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DEPA

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS-SC-25-0188]

Almonds Grown in California; Extension of Inedible Disposition Obligation Deadline

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Almond Board of California to extend the inedible disposition obligation deadline prescribed under the Federal marketing order for almonds grown in California from September 30 to November 30 indefinitely.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (559) 487-5901; or email: Jeremy.Sasselli@usda.gov or Abigail.Maharaj@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final 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 producers and handlers of almonds operating within the production area.

This action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This final 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 final 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. The Agricultural Marketing Service (AMS) has determined this final 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 final rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This final rule is not intended to have retroactive effect.

The Act provides that administrative remedies must be exhausted before parties may file suit in court. Under section 608(c)(15)(A) of the Act, any handler subject to an order may file with U.S. Department of Agriculture (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 final rule extends the inedible disposition deadline prescribed under the Order from September 30 to November 30. Section 981.42 of the Order authorizes the Board, with the approval of the Secretary, to establish rules and regulations necessary for the administration of the inedible program for quality control. Under this section, the Order currently mandates that inedible kernels for each almond variety in excess of two percent shall constitute an inedible obligation that must be delivered to the Board or Board-accepted users. Section 981.442 of the Order establishes the disposition obligation schedule for California almonds. These requirements are specified in § 981.442(a)(5) and require handlers to meet the disposition obligation deadline no later than September 30 succeeding the crop year in which the obligation was incurred.

Since the 2023-2024 crop year, meeting the disposition obligation deadline of September 30 has become problematic because heavy winter precipitation and insect damage have increased the percentage of inedible kernels, a trend that industry believes will continue to adversely impact future crops. For example, during the 2022-2023 crop year, the inedible disposition percentage was 2.12 percent. For the 2023-2024 crop year, the percentage was measured at 4.23 percent (the highest inedible percentage in 40 years), and during the 2024-2025 crop year, the inedible disposition percentage was 3.07 percent. Prior to the 2023-2024 crop year, the previous 15-year inedible percentage average was 1.44 percent. Thus, the lower crop quality in 2023-2024 led to the largest recorded inedible disposition at 55.8 million pounds (the previous largest industry inedible disposition was 14.4 million pounds in 2017-2018 at which time the inedible percentage was 2.42 percent). This nearly quadrupling of the inedible disposition obligation meant that in addition to handling a record of 6.7 million pounds of inshell credits, industry was also required to ship a record 49.1 million pounds of inedible kernels by September 30, 2024.

Because recent historical inedible percentages have been around 1.5 percent prior to the 2023-2024 crop year, the two percent inedible tolerance had remained reasonable for industry and could be addressed during the current 14-month timeframe. While the 2024-2025 crop year inedible disposition of 3.09 percent decreased from the record high percentage of 4.23 percent in 2023-2024, the current inedible percentage remains nearly double the historical inedible percentage. Such an increase in the inedible disposition percentage has made it difficult for industry to meet the current September 30 deadline.

Given the notable increase in overall inedible product occurring since 2023, the Board met on June 17, 2025, and unanimously recommended, eight in favor and none opposed, to extend the inedible disposition deadline from September 30 to November 30. This action was previously developed during a Loss & Exempt Task Force meeting on February 26, 2025, where it was supported unanimously, and was voted on at the Almond Quality, Food Safety & Services (AQFSS) Committee meeting on March 20, 2025, where it was also supported unanimously. The Board believes adjusting the deadline by 60 days, from September 30 to November 30, will allow sufficient time and more flexibility for industry to meet the disposition obligation deadline.

Final 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 final 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 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 regulations in that they are brought about through group action of typically small entities acting on their own behalf.

There are approximately 7,600 growers of California almonds subject to regulation under the Order and approximately 100 handlers in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural growers of almonds as those having annual receipts equal to or less than $3,750,000 (North American Industry Classifications System (NAICS) code 111335, Tree Nut Farming). Small agricultural service firms, including handlers, are defined as those whose annual receipts are equal to or less than $34,000,000 (NAICS code 115114, Postharvest Crop Activities).

