

# 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. FV06-981-2 PR]

#### Almonds Grown in California; Changes to Incoming Quality Control Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on changing the incoming quality control requirements under the administrative rules and regulations of 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). These changes would help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. This action is intended to improve the overall quality of almonds placed into consumer channels.

**DATES:** Comments must be received by August 23, 2006.

**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, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), 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 available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Assistant Regional Manager, or Kurt 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: [Maureen.Pello@usda.gov](mailto:Maureen.Pello@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 proposed 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 proposed rule invites comments on changing the incoming quality control requirements under the administrative rules and regulations of the order. These changes would help minimize the risk of aflatoxin in almonds by removing inedible almonds from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. These changes are intended to improve the overall quality of almonds placed into consumer channels, and were recommended by the Board at a meeting on May 18, 2006.

Section 981.42 of the order provides authority for a quality control program. Paragraph (a) of that 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. Based on these inspections, handlers incur an inedible disposition obligation. They must satisfy their obligation by disposing of inedible almonds in outlets such as oil and animal feed.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in excess of 1 percent of kernel weight shall constitute that handler's disposition obligation. Handlers must satisfy the disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users of such product. Accepted users dispose of this material through non-human consumption outlets. Paragraph (a)(5) of § 981.442 specifies further that at least 25 percent of a handler's total annual disposition obligation be satisfied with inedible kernels as defined under § 981.408. Handlers with total annual inedible obligations of less than 1,000 pounds are exempt from the 25 percent requirement.

Board research has shown that aflatoxin in almonds is directly related to insect damage in inedible kernels. In order to help minimize the risk of aflatoxin in almonds, the Board recommended reducing the tolerance for

inedible kernels from 1 to .50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. Such revisions are intended to improve the overall quality of almonds placed into consumer channels.

All of the Board's members supported the change regarding true inedibles, but three of the Board's 10 members opposed the change to reduce the incoming tolerance for inedible kernels (the Board's chairperson abstained). Those opposed pointed to the existing 2 percent outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. The majority of Board members supported both changes. Paragraphs (a)(4) and (a)(5) of § 981.442 are proposed to be revised 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 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 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 115 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 52 percent of the handlers shipped under \$6,500,000 worth of almonds. Dividing average almond crop value for 2003–2005 reported by the National Agricultural Statistics Service (\$2.171 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about \$362,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities.

This rule would revise paragraphs (a)(4) and (a)(5) of § 981.442 of the order's administrative rules and regulations regarding inedible almonds. These changes would help minimize the risk of aflatoxin in almonds by removing inedible kernels from human consumption. Inedible almonds are poor quality kernels or pieces of defective kernels that may be contaminated with aflatoxin. Specifically, this action would reduce the tolerance for inedible kernels in each variety of almonds received by a handler from 1 to .50 percent, and increase the percent of a handler's annual inedible obligation that must be satisfied with dispositions containing inedible almonds from 25 to 50 percent. Authority for these changes is provided in § 981.42(a) of the order.

Regarding the impact of the proposed action on affected entities, this action is intended to improve the overall quality of almonds placed into consumer channels and therefore would be beneficial to the industry. In addition, this rule is not expected to change handler inspection costs. Handlers must currently have an incoming inspection done on each lot of almonds received to determine the percent of inedible kernels. Additionally, inedible almond dispositions must be inspected to determine the percent of inedible kernels in such dispositions. Such inspections are performed by the inspection agency, which means the Federal-State Inspection Service. The inspection agency charges a fee of \$40 per hour, plus \$0.75 per ton, with a minimum total fee of \$55, to perform an inedible disposition inspection.

The Board considered various alternatives and options before making its recommendation on inedible almonds. It was decided that a 0.5 percent tolerance was appropriate rather than 0 percent. As previously stated, opposition Board members pointed to the existing 2 percent outgoing tolerance and expressed concern about additional costs that handlers may incur to separate out inedible kernels. Ultimately, the majority of Board members supported both changes. The Board's Food Quality and Safety (FQS) Committee met again via teleconference on June 13, 2006, and concurred with the Board's recommendation.

This action would impose no additional reporting and recordkeeping burden on California almonds handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. 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 compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. There are U.S. Standards for Grades of Shelled Almonds (7 CFR 51.2105 through 51.2131) and U.S. Standards for Grades of Almonds in the Shell (7 CFR 51.2075 through 51.2091) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). However, these standards are voluntary for the almond industry.

Additionally, the meetings were 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 Board meetings, the task force meetings on March 23 and April 26, 2006, the FQS Committee meetings on April 11, May 8, and June 13, 2006, and the Board meeting on May 18, 2006, were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on 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/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.

A 7-day comment period is provided to allow interested persons to respond to this proposal. Seven days is deemed appropriate because the 2006–07 crop year begins on August 1, 2006, and therefore, this rule, if adopted, should be in effect as soon as possible.

### 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.

2. Section 981.442 is amended by revising the first sentence of paragraph (a)(4)(i) and the eleventh sentence in paragraph (a)(5) to read as follows:

### § 981.442 Quality control.

(a) \* \* \*

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of .50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. \* \* \*

\* \* \* \* \*

(5) *Meeting the disposition obligation.* \* \* \* At least 50 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 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. \* \* \*

\* \* \* \* \*

Dated: August 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–6941 Filed 8–11–06; 2:16 pm]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2006–25563; Directorate Identifier 2006–NM–083–AD]

RIN 2120–AA64

#### Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F,

24F–A, 25, 25A, 25B, 25C, 25D, 25F, 28, 29, 31, 31A, 35, 35A (C–21A), 36, 36A, 55, 55B, and 55C airplanes. This proposed AD would require modifying the left- and right-hand standby fuel pump switches. This proposed AD would also require revising the Emergency and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew of the proper procedures to follow in the event of failure of the standby fuel pump to shut off. This proposed AD results from a report of inadvertent operation of a standby fuel pump due to an electrical system malfunction. We are proposing this AD to prevent this inadvertent operation, which could result in inadvertent fuel transfer by the left or right wing fuel system and subsequent over-limit fuel imbalance between the left and right wing fuel loads. This imbalance could affect lateral control of the airplane which could result in reduced controllability.

**DATES:** We must receive comments on this proposed AD by October 2, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for the service information identified in this proposed AD

**FOR FURTHER INFORMATION CONTACT:**

James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your

comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA–2006–25563; Directorate Identifier 2006–NM–083–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://dms.dot.gov>.

**Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report indicating that inadvertent operation of a standby fuel pump due to an electrical system malfunction occurred on a Learjet Model 35A (C–21A) airplane. This condition, if not corrected, could result in inadvertent fuel transfer by the left or right wing fuel system and subsequent over-limit fuel imbalance between the left and right wing fuel loads. This imbalance could affect lateral control of the airplane which could result in reduced controllability.

**Relevant Service Information**

We reviewed the Bombardier service bulletins identified in the following table: