



Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS-SC-25-0016]

Almonds Grown in California; Amendment to the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed amendment to Marketing Order No. 981, which regulates the handling of almonds grown in California. The proposed amendment would establish the authority to borrow funds from a commercial lending institution.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be sent to the Docket Clerk electronically by email: MarketingOrderComment@usda.gov or via the internet: <https://www.regulations.gov>. Comments should reference the document number, the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that comments are posted to [regulations.gov](https://www.regulations.gov) without change.

FOR FURTHER INFORMATION CONTACT: Taylor Johnson, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence

Avenue SW, Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or email: MarketOrderComment@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), amending Marketing Order No. 981 (7 CFR part 981; the Order), regulating the handling of almonds grown in California. The Almond Board of California (Board) locally administers the Order and is comprised of growers and handlers of almonds operating within California.

Section 608c(17) of the Act (7 U.S.C. 608c(17)) and the applicable rules of practice and procedure at 7 CFR 900.43 authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule and, based on all the information available, will determine if the amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued, and growers would be allowed to vote for or against the proposed Order amendment. AMS would then issue a final rule effectuating any amendments favored in the referendum.

This action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This rule amends existing Marketing Order No. 981, as amended (7 CFR part 981), Almonds Grown in California, and is necessary for the continued operation of Marketing Order No. 981. Additionally, this action is exempt from the requirements of Executive Order 14192, "Unleashing Prosperity Through Deregulation," pursuant to section 5(c).

This proposed rule has been reviewed under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," which requires

Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This proposed rule is not intended to have retroactive effect. This proposed rule shall not be deemed to preclude, preempt, or supersede any State program covering almonds grown in California.

Section 608c(17) of the Act (7 U.S.C. 608c(17)) and the supplemental rules of practice at 7 CFR 900.43 authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. In determining whether informal rulemaking is appropriate, USDA is required to consider the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed herein is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the “Initial Regulatory Flexibility Analysis” section of this proposed rule.

The Board discussed the proposal at length at its meeting held on August 8, 2024. Following that meeting, the Board voted on the proposed amendment to the Order, nine in favor and one opposed, by electronic vote distributed on August 19 and concluded on August 28, 2024.

Proposal – Seasonal Line of Credit

Section 981.81 of the Order authorizes the collection of assessments from almond handlers to provide funds to meet authorized Board expenses and the operating reserve requirements. This proposal would establish § 981.81(f), to authorize the Board to borrow funds from a commercial lending institution through a seasonal line of credit. The authority to borrow would provide short term funds to address cashflow constraints associated with the timing of program expenditures and revenue collection. This would ensure continuity in operations and Board functions, such as during the first few months of the marketing year when new crop is received but no assessment revenue is collected. Borrowed funds would be repaid within a maximum period of 12 months.

The topic of borrowing authority previously appeared before California almond growers as a proposed amendment to the Order during a proposed rulemaking in April 2023 (88 FR 25559) and subsequent referendum order (88 FR 68500) conducted by USDA between October 30 and November 20, 2023. The proposal to add borrowing authority to the Order received the support of 63.59% of almond growers voting, representing 56.15% of the production volume. To be enacted, at least two-thirds of the growers voting, or at least two-thirds of the volume represented by those growers voting, would need to vote in favor of a proposal. The outcome fell just shy of these thresholds and was not enacted.

The Board reviewed and discussed borrowing authority over several meetings in 2023 and 2024 to identify the underlying cause of the failed amendment. It was determined the cause of the failed amendment was a combination of grower confusion with the regulatory language that appeared on the ballot and a lack of coordinated communication with stakeholders. Despite the failure, the Board maintained that having borrowing authority would allow it to better manage approved expenditures within its established internal control policies, and would help maintain cash flow.

As almond tonnage and assessment revenue have increased since the Order's promulgation, the industry has approved increasingly larger budgets which have year-round financial commitments. However, growers do not necessarily deliver the entire assessable crop at one time, nor do handlers have the facilities to process the entire crop at one time, and handlers instead purchase and market almonds throughout the production cycle. As a result, only about 18 percent of assessment revenue is paid to the Board when the first crop year assessment invoice is sent to handlers in October. Subsequently, the Board invoices for assessments in the second and third quarters of the crop year. Yet, many research activities and marketing programs are initiated early in the crop year, necessitating payment when services are performed, often well before the first assessments are received from October invoices. Although the Board currently maintains a reserve fund to help pay for early expenses, this fund is insufficient to advance some of the necessary payments. Authorizing the Board to borrow from commercial lending institutions would help it manage and sustain program activities during times of cash flow deficiencies.

Board members further noted that the ability to borrow against a line of credit is a common tool authorized in other Federal marketing orders, especially to accommodate expenses when the assessment revenue necessary to pay such expenses is not received until later in the year.

