

Reporting and recordkeeping requirements.

7 CFR Part 801

Exports, Grains, Scientific equipment.

■ For the reasons set out in the preamble, we are amending 7 CFR parts 800 and 801 as follows:

**PART 800—GENERAL REGULATIONS**

■ 1. Revise the authority citation for part 800 to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. Amend § 800.71 by revising Table 1(2) (i through xi) and revising Table 2(1)(v) and (2)(ii) in Schedule A of paragraph (a) to read as follows:

**§ 800.71 Fees Assessed by the Service.**  
(a) \* \* \*

**TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT’S FACILITY IN AN ONSITE FGIS LABORATORY<sup>1</sup>**  
Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

(2) Additional Tests (cost per test, assessed in addition to the hourly rate): <sup>3</sup>	
(i) Aflatoxin (rapid test kit method) .....	\$10.00
(ii) NIR or NMR Analysis (protein, oil, starch, etc.) .....	2.25
(iii) Vomitoxin (qualitative) .....	12.50
(iv) Vomitoxin (quantitative) .....	18.50
(v) Waxy corn (per test) .....	2.25
(vi) Fees for other tests not listed above will be based on the lowest noncontract hourly rate .....	
(vii) Other services .....	
(a) Class Y Weighing (per carrier) .....	
(1) Truck/container .....	0.30
(2) Railcar .....	1.25
(3) Barge .....	2.50

**TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT’S FACILITY IN AN FGIS LABORATORY<sup>1 2</sup>**

(1) Original Inspection and Weighing (Class X) Services * * *	
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method) .....	\$30.00
(b) NIR or NMR Analysis (protein, oil, starch, etc.) .....	10.00
(c) Vomitoxin (qualitative) .....	31.00
(d) Vomitoxin (quantitative) .....	38.50
(e) Waxy corn (per test) .....	10.00
(f) Canola (per test_00 dip test) .....	10.00
(g) Pesticide Residue Testing: <sup>3</sup>	
(1) Routine Compounds (per sample) .....	216.00
(2) Special Compounds (per hour per service representative) .....	115.00
(h) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. <sup>4</sup> * * *	
(ii) Additional tests (assessed in addition to all other applicable tests):	
(a) Aflatoxin (rapid test kit method) .....	\$30.00
(b) NIR or NMR Analysis (protein, oil, starch, etc.) .....	17.70
(c) Vomitoxin (per test-qualitative) .....	41.00
(d) Vomitoxin (per test-quantitative) .....	47.00
(e) Vomitoxin (per test-HPLC Board Appeal) .....	141.00
(f) Pesticide Residue Testing: <sup>3</sup>	
(1) Routine Compounds (per sample) .....	216.00
(2) Special Compounds (per hour per service representative) .....	115.00
(g) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	

**PART 801—[AMENDED]**

■ 3. Revise the authority for part 801 to read as follows:

Authority: 7 U.S.C. 71–87k

■ 4. Amend § 801.7 by adding a new paragraph (b)(4) to read as follows:

**§ 801.7 Reference methods and tolerances for near-infrared spectroscopy (NIRS) analyzers.**

\* \* \* \* \*

(b) \* \* \*

(4) NIRS barley protein analyzers. The maintenance tolerances for the NIRS analyzers used in performing official

inspections for determination of barley protein content are 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the Combustion method, AOAC International Method 992.23.

Pat Donohue-Galvin,  
Acting Administrator, Grain Inspection,  
Packers and Stockyards Administration.  
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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 981**

[Docket No. FV06–981–2 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This rule changes 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 will 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.

**EFFECTIVE DATE:** This final rule becomes effective on November 9, 2006.

**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 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 changes the incoming quality control requirements under the administrative rules and regulations of the order. These changes will 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 (hereinafter referred to as "true inedibles"). 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 0.50 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 voluntary 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 revised accordingly.

#### 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 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 revises paragraphs (a)(4) and (a)(5) of § 981.442 of the order's administrative rules and regulations regarding inedible almonds. These changes will 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 reduces the tolerance for inedible kernels in each variety of almonds received by a handler from 1 to 0.50 percent, and increases 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 this action on affected entities, this action is intended to improve the overall quality of almonds placed into consumer channels and therefore should 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 0.50 percent tolerance was appropriate rather than 0 percent. As previously stated, Board members opposed pointed to the existing 2 percent voluntary 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 imposes 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, Vegetable and Specialty Crops. 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.

The 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.

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.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2006 (71 FR 47152). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 7-day comment period ending August 23, 2006, was provided for interested persons to respond to the proposal. Five comments were received from industry handlers opposed to the proposed reduced tolerance for inedible kernels from 1 to 0.50 percent. All the points raised in these five comments were previously discussed by the almond industry at the meetings cited earlier in this rule.

Two of the commenters believe that reducing the incoming tolerance for inedible kernels will not remove

additional inedible almonds from the market. They pointed to the existing voluntary outgoing tolerances for seriously damaged kernels in the U.S. Standards for Grades of Shelled Almonds (1 percent tolerance for U.S. Fancy and 2 percent tolerance for U.S. Select Sheller run). One commenter also pointed to the Board's voluntary aflatoxin sampling plan that recommends that loads of almonds with over 2 percent serious damage be tested for aflatoxin. The commenters contend that reducing the incoming tolerance will not cause handlers to ship almonds at a lower outgoing tolerance into the market.

