

# 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. AO-214-A7; AMS-FV-07-0050; FV07-981-1]

#### Almonds Grown in California; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Order No. 981

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Order No. 981 (order), which regulates the handling of almonds grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Almond Board of California (Board), which is responsible for local administration of the order. The amendments would authorize the establishment of different outgoing quality requirements for different markets and would authorize the establishment of bulk container marking and labeling requirements. The proposals are intended to provide additional flexibility in administering the quality control provisions of the order and provide the industry with additional tools for the marketing of almonds.

**DATES:** The referendum will be conducted from March 24 through April 11, 2008. The representative period for the purpose of the referendum is August 1, 2006, through July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; Telephone: (559) 487-5110, Fax: (559) 487-5906, or E-mail: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov); or Laurel

May, 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: [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov).

Small businesses may request information on this proceeding 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:** Prior documents in this proceeding: Notice of Hearing issued on June 29, 2007, and published in the July 6, 2007, issue of the *Federal Register* (72 FR 36900), and a Recommended Decision issued on December 21, 2007, and published in the December 28, 2007, issue of the *Federal Register* (72 FR 73671).

This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

#### Preliminary Statement

The proposed amendments are based on the record of a public hearing held August 2, 2007, in Modesto, California, to consider such amendments to the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-612), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing was published in the *Federal Register* on July 6, 2007 (72 FR 36900), and contained amendment proposals submitted by the Board.

The amendments included in this decision would:

1. Authorize the establishment of different outgoing almond quality requirements for different markets; and
2. Authorize the establishment of container marking and labeling requirements.

In addition, the Agricultural Marketing Service (AMS) proposed to make changes as may be necessary to the order, if any of the proposed

changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on December 21, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture (USDA), a Recommended Decision and Opportunity to File Written Exceptions thereto by January 17, 2008. None were filed.

#### Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,500,000. Small agricultural producers have been defined as those with annual receipts of less than \$750,000.

There are approximately 104 handlers of almonds subject to regulation under the order and approximately 6,000 producers of almonds in the regulated area. Information provided at the hearing indicates that approximately 50 percent of the handlers would be considered small agricultural service firms. According to data reported by the National Agricultural Statistics Service (NASS), the two-year average crop value for 2005-06 and 2006-07 was \$2.283 billion. Dividing that average by 6,000 producers yields average estimated producer revenues of \$380,500, which suggests that the majority of almond producers would also be considered small entities according to the SBA's definition.

The order regulates the handling of almonds grown in the state of California. The California almond bearing acreage increased nearly 40

percent between 1996 and 2006, from 418,000 to 585,000 acres. Approximately 1.115 billion pounds (shelled basis) of almonds were produced during the 2006–07 season. Bearing acreage for the 2007–08 season is estimated to be 615,000 acres. NASS has forecasted that the 2007–08 crop will reach 1.330 billion pounds (shelled basis). More than two thirds of California's almond crop is exported to approximately 90 countries worldwide, and comprises nearly 80 percent of the world's almond supply.

Under the order, incoming and outgoing quality regulations are established, statistical information is collected, production research projects are conducted, and marketing research and generic promotion programs are sponsored. Program activities administered by the Board are designed to support large and small almond producers and handlers. The 10-member Board is comprised of both producer and handler representatives from the production area. Board meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in Board deliberations, and each Board member has an equal vote. Others in attendance at meetings are also allowed to express their views.

The Board's Food Quality and Safety Committee discussed the need for amendments to the order at meetings held on May 12, 2005; July 20, 2005; and November 1, 2006. The Board approved language for two proposed amendments to the order at their meeting on November 28, 2006. During a conference call on February 27, 2007, the Board confirmed that the two amendments should be proposed to USDA. The views of all participants were considered throughout this process.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The proposed amendments are intended to provide the Board and the industry with additional flexibility in the marketing of California almonds. Record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size. There would be no cost implications for handlers or growers from adding the proposed order authorities. Costs of implementation would be incurred only if specific additional requirements were established following future informal rulemaking. All grower and handler witnesses supported the proposed

amendments and commented on the implications of implementing specific requirements in the future. In that context, witnesses stated that they expected the benefits to be substantial and the costs of any future requirements to be minimal.