While addressing general business concerns about the potential risks associated with debt financing, the Board agreed that its internal control policies would be revised to reflect the new borrowing authorities. Notably, the Board stressed that these policies would include: monitoring by the finance department to take interest rates, debt levels, and timing of loans into consideration; allowing the lending institution to determine the maximum line of credit available; making the amount of credit needed proportional to the net position; and, ensuring line of credit advances are short term in nature, with preferred

lengths and timelines to be decided by the industry-led finance and audit committee. The Board continues to believe that this proposal would make the Board more operationally efficient while not exceeding approved crop year budget ceilings. The Board does not anticipate this amendment to negatively impact California almond growers or handlers of any size.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 7,596 almond growers in the production area and 100 handlers subject to regulation under the Order. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers of almonds as those having annual receipts equal to or less than \$3,750,000 (North American Industry Classification System (NAICS) code 111335, Tree Nut Farming). Small agricultural service firms, which include almond handlers, are defined by the SBA as those having annual receipts equal to or less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

To estimate the number of almond growers that would be considered small businesses per the SBA definition, AMS calculates the acreage required to produce the volume of almonds at an average price to reach the \$3.75 million threshold. Due to the alternate-bearing nature of almonds, a two-year average is used to estimate price and

yield, based on the most recent National Agricultural Statistics Service (NASS) data for 2023 and 2024. Based on a two-year average price of \$1.93 per pound, shelled, and a two-year average yield of 1,880 pounds per acre, shelled, an almond grower would need more than 1,033 bearing acres to exceed the SBA threshold of \$3.75 million (\$3.75 million divided by \$1.93 per pound, divided by 1,880 pounds per acre). According to the 2022 Census of Agriculture, 134 farms had almond acreage of 1,500 acres or more. This means that of the 7,596 growers in California, at least 98 percent of them would be considered small businesses.

To estimate the number of almond handlers that would be considered small businesses, per the SBA definition, AMS calculates total handler revenue using AMS Market News terminal market prices for almonds and for total California almond production, reported by NASS. The 2024 average terminal market price, used as a proxy for handler price, for almonds grown in California was \$2.82 per pound. Total 2024 California production of almonds was 2.73 billion pounds, shelled. Assuming that all California almonds were processed by domestic handlers, total handler revenue in 2024 is estimated to be nearly \$7.7 billion (\$2.82 per pound multiplied by 2.73 billion pounds). If total handler revenue were evenly distributed among the 100 handlers in the production region, then each handler would have a 2024 annual receipt of nearly \$77 million (\$7.7 billion divided by 100 handlers), surpassing the \$34 million threshold of the SBA definition of a small business. Therefore, based on this analysis, AMS estimates that most almond handlers would not be considered small businesses per the SBA definition.

This proposal would establish § 981.81(f) to authorize the Board to borrow funds from a commercial lending institution through a seasonal line of credit. The authority to borrow funds would provide necessary short term funds, given cashflow constraints associated with the timing of program expenditures and revenue collection. This amendment would better ensure continuity in operations during periods when neither

operating assessments nor reserve funds are sufficient to fund the Board functions.

Borrowed funds would be repaid within a maximum period of 12 months.

The Board noted that the ability to borrow against a line of credit is a common tool authorized in other Federal marketing orders, especially to accommodate expenses when the assessment revenue necessary to pay such expenses is not received until later in the year.

While addressing general business concerns about the potential risks associated with debt financing, the Board agreed that its internal control policies would be revised to reflect the new borrowing authorities. Notably, the Board stressed that these policies would include: monitoring by the finance department to take interest rates, debt levels, and timing of loans into consideration; allowing the lending institution to determine the maximum line of credit available; making the amount of credit needed proportional to the net position; and, ensuring line of credit advances are short term in nature, with preferred lengths and timelines to be decided by the industry-led finance and audit committee. The Board continues to believe that this proposal would make the Board more operationally efficient while not exceeding approved crop year budget ceilings. The Board does not anticipate this to negatively impact California almond growers or handlers of any size

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements are necessary because of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

The Board's meetings are widely publicized throughout the California almond production area. All interested persons are invited to attend the meetings and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the meeting held on August 8, 2024, was public, and all entities, both large and small, were encouraged to express their views on the proposed amendment.

Interested persons are invited to submit comments on the proposed amendment to the Order, including comments on the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendment discussed in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, AMS would publish a proposed rule and notice of referendum, and growers could vote for or against the proposed amendment. AMS would publish information about the referendum, including dates and voter eligibility requirements, in a future issue of the *Federal Register*. AMS would then publish a final rule to effectuate any amendment favored in the referendum.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 981; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 981 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 981 as hereby proposed to be amended regulates the handling of almonds grown in California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 981 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 981 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of almonds produced or packed in the production area; and

5. All handling of almonds grown or handled in the production area, as defined in Marketing Order 981, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Any comments received on the amendment proposed in this rule will be analyzed, and if AMS determines to proceed based on all the information presented, a grower referendum would be conducted to determine grower support for the proposed amendment. If appropriate, a final rule would then be issued to effectuate the amendment favored by growers participating in the referendum.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 981 as follows:

PART 981 – ALMONDS GROWN IN CALIFORNIA.

1. The authority citation for part 981 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 981.81, add paragraph (f) to read as follows:

§ 981.81 Assessment.

* * * * *

(f) *Seasonal Line of Credit.* To provide short term funds given cashflow constraints associated with the timing of program expenditures and revenue collection. The Board may borrow money from a commercial lending institution for such purposes; funds will be repaid within a maximum of 12 months.

Erin Morris,
Administrator,
Agricultural Marketing Service.

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