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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an Export Trade Certificate of Review, Application No. 99-00005.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to California Almond Export Association, LLC ("CAEA"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Certified Conduct

##### Export Trade

##### 1. Products

California almonds in processed and unprocessed form.

##### 2. Export Trade Facilitation Services (as They Relate to the Export of Products)

All export trade-related facilitation services, including but not limited to: development of trade strategy; sales, marketing, and distribution; foreign market development; promotion; and all aspects of foreign sales transactions, including export brokerage, freight forwarding, transportation, insurance, billing, collection, trade documentation, and foreign exchange; customs, duties, and taxes; and inspection and quality control.

##### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands).

##### Export Trade Activities and Methods of Operation

1. CAEA, on its own behalf or on behalf of all or less than all of its Members, through CAEA or through Export Intermediaries (to the extent provided in section 1.g) may:

a. *Sales Prices.* Establish sale prices, minimum sale prices, target sale prices and/or minimum target sale prices, and other terms of sale;

b. *Marketing and Distribution.* Conduct marketing and distribution of Products;

c. *Promotion.* Conduct promotion of Products;

d. *Quantities.* Agree on quantities of Products to be sold, provided each Member shall be required to dedicate only such quantity or quantities as each such Member shall independently determine. CAEA shall not require any Member to export a minimum quantity;

e. *Market and Customer Allocation.* Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;

f. *Refusals to Deal.* Refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Markets, or any countries or geographical areas in the Export Markets;

g. *Exclusive and Nonexclusive Export Intermediaries.* Enter into exclusive and nonexclusive agreements appointing one or more Export Intermediaries (as defined under "Definitions" paragraph 1) for the sale of Products with price, quantity, territorial and/or customer restrictions as provided in sections 1.a through 1.f, inclusive, above; and

h. *Non-Member Activities.* Purchase Products from non-Members to fulfill specific sales obligations, provided that CAEA and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite Products at a price competitive under the circumstances. In no event shall a non-Member be included in any deliberations concerning any Export Trade Activities.

2. CAEA and its Members may exchange and discuss the following information:

a. Information about sale and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets;

b. Information about the price, quality, quantity, source, and delivery dates of Products available from the Members to export;

c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by CAEA and its Members;

d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freights to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for the Export Markets;

g. Information about CAEA's or its Members' export operations, including without limitation, sales and distribution networks established by CAEA or its Members in the Export Markets, and prior export sales by Members (including export price information); and

h. Information about export customer credit terms and credit history.

3. CAEA and its Members may prescribe the following conditions for admission of Members to CAEA and termination of membership in CAEA:

a. Membership shall be limited to Handlers as defined under "Definitions" paragraph 2.

b. Membership shall terminate on the occurrence of one or more of the following events:

i. withdrawal or resignation of a Member;

ii. Expulsion approved by a majority of all Members for a material violation of CAEA's Operating Agreement, after prior written notice to the Member proposed to be expelled and an opportunity of such Member to appear and be heard before a meeting of the Members;

iii. Death or permanent disability of a Member who is an individual or the dissolution of a Member other than an individual; and

iv. The bankruptcy of a Member as provided in CAEA's Operating Agreement.

4. CAEA and its Members may meet to engage in the activities described in paragraphs 1 through 3 above.

#### Definitions

1. "Export Intermediary" means a person (including a Member) who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. "Handler" means a person who handles almonds grown in California as defined in 7 CFR Section 981.13, under the Order Regulating Handling of Almonds Grown in California.

3. "Member," within the meaning of section 325.2(1) of the Regulations, means the members of CAEA as set out in Attachment A and incorporated by reference.

#### Terms and Conditions of Certificate

1. Except as provided in paragraph 2(b) and (e) of the Export Trade Activities and Methods of Operation above, CAEA and its Members shall not intentionally disclose, directly or indirectly, to any Handler (including Members) any information about its or any other Handler's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies or methods, unless: (1) Such information is already generally available to the trade or public; (2) such disclosure is a necessary term or condition of an actual or potential bona fide sale or purchase of Products and the disclosure is limited to that prospective purchaser or seller; or (3) such disclosure is made in connection with the administration of the United States Department of Agriculture marketing order for almonds grown in California.

2. Each Member shall determine independently of other Members the quantity of Products the Member will make available for export or sell through CAEA. CAEA may not solicit from any Member specific quantities for export or require any Member to export any minimum quantity of Products.

3. Meetings at which CAEA allocates export sales among Members and establishes export prices shall not be open to the public.

4. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving a written notice to CAEA, a copy of which CAEA shall promptly transmit to the Secretary of Commerce and the Attorney General.

5. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, Product specifications or standards, export prices, Product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only those Members participating or having a genuine interest in participating in such transactions or opportunities, provided that CAEA and/or the Members may discuss standardization of Products for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.

6. CAEA and its Members will comply with requests made by the Secretary of Commerce, on behalf of the Secretary or the Attorney General, for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

#### Protection Provided by Certificate

The Certificate protects CAEA, its Members, and their directors, officers, and employees acting on their behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in this Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: December 27, 1999.

#### Morton Schnabel,

Director, Office of Export Trading, Company Affairs.

#### Attachment A

Members (Within the meaning of Section 325.2(1) of the Regulations)

A & P Growers Cooperative, Inc., Tulare, CA  
Almonds California Pride, Inc., Caruthers, CA

Baldwin-Minkler Farms, Orland, CA  
Blue Diamond Growers, Sacramento, CA  
Calcot, Ltd., Bakersfield, CA  
California Independent Almond Growers, Ballico, CA

Campos Brothers, Caruthers, CA  
Chico Nut Company, Chico, CA  
Del Rio Nut Company, Livingston, CA  
Dole Nut Company, Bakersfield, CA  
Fair Trade Corner, Inc., Chico, CA  
Gold Hills Nut Co., Inc., Ballico, CA  
Golden West Nuts, Inc., Ripon, CA  
Harris Woolf California Almonds, Huron, CA  
Hilltop Ranch, Ballico, CA  
Hughson Nut Company, Hughson, CA  
Kindle Nut Company, Denair, CA  
Paramount Farms, Inc., Los Angeles, CA  
P-R Farms, Inc., Clovis, CA  
Santa Fe Nut Company, Ballico, CA  
South Valley Farms, Wasco, CA  
Western Nut Company, Chico, CA

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

[I.D. 101599J]

#### Reopening of Public Comment Period for Draft Environmental Impact Statement and Application for an Incidental Take Permit for the Simpson Timber Company, Northwest Operations, Habitat Conservation Plan, Thurston, Mason, and Grays Harbor Counties, Washington

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

**ACTION:** Notice of reopened public comment period.

**SUMMARY:** NMFS and FWS (the Services) are reopening the public comment period for the Draft Environmental Impact Statement (DEIS) and application for an Incidental Take Permit (Permit) for the Simpson Timber Company, Northwest Operations, Habitat Conservation Plan, Thurston, Mason, and Grays Harbor Counties,