A description of the proposed amendments and their anticipated economic impact on small and large entities is discussed below.

#### **Proposal 1—Adding the Authority To Establish Different Outgoing Quality Requirements for Different Markets**

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have no economic impact on producers or handlers of any size. Regulations implemented under that authority could impose additional costs on handlers required to comply with them. However, witnesses testified that establishing mandatory regulations for different markets could increase the industry's credibility and reduce the risk that shipments of substandard product could jeopardize the entire industry's reputation. Record evidence shows that any additional costs are likely to be offset by the benefits of complying with those requirements.

Witnesses cited decreased delays and demurrage charges, as well as fewer rejected loads and increased customer confidence, as expected benefits. Recently, almonds have been rejected in the EU due to aflatoxin levels exceeding its importing tolerances. Information provided at the hearing shows that the rejection of a 44,000 pound container of almonds in the EU costs about \$10,000, or 22.7 cents per pound. The cost includes demurrage for unanticipated delays at port, warehousing product while awaiting official import testing results, shipping rejected almonds back to the U.S., and shipping a replacement container back to the EU.

To reduce the risk of rejections, the California almond industry developed a voluntary aflatoxin testing protocol. Witnesses estimated that the cost of the pre-export testing, including the value of the sample, analytical fees, courier fees, and sampling labor is less than 2 cents per pound, which is less than 10 percent of the cost associated with a rejection. Proponents testified that if a requirement that all almonds destined for the EU be tested prior to shipment was established under authority provided by the proposed order amendment, handlers would incur the cost of testing, but those costs would be expected to be more than offset by the reduced risk of rejections.

It's likely that most handlers are already complying with their customers' specific market requirements on a voluntary basis as a part of doing business, but witnesses explained that mandatory requirements lend credibility to the entire industry. In addition, such requirements could reduce the risk that one shipment of substandard product would jeopardize the entire industry's reputation.

Currently, outgoing quality requirements established under the order apply to all handler entities regardless of size. If the proposed amendment and subsequent regulations established thereunder are implemented, distribution of any increased costs between small and large entities would depend on the requirements established for the markets to which individual handlers shipped their almonds as well as the volume of almonds shipped to those markets. But increases in cost would be equitable to all entities because requirements for each market would be imposed uniformly on all handlers shipping to that market.

Witnesses explained that almonds are used in many different ways by the various markets. In Europe, almonds are widely used as marzipan and ingredients for baked goods, candy, and other dishes. In India and the Middle East, almonds are presented as gifts at holidays and weddings, and play a part in other cultural traditions. India imports large quantities of inshell almonds that are then processed by hand. The wide range of uses leads to a similarly wide array of customer requirements.

According to record testimony, handlers adapt their export methods to satisfy customer requirements. One witness explained that it is often difficult for smaller handlers to stay informed of rapidly changing import regulations. The witness stated that small handlers in particular would benefit from the proposed authority to establish different requirements for different markets by avoiding costly mistakes that could be associated with not understanding various market and import requirements. If regulations were established under the proposed authority, the Board would provide information about updated requirements to the industry.

Finally, one witness explained that having the ability under the order to establish different outgoing quality requirements for different markets would not restrict handlers' choices regarding which markets to supply. Rather, the provision would ensure that the important standards that

differentiate markets would be consistently met by all handlers shipping to those markets.

### **Proposal 2—Adding the Authority To Establish Container Labeling and Marking Requirements**

The proposal described in Material Issue No. 2 would add § 981.43 to the order to provide general authority to establish container marking and labeling requirements. If implemented, the proposed amendment would allow the Board, through the informal rulemaking process, to recommend and establish uniform container marking and labeling regulations in response to evolving market requirements. Under current order provisions, there is only very limited authority for container marking and labeling requirements.

Witnesses testified that the lack of this authority has hindered them from adapting quickly and appropriately to recent market situations. In one case described at the hearing, the industry was unable to implement container marking or labeling following recalls for possible *Salmonella* contamination. Witnesses stated that customer confidence in almond quality could have been reinforced if the necessary authority to establish marking and labeling requirements had been available. Such authority would have allowed the industry to prescribe labeling to clearly indicate which almonds had been treated to reduce risk of contamination.

