meet. This rule revises this section to specify that an accepted user's status may be denied or revoked if the criteria are not met. This rule will help maintain the integrity of the Board's quality control program.

This change is not expected to impact handlers, other than to clarify to them that an accepted user's status may be denied or revoked. Handlers are provided a listing of approved accepted users so they know who they can deliver inedible material to and receive credit against their obligation. In the event an application for accepted user status is denied or an accepted user's status is revoked, handlers will be notified by Board staff and provided an updated listing.

This rule only impacts applicants for accepted user status, or accepted users in the sense that it clarifies that accepted user status may be denied or revoked if the terms and conditions set forth in the rules and regulations and the accepted user application are not met. Accepted users are approved entities to which handlers may deliver inedible almonds and receive credit

against their inedible disposition obligation. Accepted users voluntarily agree to meet certain terms and conditions so the Board may be assured that inedible almonds do not enter human consumption channels. If these dealers in inedible almonds do not agree to the terms and conditions, they are not approved by the Board. However, they may still operate in the business, although handlers do not receive credit against their inedible disposition obligation if they deliver product to such non-approved entities. Situations have occurred in the past wherein accepted users have failed to completely meet these conditions, and the Board could not be assured the inedible almonds were being disposed of in non-human consumption outlets.

One alternative to this rule would be to maintain the regulatory language as it currently exists, in which case there would be no clarification. Another alternative would be to specify at length all possible reasons for denying or revoking an accepted user's status. The first alternative fails to address the issue, and the second would require unnecessary lengthy additions to regulatory language, and may be incomplete.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. 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. 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. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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. Like all Board meetings, the March 25, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on February 25, 1998,

and discussed this issue. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on June 17, 1998 (63 FR 33010). Copies of the rule were mailed to all Board members and almond handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending July 17, 1998, was provided to allow interested persons to respond to the proposal.

One comment was received in response to the proposed rule. The commenter, a marketing cooperative representing California almond growers, supported the proposal. The commenter believes that denying or revoking accepted user status is the principal method that the Board has to ensure that only users that dispose of inedible almonds in proper channels are approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, the comment received, 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the beginning of the 1998-99 crop year is August 1, 1998, and the rule needs to be in effect as soon as possible so this action coincides with the approval cycle for accepted user applications. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and one comment was received which supported the change.

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 981.442 is amended by adding a new paragraph (a)(7)(iv) to read as follows:

§ 981.442 Quality Control.

(a) * * *

(7) * * *

(iv) The Board may deny or revoke accepted user status at any time if the applicant or accepted user fails to meet the terms and conditions of § 981.442, or if the applicant or accepted user fails to meet the terms and conditions set forth in the accepted user application (ABC Form 34).

* * * * *

Dated: July 30, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN: 0560-AF56

Cleaning and Reinspection of Farmers Stock Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends regulations for the peanut price support program to, pending comment, ease conditions for marketing Segregation 3 peanuts by allowing the peanuts to be reconditioned and regraded in certain limited instances. Peanuts are graded as "Segregation 3" peanuts when they are found by visual inspection to have *Aspergillus flavus* (A. flavus) mold. This rule would allow a farmer whose peanuts were found at a buying point inspection to have the mold to reclean those peanuts at the buying point and have them visually reinspected within 24 hours. The farmer could obtain such a re-inspection only once for any given lot. This rule follows litigation in which all segments of the industry were involved and buying point inspection procedures were at issue. This rule is issued as an interim rule to allow relief with respect to the upcoming crop (the 1998 crop) which should come to market shortly. However, comments on all inspection options related to the price support program for peanuts are solicited and should be offered by all interested parties.

DATES: Effective August 5, 1998. Comments must be received on or before September 4, 1998 to be assured consideration. Comments regarding information collection must be received

on or before October 5, 1998 to be assured consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture, STOP 0514, 1400 Independence Avenue, SW, Washington, D.C., 20250-0514. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720-7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

For purposes of Executive Order 12866, this rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Unfunded Federal Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR