Rules and Regulations

Federal Register

Vol. 65, No. 84

Monday, May 1, 2000

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV00–981–1 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes volume regulation 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 releases, in three stages, reserve almonds into normal salable channels. One-third of the reserve will be released on the effective date of this rule, the second-third will be 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.

DATES: Effective on May 2, 2000; comments received by May 16, 2000 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. 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: 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 of Agriculture (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 revises 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.

This interim final rule relaxes volume regulation implemented under the 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 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 relaxes this regulation on handlers by releasing, in three stages, all almonds held as reserve to be available 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 the 1999–2000 crop year. Trade demand was estimated by the Board at 649 million pounds; thus, a projected oversupply of almonds existed for the 1999–2000 crop year of about 178.2 million pounds. 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]

	7/12/99 initial estimates	4/10/00 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)	77.64%	100.0
13. Reserve % (100% minus item 12)	22.36%	0.0

In arriving at these estimates, the Board revised its the 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.

Although an official crop estimate for the 2000–2001 crop year will not be available until May 11, 2000, the consensus in the industry is 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 next year's crop will be significantly smaller. Preliminary industry discussions indicate that the 2000–2001 crop will be approximately 550 million pounds. A crop of that size would 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 will be 85.09 percent and 14.91 percent, respectively, on the effective date of this rule; 92.55 percent and 7.45 percent, respectively, on June 1, 2000; and 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 initial 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 have been 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.

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 releases 7.45 percent of the reserve on the effective date of this rule, 7.45 percent on June 1, 2000, and 7.45 percent 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 lead to an increased trade demand estimate from 649 million pounds to 695 million pounds. In addition, because a smaller 2000–2001 crop is expected (approximately 550 million pounds), 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. Timing of the release is structured so that all 178 million pounds of reserve product will 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 $1.25 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 limited. 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 will help to ensure that a large supply of almonds is not available for sale by handlers at the same time, which could create a temporary oversupply and have a negative impact on price levels. The staged release will also help to ensure that additional product will be available to carry into 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 negatively impact 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 NASS for the 2000–2001 crop is less than 525 million pounds, to release the entire reserve as soon as possible after that. If the May crop estimate is more than 525 million pounds, this alternative would release one-third of the reserve as soon as possible after the estimate is issued 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 (on the effective date of this rule), 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. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: 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.

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.

A comment period of 15 days is provided to allow interested persons to respond to this interim final rule. A comment period of 15 days is deemed appropriate to allow the Department sufficient time to consider comments prior to the scheduled releases on June 1, and July 1, 1999. All comments timely received will be considered in finalizing this action.

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) This rule relaxes requirements currently in effect by increasing the quantity of almonds that may be marketed; (2) the 1999–2000 crop year ends July 31, (3) this rule was discussed at a public meeting and interested persons had an opportunity to provide input; (4) the rule was unanimously recommended by the Board; and (5) this rule provides a 15-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.

[Note: This section will not appear in the Code of Federal Regulations.]

2. In Part 981, § 981.240 is revised to read as follows:

§ 981.240 Salable and reserve percentages for almonds during the crop year beginning on August 1, 1999.

The salable and reserve percentages during the crop year beginning on August 1, 1999, shall be 85.09 percent and 14.91 percent, respectively, beginning on May 2, 2000; 92.55 percent and 7.45 percent, respectively, beginning on June 1, 2000, and 100 percent and 0 percent, respectively, beginning on July 1, 2000.

Dated: April 25, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–10765 Filed 4–28–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–00–002]

2000 Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This action is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

EFFECTIVE DATE: May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, (202) 720–2259.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be ''non significant'' for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment will be lowered, the decrease is small and will not significantly affect small businesses.

The current assessment on imported cotton is $0.011397 per kilogram of imported cotton. The amended assessment is $0.009833, a decrease of $0.001564 or a 13.72 percent decrease from the current assessment. From January through December 1999 approximately $23 million was collected at the $0.011397 per kilogram rate. Should the volume of cotton products imported into the U.S. remain at the same level in 2000, one could expect the decreased assessment to generate approximately $19.8 million or a 13.72 percent decrease from 1999.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.