The proposed amendment would allow the industry to respond to evolving market needs as they develop by establishing uniform and consistent marking and labeling requirements. According to proponents, the ability to communicate important product information to customers in a uniform and consistent manner will be essential as the industry strives to maintain its position in the expanding global marketplace.

If the proposed amendment is implemented, costs of complying with any regulations established thereunder would not be disproportionate to small businesses. Witnesses testified that applying labels and marks to almond containers is currently a common practice, and industry handlers already have container marking processes and equipment in place. Therefore, the costs associated with the addition of uniform marking or labeling requirements would be minimal for both small and large entities. The record shows that any costs would likely be offset by the benefits derived from being more responsive to market demands.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size. Further, the record shows that the costs associated with implementing regulations would be outweighed by the benefits expected to accrue to the California almond industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the order to the benefit the California almond industry.

### **Paperwork Reduction Act**

Information collection requirements for Part 981 are currently approved by the Office of Management and Budget (OMB), under OMB Number 0581-0178, Vegetable and Specialty Crops. Implementation of these proposed amendments would not trigger any changes to those requirements. Should any such changes become necessary in the future, they would be submitted to OMB for approval.

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 Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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.

### **Civil Justice Reform**

The amendments to Marketing Order 981 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 no later than 20 days after the date of the entry of the ruling.

### **Findings and Conclusions**

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the December 28, 2007 issue of the **Federal Register** are hereby approved and adopted.

### **Marketing Order**

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Almonds Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered,* That this entire decision be published in the **Federal Register**.

### **Referendum Order**

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referendum (7 CFR part 900.400-407) to determine whether the annexed order amending the order regulating the handling of almonds grown in California is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of almonds in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2006, through July 31, 2007.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel and Terry Vawter, 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: [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov) or [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov), respectively.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Dated: February 27, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

**Order Amending the Order Regulating the Handling of Almonds Grown in California<sup>1</sup>***Findings and determinations*

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; 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.

*(a) Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Order No. 981 (7 CFR part 981), regulating the handling of almonds grown in California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of almonds grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited to its 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 orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(4) The marketing order, as amended, and as hereby proposed to be further 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 grown in the production area; and

(5) All handling of almonds grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**Order Relative to Handling**

*It is therefore ordered,* That on and after the effective date hereof, all handling of almonds grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on December 21, 2007, and published in the **Federal Register** (72 FR 73671) on December 28, 2007, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

**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. Amend paragraph (b) of § 981.42 by adding the following sentence before the last sentence to read as follows:

**§ 981.42 Quality control.**

\* \* \* \* \*

(b) \* \* \* The Board may, with the approval of the Secretary, establish different outgoing quality requirements for different markets. \* \* \*

3. Add a new § 981.43 to read as follows:

**§ 981.43 Marking or labeling of containers.**

The Board may, with the approval of the Secretary, establish regulations to require handlers to mark or label their containers that are used in packaging or handling of bulk almonds. For purposes of this section, *container* means a box, bin, bag, carton, or any other type of receptacle used in the packaging or handling of bulk almonds.

[FR Doc. E8–4017 Filed 2–29–08; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2008–0177; Directorate Identifier 2007–CE–093–AD]

RIN 2120–AA64

**Airworthiness Directives; Taylorcraft Models A, B, and F Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document makes a correction to a current notice of proposed rulemaking (NPRM), which was published in the **Federal Register** on February 20, 2008 (73 FR 9239), and applies to certain Taylorcraft Models A, B, and F series airplanes. The NPRM proposed to require inspection of the wing strut attach fittings for corrosion or cracks and would require repair or replacement if corrosion or cracks are found. The docket number was incorrectly referenced at “FAA–2007–0177” instead of “FAA–2008–0177.” The NPRM is posted in the FAA–2008–0177 docket section of the Federal Docket Management System (FDMS). This document corrects the docket number and should further reduce the confusion associated with the inadvertent error.

**DATES:** We must receive comments on this proposed AD by March 21, 2008.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andy McAnaul, Aerospace Engineer, 10100 Reunion Place, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

**SUPPLEMENTARY INFORMATION:****Discussion**

On February 12, 2008, the FAA issued an NPRM (73 FR 9239; February 20,