

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

**PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 69 FR 34549 on June 22, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

A. J. Yates,

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-21631 Filed 9-27-04; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 981**

[Docket No. FV04-981-4 FIR]

**Almonds Grown in California; Revision of Quality Control Provisions**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that revised the quality control provisions under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues in effect changes in the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices.

**DATES:** Effective October 28, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Assistant Regional Manager, 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, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto: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 (USDA) 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 USDA 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 USDA 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 USDA'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 continues in effect revisions to the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues to change the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices. This action was unanimously recommended by the Board at a meeting on May 20, 2004.

Section 981.42 of the almond marketing order provides authority for quality control regulations, including a requirement that almonds must be inspected prior to processing (incoming inspection) to determine, by variety, the percentage of inedible kernels in each lot received. The percentage of inedible kernels are reported to individual handlers and the Board, by variety, as determined by the incoming inspection. The Board then calculates each handler's inedible disposition obligation by variety, and handlers are required to dispose of a quantity of almonds equal to their inedible weight obligation.

Section 981.442(a)(2) of the order's rules and regulations defines "variety" for the purpose of calculating handlers' inedible disposition obligations. Prior to implementation of the interim final rule (69 FR 40534; July 6, 2004), "variety" was defined as that variety of almonds which constituted at least 90 percent of the almonds in a lot. Further, if no variety constituted at least 90 percent of the almonds in a lot, the lot was classified as "mixed."

One such mixture is the combination of the Butte and Padre varieties of almonds, which have very similar characteristics. It has become common practice within the industry to harvest the two varieties together and sell them under the marketing classification known as "California". In addition to harvesting and marketing these varieties together, handlers also present them for inspection and report them as "Butte-Padre", rather than "mixed", regardless

of the percentages of each variety that comprise the lot. Previously, mixtures of the Butte and Padre varieties were classified by the Board as "mixed" for purposes of calculating inedible disposition obligations if neither variety constituted at least 90 percent of the lot. To be consistent with the harvesting, reporting, and marketing of the Butte and Padre varieties, mixtures of these varieties are now classified as "Butte-Padre" for the purpose of determining handlers' inedible disposition obligations.

Prior to implementation of the interim final rule, § 981.442(a)(2) also specified that in cases where it was not known which variety constituted at least 90 percent of a mixed lot, the lot should be classified as "unknown." In the past, very small "door lot" deliveries were accumulated by gathering almonds from isolated trees of unknown varieties. This practice is no longer common in the industry, and virtually all almond deliveries consist of known varieties of almonds. Thus, the use of "unknown" is no longer necessary or appropriate.

Harvesting, marketing, and reporting mixtures of Butte and Padre varieties of almonds together as one varietal type and reporting lots of unknown varieties of almonds as "mixed" are now common practices in the industry. In order for the Board to calculate handlers' inedible disposition obligations by variety and to be consistent with current industry practices, it was necessary to implement changes to the administrative rules and regulations. Thus, the Board recommended that the rules and regulations be revised.

Section 981.442(a)(2) of the quality control regulations regarding the classification of varietal types for the purpose of determining handlers' inedible disposition obligations was therefore revised to add "Butte-Padre" as the varietal classification for mixed lots of the Butte and Padre varieties of almonds, regardless of the percentage of each variety in the lot. Other mixed variety lots that do not contain at least 90 percent of one variety will continue to be classified as "mixed." Lots of almonds for which the variety or varieties are not specified will also be classified as "mixed." Accordingly, the "unknown" varietal classification was eliminated.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 the 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 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over \$5,000,000 worth of almonds and about 62 percent of the handlers shipped under \$5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is estimated to be approximately \$199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule continues to revise the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues to change the varietal types of almonds for which inedible obligations are calculated.

Specifically, this rule continues to revise § 981.442(a)(2) of the regulations by adding "Butte-Padre" as the varietal classification for mixed lots of Butte and Padre almonds, regardless of the percentage of each variety in the lot. This rule also continues to designate "mixed" as the varietal classification for lots of unidentified varieties of almonds. Finally, the "unknown" classification

continues to be removed. These revisions will permit the Board to calculate handlers' inedible disposition obligations consistent with current industry harvesting and marketing practices, and handler reporting requirements. This action was reviewed and unanimously recommended by the Food Quality and Safety Committee (FQSC) at its April 27, 2004, meeting, and by the Board at its meeting held on May 20, 2004.

These revisions are not expected to have a financial impact on handlers, including small businesses. The regulations are applied uniformly on all handlers, regardless of size. This action imposes no additional reporting or recordkeeping requirements on either small or large California 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 addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The meetings of the FQSC and the Board were both widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all committee and Board meetings, those held on April 27 and May 20, 2004, were public meetings and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on July 6, 2004. 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 USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 7, 2004. One comment was received during that period, but that comment concerned forest fires and was not relevant to this rulemaking action.

Accordingly, no changes were made to the rule, based on the comment received.

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.

After consideration of all relevant material presented, including the

information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register**, 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 69 FR 40534 on July 6, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–21628 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV04–989–3 FIR]

#### Raisins Produced From Grapes Grown in California; Change to Reporting Requirements Regarding Other Seedless Raisins

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting requirements regarding Other Seedless (OS) raisins under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flame Seedless (Flames) and other red grapes. This rule requires handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted.

**DATES:** Effective October 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes 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 (USDA) 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 USDA 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 USDA 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 USDA’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 continues in effect revisions to the reporting requirements regarding OS raisins under the order. The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flames and other red grapes. This rule continues to require handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted. This action was unanimously recommended by the RAC at a meeting on April 13, 2004.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers. Paragraph (d) of that section provides that, upon request of the RAC, with approval by the Secretary, handlers shall furnish to the RAC other information as may be necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as volume regulation and quality control. The RAC utilizes information collected under the order in its decisionmaking. Section 989.173 of the order’s administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC.

Many of the reports submitted by handlers under the order require information to be segregated by varietal type of raisin. Section 989.10 defines varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient enough to warrant separate identification and classification. Section 989.110 of the order’s administrative rules and regulations contains a list and description of the nine varietal types currently segregated under the order.

One of these varietal types, OS raisins, includes raisins produced from Flames and other similar seedless red grapes. There has been some discussion in recent years regarding whether Flames should be segregated into a separate varietal type. Between the 1995–96 and 2000–01 crop years, volume regulation had not been implemented for OS raisins, and handlers were able to market all of the OS raisins they acquired. During this