

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV-97-981-2 PR]

Almonds Grown in California; Interhandler Transfers of Reserve Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on implementing regulations to authorize interhandler transfers of reserve obligations. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule would allow the Board to implement authority contained in the marketing order to authorize handlers to transfer reserve withholding obligations to other handlers. It would provide handlers with an additional option to satisfy reserve obligations. If implemented, this rule would enhance the utility and flexibility of the volume control regulations while benefiting producers, handlers, and consumers.

DATES: Comments must be received by June 9, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 2530-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. 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, P.O. Box 96456, Washington, DC, 20090-6456, telephone: (202) 720-2491 or Fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, 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 conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 proposal invites comments on implementing regulations authorizing interhandler transfers of reserve obligations. Sections 981.45 through 981.60 set forth the authority to implement volume control regulations under the order by establishing salable and reserve percentages of almonds. Annually, the Board meets to review projected crop estimates and marketing conditions for the coming season. Variations in production can cause wide fluctuations in prices. These swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers.

If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers are required to refrain from selling to normal market outlets a quantity of almonds equal to the reserve percentage. This percentage becomes the handlers' reserve withholding obligation. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to secondary reserve outlets to satisfy their reserve obligation. The last season a reserve was in effect was during the 1994-95 crop year.

Section 981.55 of the order was amended by final order dated June 26, 1996 (61 FR 32917) to include a provision that allows handlers to transfer reserve withholding obligation to other handlers. Prior to the amendment to the order, § 981.55 authorized only the transfer of almonds (not reserve almonds) or reserve credits to other handlers. Reserve credits are issued to handlers when they dispose of almonds to secondary outlets in satisfaction of their reserve obligation. Handlers can transfer excess credits to other handlers. The receiving handler can use the credit to meet all or a portion of its reserve obligation. This section of the order further states that the terms and conditions implementing the provision must be recommended by the Board and approved by the Secretary. Adding a third option by

amendment to the order was intended to provide more flexibility for handlers in satisfying their reserve obligation.

At a Board meeting held on February 18, 1997, the Board unanimously recommended implementing the third option under Section 981.55 concerning reserve withholding obligation transfers by making appropriate changes to the rules and regulations. This proposal would enhance the utility and flexibility of the volume control regulations. It would provide handlers with an additional method of satisfying reserve obligations.

Currently, § 981.455 contains three paragraphs setting forth rules and regulations regarding interhandler transfers of almonds. These paragraphs set forth procedures for: (1) Transferring non-reserve almonds; (2) transferring reserve credits; and (3) transferring inedible almond obligations. The Board's proposal recommends adding a new paragraph including procedures for transferring reserve withholding obligations.

This rule would expand the options available to handlers in the event a reserve is implemented. The ability to transfer reserve obligations would particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve inventory or disposing of product to secondary outlets could be reduced. This rule would provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

The objective of the reserve provisions is to keep a certain quantity of almonds off the market in order to maintain market stability. The additional flexibility in the reserve provisions is expected to improve compliance among handlers, which in turn would maintain the integrity of the volume control regulations.

In order to ensure that adequate procedures are in place to monitor transfer of reserve obligations among handlers, the Board recommended modifying ABC Form 11 which currently covers interhandler transfers of reserve credits. New information would be added to the form to properly document reserve obligation transfers. Almond handlers wanting to transfer their reserve obligation to another handler would complete one portion of revised Form 11 and forward the form to the receiving handler. The receiving handler would complete their portion of the form and submit it to the Board.

Authorized Board personnel would review, and if appropriate, approve the transfer. The Board would then submit copies of the forms to involved parties.

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 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 97 handlers of California almonds who are subject to regulation under the marketing 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 million of almonds and 42 percent ship over \$5 million 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.

Sections 981.45 through 981.60 of the almond marketing order provide authority to implement volume control regulations by establishing salable and reserve percentages of almonds. If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers are required to not sell to normal market outlets a quantity of almonds equal to the reserve percentage. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to lower value reserve outlets to satisfy their reserve obligation. These lower value outlets are primarily crushing for oil and animal feed.

Section 981.55 of the order provides authority for the interhandler transfer of almonds and reserve credits. This section was recently amended to include authority for interhandler transfer of reserve obligations. This proposed rule would implement the authority to transfer reserve withholding obligations by revising § 981.455 of the administrative rules and regulations accordingly. This proposal would provide another option, in addition to those that appear in that section, for handlers to satisfy their reserve obligations. The ability to transfer reserve obligations would particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve inventory or disposing of product to secondary outlets could be reduced. This rule would provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

In past years, handlers either had to maintain product in inventory or dispose of it in approved reserve outlets to satisfy their withholding obligation, as discussed earlier. Those handlers choosing to maintain product in inventory must locate storage facilities and incur storage costs they may not otherwise incur, until the reserve is lifted. Storage costs vary, depending upon factors such as the type of facilities utilized and quantities involved. These costs are generally in the range of one cent per pound per month, with additional charges for moving product into and out of storage facilities. These costs could be incurred for approximately six months to a year and a half depending on the ultimate disposition of the reserve.

