

increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach 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.

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.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the December 18, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on December 11, 2007, 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.

An interim final rule concerning this action was published in the **Federal Register** on March 18, 2008. Copies of the rule were posted on the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. That rule provided a 60-day comment period which ended May 19, 2008. One comment was received from the committees' staff. The comment stated that the trademark name for the currently regulated Burpeachsixteen variety had been established as "Spring Flame® 24." Section 917.459(a)(6) has been modified to include the new trademark name.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 committees' recommendations, and other information, it is found that finalizing this interim final rule, with a change, as published in the **Federal Register** (73 FR 14372, March 18, 2008) will tend to effectuate the declared policy of the Act.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 73 FR 14372 on March 18, 2008, is adopted as a final rule with the following change:

**PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA**

■ 1. The authority citation for part 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 917.459 is amended by revising the introductory text of paragraph (a)(6) to read as follows:

**§ 917.459 California peach grade and size regulation.**

\* \* \* \* \*

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Burpeachfifteen (Summer Flame® 34), Burpeachsixteen (Spring Flame® 24), Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Coral Princess, Country Sweet, Diamond Princess, Earlirich, Early Elegant Lady, Elegant

Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Flame, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Queen Jewel, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Spring Candy, Strawberry, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

\* \* \* \* \*

Dated: July 21, 2008.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–16956 Filed 7–23–08; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 981**

[Docket No. AMS–FV–08–0044; FV08–981–1 IFR]

**Almonds Grown in California; Relaxation of Incoming Quality Control Requirements**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule relaxes the incoming quality control requirements prescribed 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). This rule changes the date by which almond handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. This will provide handlers more flexibility in their operations in light of larger almond crops.

**DATES:** Effective July 25, 2008; comments received by September 22, 2008 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.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, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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. A 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 relaxes the incoming quality control requirements prescribed under the order. This rule changes the date by which almond handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. This will provide handlers more flexibility in their operations in light of larger almond crops.

Section 981.42 of the order provides authority for a quality control program. Paragraph (a) of this section requires handlers to obtain incoming inspections on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. Inedible kernels are poor quality kernels or pieces of kernels as defined in § 981.408. A handler's inedible disposition obligation is based on the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State inspection service. Handlers must satisfy their obligation by disposing of inedible kernels and other almond material in Board-accepted, non-human consumption outlets like oil and animal feed. Section 981.42(a) also provides authority for the Board, with approval of the Secretary, to establish rules and regulations necessary to administer this program.

Section 981.442(a)(5) of the order's administrative rules and regulations currently specifies that handlers must satisfy their inedible disposition obligation no later than August 31 succeeding the crop year in which the obligation was incurred. The crop year runs from August 1 through July 31.

Since the mid-1990s, almond crops have doubled in size and are now over 1 billion pounds annually. Larger crops have resulted in larger quantities of inedible kernels. Between the 1993-94 and 1997-98 crop years, almond production averaged about 570 million pounds and inedible disposition obligations averaged about 7 million pounds annually. Between the 2003-04 and 2007-08 crop years, production

averaged about 1 billion pounds and inedible disposition obligations averaged about 10 million pounds annually.

Many handlers now operate year-round and dispose of their inedible kernels at one time after the end of the crop year. With larger crops, it has become difficult for handlers to meet the August 31 inedible-disposition deadline because of the larger volume of inedible kernels that must be disposed of under the program. Thus, the Board recommended extending the deadline from August 31 to September 30, giving handlers an additional month to meet their prior year's obligation. This will provide handlers more flexibility in their operations in light of larger almond crops. Section 981.442(a)(5) is revised accordingly.

This rule also removes obsolete language in § 981.442(a)(5). That section was modified in 2006 to specify that at least 50 percent (increased from 25 percent) of a handler's crop year inedible disposition obligation must be satisfied with dispositions consisting of inedible kernels. The 50 percent requirement does not apply to handlers with total inedible obligations of less than 1,000 pounds. However, that section still contains the sentence referencing the 25 percent requirement. This rule removes that sentence and revises § 981.442(a)(5) accordingly.

#### Initial 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 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 6,200 producers of almonds in the production area and approximately 100 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 of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Data for the most recently-completed crop year indicate that about 50 percent of the handlers shipped under \$6,500,000 worth of almonds. Dividing average almond crop value for 2006–07 reported by the National Agricultural Statistics Service of \$2.258 billion by the number of producers (6,200) yields an average annual producer revenue estimate of about \$364,190. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule revises and relaxes § 981.442(a)(5) of the order's administrative rules and regulations, whereby handlers will be permitted to satisfy their inedible disposition obligation no later than September 30 of each year for obligations incurred in the previous crop year, rather than the current deadline of August 31 of each year. This rule also removes an obsolete sentence in that section that references handler dispositions containing 25 percent inedible kernels. Authority for this action is provided in § 981.42(a) of the order.

Regarding the impact of this action on affected entities, extending the disposition deadline will provide handlers with additional flexibility in light of larger almond crops. Handlers who operate year round and dispose of their inedible kernels at one time after the end of the crop year will have an additional month to satisfy their prior year's inedible obligation.

The Board considered alternatives to this action. The Board's Food Quality and Safety Committee (committee) met in September and November 2007 and discussed the difficulties that handlers were experiencing with meeting the August 31 disposition deadline. The committee recommended revising the regulation to allow July dispositions to be counted towards either the current year or the following year's obligation. However, the intent of the inedible program is to ensure that poor quality almonds from the current crop year are removed from the market. Thus, allowing July dispositions to count towards the following year's obligation would not meet the intent of the program.

The committee deliberated on this issue again in April 2008. The committee considered the option of extending the August 31 deadline to September 30. The Board concurred with this option at its meeting on April 2, 2008, and referred the issue back to the committee for full discussion. The committee met again on April 22, 2008, to discuss the potential change. Ultimately, the committee recommended this option to the Board,

and the Board unanimously recommended this change at its May 2008 meeting.

This rule will 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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee and Board meetings where this issue was discussed were widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations. Like all committee and Board meetings, the meetings held in September and November 2007, and in April and May 2008 were all public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including 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: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxing the quality control requirements currently prescribed under the California almond marketing order. This rule extends the date by which handlers must satisfy their inedible disposition obligation from August 31 to September 30 of each year. Any comments received will be considered prior to finalization of this rule.

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.

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 should be in place as soon as possible so that handlers can act accordingly; (2) the Board unanimously recommended this change at a public meeting, and interested parties had an opportunity to provide input; (3) this rule relaxes the current rules and regulations; and (4) this rule provides a 60-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.

■ 2. In § 981.442, paragraph (a)(5) the words “At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds.” are removed and the last sentence is revised to read as follows:

#### **§ 981.442 Quality control.**

(a) \* \* \*

(5) \* \* \* Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than September 30 succeeding the crop year in which the obligation was incurred.

\* \* \* \* \*

Dated: July 22, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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