We disagree with these comments. Reducing the incoming tolerance for inedible kernels will remove more inedible almonds from channels of commerce. Let us assume that the annual almond production is 1 billion pounds, of which 3 percent or 30 million pounds ( $.03 \times 1$  billion pounds) are inedible. The current inedible program provides for a 1 percent tolerance, or 10 million pounds ( $.01 \times 1$  billion pounds) of almonds that can be inedible and sold into normal market channels. Thus, 20 million pounds ( $.02 \times 1$  billion pounds) must be disposed of into specified outlets for inedible almonds. Of the 20 million pounds, only 25 percent, or 5 million pounds, must be true inedibles, and the remaining 15 million pounds can be edible, inedible, or meal.

In comparison, the revised inedible program provides for a tolerance of 0.50 percent, or 5 million pounds ( $.005 \times 1$  billion pounds) of almonds that can be inedible and sold into normal market channels. Thus, 25 million pounds ( $.025 \times 1$  billion pounds) must be disposed of into specified outlets for inedible almonds. Of the 25 million pounds, 50 percent, or 12.5 million pounds, must be true inedibles, and the remaining 12.5 million pounds can be edible, inedible, or meal.

In summary, a total of 5 million pounds of true inedible almonds are removed from the market annually under the current program, and 12.5 million pounds of almonds will be removed annually under the revised program. Thus, the revised program will remove an additional 7.5 million pounds of inedible almonds from the market.

A commenter also stated that reducing the incoming tolerance from 1 to 0.50 percent may provide an unfair advantage for larger processors that have blanching facilities. We disagree. The process of blanching involves scalding the almonds with hot water to remove the skins, and then running the almonds

through a series of rollers to remove any remaining skin and smooth the almond surface. Handlers with blanching equipment may clean up inedible almonds for market. However, increasing the percent of a handler's total annual obligation that must be true inedible from 25 to 50 percent will reduce the amount of inedible almonds that are available to be cleaned up with blanching equipment. Additionally, the revised tolerances apply to all handlers throughout the industry, regardless of size or processing capabilities.

Another commenter expressed concern that the reduced incoming tolerance is only being applied to the California almond industry, and that other producing countries like Spain and Australia would not be impacted by the change. The commenter added that the real concern to the California industry is aflatoxin, and suggested that the industry focus more on testing almonds prior to shipment rather than tightening up the inedible almond program under the order.

The comment correctly points out that the revised tolerances are applied under the California almond marketing order, and are only applicable to domestic California production. However, concerning the issue of aflatoxin, a number of initiatives have been recommended by the Board. For example, the Board has endorsed a voluntary aflatoxin sampling plan that recommends that loads of almonds with over 2 percent serious damage be tested for aflatoxin. Additionally, 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, the Board recommended reducing the tolerance for inedible kernels from 1 to 0.50 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. This rule implements the Board's recommendation.

Two commenters expressed concern that this issue was not fully deliberated by the Board and/or its committees. However, the Board formed a task force to address the industry's concerns regarding aflatoxin. The task force met on March 23 and April 26, 2006, and recommended reducing the incoming tolerance from 1 to 0 percent, and increasing the percent of a handler's total annual inedible obligation that must be true inedibles from 25 to 50 percent. The FQS Committee reviewed the task force's proposal on April 11 and again on May 8, 2006. After much discussion, the FQS Committee reached a compromise and recommended that

the incoming tolerance be reduced from 1 to 0.50 percent. The FQS Committee concurred with the proposal regarding true inedibles. The Board considered the issue on May 18, 2006. Ultimately, the majority of Board members concurred with the FQS Committee's proposal. The FQS Committee met again via teleconference on June 13, 2006, revisited the issue, and reaffirmed its previous recommendation that was ultimately approved by the Board and submitted to USDA. Thus, the issue was fully deliberated at several meetings, and interested persons had ample opportunity to express their views and participate in the discussions.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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 this 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–07 crop year began on August 1, 2006, and handlers are disposing of inedible almonds. These changes should be in effect for as much of the crop year as possible. Handlers are aware of this action which was recommended at a public meeting. Additionally, a 7-day comment period was provided for in the proposed 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. 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 0.50 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: November 3, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–9133 Filed 11–3–06; 4:34 pm]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 626**

**RIN 1901–AB16**

**Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve**

**AGENCY:** Office of Petroleum Reserves, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Energy Policy Act of 2005 (EPAct 2005) directs the Secretary of Energy (Secretary) to develop procedures for the acquisition of petroleum for the Strategic Petroleum Reserve (SPR) in appropriate circumstances. On April 24, 2006, the Department of Energy (DOE) published proposed procedures in the **Federal Register** for public comment. Today DOE is issuing the final rule governing procedures for the acquisition of petroleum for the SPR, including acquisition by direct purchase and transfer of royalty oil from the Department of the Interior (DOI). The final rule also has provisions concerning the deferral of scheduled deliveries of petroleum for the SPR. With the exception of some minor clarification changes and definitional and editorial adjustments, these final procedures are substantially the same as those proposed.