Those handlers choosing to dispose of their reserve to approved outlets may save on storage costs, but receive a lower return on the sales than they may receive if sold in normal market channels if the reserve is ultimately released. Price levels for almonds used for crushing into oil are in the range of 28 to 35 cents per pound, while animal feed brings about two to three cents per pound. Price levels for sales to normal market outlets vary significantly from year to year depending on available supplies and market conditions. The additional option that would be provided by this proposal would allow handlers to make arrangements to transfer their reserve obligation to other handlers. Handlers could choose the most cost effective method of satisfying

their reserve obligations that best suits their operations. This proposed rule would provide more flexibility if volume control regulations under the almond marketing order are issued.

A current form is being revised for handlers to supply the transfer information to the Board for its approval. The current form (ABC Form 11) provides for handlers to transfer reserve credits. Information would be added to this form to collect information on transfers of withholding obligation. No additional burden would be added to the form because handlers would choose one of the options on the form. The forms current burden time of 5 minutes would not be changed. This action would not impose any significant additional reporting or recordkeeping requirements on either small or large almond handlers. The benefits of providing another tool to the industry to assist them in making business decisions far outweigh the estimated 5 minutes it would take to complete the form. Further, any additional reporting may be offset by reduced reporting for those handlers choosing to utilize this option in lieu of other options available for satisfying reserve obligations. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. Information generated by State, Federal, and private sector reports pertains to almonds in general and does not contain specific producer and handler information. Therefore, such information would not be detailed enough to be used for the specific purposes required under the order.

The amendment to the marketing order was voted on in a referendum and was overwhelmingly supported by almond growers. This proposal would establish procedures to implement the amendment that authorized transfers of reserve obligations. There are no alternatives that would result in the additional flexibility sought by the industry.

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 committee deliberations on all issues. Like all Board meetings, the February 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Board itself is composed of ten

members, of which five are handlers and five are growers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for almonds grown in California.

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581-0071.

Expiration Date of Approval: August 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California almond marketing order program, which has been operating since 1950.

Several provisions of the marketing order were amended as a result of extensive formal rulemaking proceedings, including a referendum of growers. Section 981.55 of the Order was amended to authorize handlers to transfer reserve withholding obligations during the effective period of a reserve. On February 18, 1997, the Board unanimously recommended implementing accompanying regulations to correspond with this amendment. This notice entails modifying ABC Form 11, which covers reserve credit transfers, to include transfers of reserve withholding obligation.

Handlers are already required to complete the form only during reserve years if they transfer reserve credits. This modification would authorize another option for handlers to dispose of their reserve obligation. This rule would necessitate adding data to this form requiring information from handlers on reserve obligation transfers. Almond handlers wanting to transfer their reserve obligation to another handler would complete their portion of the revised ABC Form 11. The initiating handler would forward the partially completed Form 11 to the handler agreeing to assume the obligation. When the receiving handler completes their portion of the form, it would transfer the form to authorized Board personnel for approval of the transfer. Following the

authorization, the transfer would be deemed complete. Only handlers wanting to transfer reserve or reserve credits would be required to complete the form.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarters staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: California almond growers, handlers and accepted users of inedible almonds.

Estimated Number of Respondents: 7,658.

Estimated Number of Responses per Respondent: 6,022.

Estimated Total Annual Burden on Respondents: 2,512 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0071 and the California Almond Marketing Order No. 981, and be sent to USDA in care of Kathleen Finn at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

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 proposed to be 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.

§ 981.455 [Amended]

2. In § 981.455, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is proposed to be added to read as follows:

§ 981.455 Interhandler transfers.

* * * * *

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to § 981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

* * * * *

Dated: April 4, 1997.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 97-9187 Filed 4-9-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-246018-96]

RIN 1545-AU49

Recomputation of Life Insurance Reserves; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the definition of life insurance reserves.

DATES: The public hearing originally scheduled for April 17, 1997, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Evangelista C. Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under sections 816 and 801

of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** on Thursday, January 2, 1997 (62 FR 71), announced that a public hearing would be held on Thursday, April 17, 1997, beginning at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

The public hearing scheduled for Thursday, April 17, 1997, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97-9112 Filed 4-9-97; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-5801-8]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides and Volatile Organic Compounds Not Covered By Other Category-Specific Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State implementation plan (SIP) revision submitted by the State of Vermont. This revision establishes and requires Reasonably Available Control Technology at major stationary sources of nitrogen oxides and major stationary sources of volatile organic compounds (VOC) which are not covered by other category-specific VOC regulations. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Comments may be mailed to Susan Studien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02203-2211 and, the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT:

Steven A. Rapp, (617) 565-2773, or Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q.

Dated: March 10, 1997.

John P. DeVillars,

Regional Administrator Region I.

[FR Doc. 97-9013 Filed 4-9-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7215]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.