Data from USDA's National Agricultural Statistics Service (NASS) 2022 Agricultural Census reports that there were 7,596 almond farms with bearing acres in the production area. Additionally, the Census indicates that out of the 7,596 California farms with bearing acres of almonds, 4,805 (63 percent) have fewer than 100 bearing acres.

In its annual *Noncitrus Fruits and Nuts* publication, NASS reported a 2023 crop year average yield of 1,790 pounds per acre (shelled basis) and a season average grower price of $1.64 per pound. Therefore, a 100-acre farm with an average yield of 1,790 pounds per acre would produce about 179,000 pounds of almonds (1,790 pounds times 100 acres equals 179,000 pounds). At $1.64 per pound, that farm's production would be valued at $293,560 (179,000 pounds times $1.64 per pound equals $293,560). Since the Census indicated that 63 percent of California's almond farms have fewer than 100 bearing acres, it could be concluded that the majority of California almond growers had annual receipts from the sale of almonds of less than $293,560 for the 2022 crop year, which is below the SBA threshold of $3,750,000 for small growers. Therefore, the majority of growers may be classified as small businesses.

To estimate the proportion of almond handlers that would be considered small or large businesses, it was assumed that the unit value per pound of almonds exported in a particular year could serve as a representative almond price at the handler level. A unit

value for a commodity is the value of exports divided by the quantity exported. Data from the Global Agricultural Trade System (GATS) database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2022 to July 2023 (shelled equivalent, combining shelled and inshell) was $4.115 billion. The quantity of almond exports over that period was 1.783 billion pounds. Dividing the export value by the quantity yields a unit value of $2.31 per shelled pound ($4.115 billion divided by 1.783 billion pounds equals $2.31).

NASS estimated that the California almond industry produced 2.511 billion pounds of almonds in 2022. Applying the $2.31 derived representative handler price per pound to total industry production results in an estimated total revenue at the handler level of $5.80 billion (2.511 billion pounds times $2.31 per pound equals $5.80 billion). With an estimated 100 handlers in the California almond industry, average revenue per handler would be approximately $58 million ($5.80 billion divided by 100 equals $58 million). Assuming a normal distribution of revenues, most almond handlers shipped almonds valued at more than $34,000,000 during the 2022 crop year. Therefore, the majority of handlers may be classified as large businesses.

This final rule extends the inedible disposition obligation deadline in § 981.442(a)(5) of the Order from September 30 to November 30. This final rulemaking revises § 981.442(a)(5). Authority for this change is provided in § 981.42. This change only impacts the inedible disposition deadline prescribed under the Order. The Board's meetings are widely publicized throughout the California almond industry and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the June 17, 2025, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

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, and 0581-0242, Almond Salmonella. This final rule does not require changes to the current information collection. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule will not impose any 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.

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 final rule.

A proposed rule concerning this action was published in the *Federal Register* on March 9, 2026 (91 FR 11187). Copies of the proposed rule were provided to all almond handlers. In addition, the proposal was made available through the internet by AMS and the Office of the Federal Register via https://www.regulations.gov. A 30-day comment period ending April 8, 2026, was provided for interested persons to respond to the proposal. AMS received four comments during the comment period. Two comments supported the proposal and one comment did not pertain to the merits of the rule. One comment opposed the proposal, expressing dissatisfaction that almond handlers pay almond growers for the edible portion of almonds received and do not pay growers for the inedible portion of the almonds. The comment suggested that handlers should pay growers for both the edible and inedible portion of almonds received; however, the basis

of this comment relates to business decisions and interactions between almond growers and handlers outside of the scope of this action. Accordingly, AMS made no changes to the rule as proposed.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, AMS has determined that this final rule is consistent with and effectuates the purposes of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 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.

§ 981.442 [Amended]

2. Amend § 981.442(a)(5) by removing the word “September” and adding in its place the word “November”.

Erin Morris,
Administrator,
Agricultural Marketing Service.
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