

a quarantined State prior to the start of the 2004 season of Japanese beetle activity, which begins in mid-June in many parts of the country. Therefore, in this interim rule we are amending the regulations in § 301.48(a) by adding Arkansas to the list of quarantined States.

#### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of Japanese beetle to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the Japanese beetle quarantine and regulations to add the State of Arkansas to the list of quarantined States. This action is necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

In 2002, agricultural crop receipts for the nine Japanese beetle protected States (Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington) totaled \$32 billion. A majority of the agricultural producers in those States can be classified as small entities under the guidelines set by the Small Business Administration (SBA) of \$750,000 or less in annual receipts. Agricultural production is an important part of these nine protected States' economies. The benefits of protecting these States from Japanese beetle are worth the slight costs associated with inspections and/or occasional treatments within quarantined States as required by the regulations.

The groups affected by this action will be air carriers flying from regulated airports in Arkansas to protected States. The cost incurred by these entities is not expected to significantly change due to

the few flights that will ultimately require treatment. While it is impossible to know exactly how many flights will require inspection and/or treatment for Japanese beetle, the number is expected to be small.

The majority of air cargo is transported by large businesses. According to SBA size standards, an air carrier with more than 1,500 employees is considered to be large. The exact number or percentage of small air carriers who may be affected is not currently known, however the economic impacts will be limited since many entities are already required to treat cargo transported to those States currently listed as protected States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat.

1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

#### § 301.48 [Amended]

■ 2. In § 301.48, paragraph (a) is amended by adding the word “Arkansas,” after the word “Alabama,”.

Done in Washington, DC, this 30th day of June, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–15214 Filed 7–2–04; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04–981–4 IFR]

#### Almonds Grown in California; Revision of Quality Control Provisions

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

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

**SUMMARY:** This rule revises the quality control provisions 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). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices.

**DATES:** Effective August 1, 2004; comments received by September 7, 2004 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, E-mail:

*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:**

Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, 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.

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*.

**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 revises the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices. This action was unanimously recommended by the Board at a meeting on May 20, 2004.

Section 981.42 of the almond marketing order provides authority for quality control regulations, including a requirement that almonds must be inspected prior to processing (incoming inspection) to determine, by variety, the percentage of inedible kernels in each lot received. The percentage of inedible kernels are reported to individual handlers and the Board, by variety, as determined by the incoming inspection. The Board then calculates each handler's inedible disposition obligation by variety, and handlers are required to dispose of a quantity of almonds equal to their inedible weight obligation.

Section 981.442(a)(2) of the order's rules and regulations defines "variety" for the purpose of calculating handlers' inedible disposition obligations. Currently, "variety" is defined as that variety of almonds which constitutes at least 90 percent of the almonds in a lot. Further, if no variety constitutes at least 90 percent of the almonds in a lot, the lot is classified as "mixed". One such mixture is the combination of the Butte and Padre varieties of almonds, which

have very similar characteristics. It has become common practice within the industry to harvest the two varieties together and sell them under the marketing classification known as "California". In addition to harvesting and marketing these varieties together, handlers also present them for inspection and report them as "Butte-Padre", rather than "mixed", regardless of the percentages of each variety that comprise the lot. Mixtures of the Butte and Padre varieties are classified by the Board as "mixed" for purposes of calculating inedible disposition obligations if neither variety constitutes at least 90 percent of the lot.

To be consistent with the harvesting, reporting, and marketing of the Butte and Padre varieties, mixtures of these varieties should be classified as "Butte-Padre" for the purpose of determining handlers' inedible disposition obligations.

Currently, § 981.442(a)(2) also specifies that in cases where it is not known which variety constitutes at least 90 percent of a mixed lot, the lot should be classified as "unknown". In the past, very small "door lot" deliveries were accumulated by gathering almonds from isolated trees of unknown varieties. This practice is no longer common in the industry, and virtually all almond deliveries consist of known varieties of almonds. Thus, the use of "unknown" is no longer necessary or appropriate.

Harvesting, marketing, and reporting mixtures of Butte and Padre varieties of almonds together as one varietal type and reporting lots of unknown varieties of almonds as "mixed" are now common practices in the industry. In order for the Board to calculate handlers' inedible disposition obligations by variety and to be consistent with current industry practices, it is necessary to implement changes to the administrative rules and regulations. Thus, the Board recommended that the rules and regulations be revised.

Section 981.442(a)(2) of the quality control regulations regarding the classification of varietal types for the purpose of determining handlers' inedible disposition obligations is therefore revised to add "Butte-Padre" as the varietal classification for mixed lots of the Butte and Padre varieties of almonds, regardless of the percentage of each variety in the lot. Other mixed variety lots that do not contain at least 90 percent of one variety will continue to be classified as "mixed". Lots of almonds for which the variety or varieties are not specified will also be classified as "mixed". Accordingly, the

“unknown” varietal classification is eliminated.

#### 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 119 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 less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over \$5,000,000 worth of almonds and about 62 percent of the handlers shipped under \$5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately \$199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule revises the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule changes the varietal types of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal types

that are consistent with current industry harvesting and marketing practices, and handler reporting requirements.

Specifically, this rule revises § 981.442(a)(2) of the regulations by adding “Butte-Padre” as the varietal classification for mixed lots of Butte and Padre almonds, regardless of the percentage of each variety in the lot. This rule also designates “mixed” as the varietal classification for lots of unidentified varieties of almonds. Finally, the “unknown” classification is removed. These revisions will permit the Board to calculate handlers' inedible disposition obligations consistent with current industry harvesting and marketing practices, and handler reporting requirements. This action was reviewed and unanimously recommended by the Food Quality and Safety Committee (FQSC) at its April 27, 2004, meeting, and by the Board at its meeting held on May 20, 2004.

These revisions are not expected to have a financial impact on handlers, including small businesses. The regulations are applied uniformly on all handlers, regardless of size. This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

The meetings of the FQSC and the Board were both 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 committee and Board meetings, those held on April 27, and May 20, 2004, 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.

This rule invites comments on a change to the quality control requirements under the California almond marketing order. Any comments

received will be considered prior to finalization of this rule.

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 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) The 2004–05 crop year begins on August 1, 2004, and quality control regulations apply to all almonds received during the entire crop year; (2) handlers are aware of this action which was unanimously recommended by the Board at a public meeting; and (3) this interim final rule provides a 60-day comment period, and all comments timely 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. Section 981.442 is amended by revising paragraph (a)(2) to read as follows:

#### § 981.442 Quality control.

(a) \* \* \*

(1) \* \* \*

(2) *Variety*. For the purpose of classifying receipts by variety to determine a handler's disposition obligation, “variety” shall mean that variety of almonds which constitutes at least 90 percent of the lot: *Provided*, That lots containing a combination of Butte and Padre varieties only, shall be classified as “Butte-Padre”, regardless of the percentage of each variety in the lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be classified as “mixed”: *Provided further*, That if the variety or varieties of almonds in a lot are not identified, the lot shall be classified as “mixed”,

regardless of the percentage of each variety in a lot.

\* \* \* \* \*

Dated: June 30, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04-15278 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM282 Special Conditions No. 25-267-SC]

#### Special Conditions: Learjet Model 35, 35A, 36, and 36A Series Airplanes; High Intensity Radiated Fields (HIRF)

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Learjet Model 35, 35A, 36, and 36A series airplanes modified by Flight Test Associates. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates installation of a Honeywell Model BA-250 altimeter indicator and a Model AM-250 barometric altimeter. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 3, 2004. Comments must be received on or before August 5, 2004.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM282, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM282.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Edgar, FAA, Standardization

Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2025; facsimile (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

##### Background

On December 19, 2003, Flight Test Associates, Incorporated, of Mojave, California, applied to the FAA, Los Angeles Aircraft Certification Office, for a supplemental type certificate (STC) to modify Learjet Model 35, 35A, 36, and 36A series airplanes. These models are currently approved under Type

Certificate No. A10CE. The proposed modification incorporates installation of the digital Honeywell Model BA-250 altimeter indicator and Model AM-250 barometric altimeter as primary altimeters. The information presented by this equipment is flight critical. The digital altimeters installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

##### Type Certification Basis

Under the provisions of 14 CFR 21.101, Flight Test Associates must show that the Learjet Model 35, 35A, 36, and 36A series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A10CE include 14 CFR part 25 as amended by Amendments 25-2, 25-4, 25-7, 25-10, and 25-18.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the modified Learjet Model 35, 35A, 36, and 36A series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 35, 35A, 36, and 36A series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Flight Test Associates apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.