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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–SC–22–0069]

Marketing Order Regulations for Almonds Grown in California

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Almond Board of California (Board) to change multiple provisions in the administrative requirements prescribed under the Federal marketing order regulating the handling of almonds grown in California (Order). This action amends administrative requirements regulating quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule stays two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers to facilitate the efficient administration of the Order.

DATES: Effective November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: PeterR.Sommers@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out

a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as 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 Board locally administers the Order and comprises growers and handlers of almonds operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 14094 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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.

This final rule amends administrative requirements in the Order regulating quality control, exempt dispositions, and interest and late charges provisions. In addition, the rule stays two sections of the administrative requirements that define almond butter and stipulate disposition in reserve outlets by handlers. This action modifies the Order’s requirements to reflect updates in industry practices and is expected to help facilitate the orderly administration of the Order.

The Board initially recommended the changes effectuated herein, along with proposed changes to the Order’s roadside stand exemption and credit-back provisions, at meetings held on December 7, 2020, and June 17, 2021. AMS subsequently published a proposed rule in the **Federal Register** addressing the aggregate of those proposed changes on February 22, 2022 (87 FR 9455), with a 60-day comment period ending April 25, 2022. Four comments were received during the comment period. Two comments favored the proposed rule, one comment was neutral, and one was opposed. The comment opposed to the action was submitted by a large cooperative marketing association and contained embedded comments from four individual growers. These comments opposed changes to the credit-back provision and further questioned the Board’s administrative process in recommending the proposed changes to AMS.

After consideration of the comments received during the proposed rule’s initial comment period, AMS reopened the comment period for 15 additional days from June 22, 2022, to July 7, 2022

(87 FR 37240). During the reopened comment period, 1,155 comments were received. Approximately 98 percent of the comments were opposed to the proposed changes to the roadside stand exemption. Notably, aside from the objections to the credit-back provision and the roadside stand exemption, commenters did not oppose any other portions of the proposed rule.

Given the opposition to proposed changes to the credit-back and roadside stand exemption provisions in the Order, AMS published a withdrawal of the proposed rule in the **Federal Register** on August 22, 2022 (87 FR 51270).

The Board met on September 30, 2022, and unanimously recommended the resubmission of the proposed changes to the Order's regulations, minus the previously proposed changes to the credit-back and roadside stand exemption provisions. Excepting the previously discussed provisions that were removed, the modifications to the Order's regulations, as effectuated herein, are identical to the changes proposed in the initial proposed rule published February 22, 2022 (87 FR 9455). A proposed rule concerning this action was published in the **Federal Register** on April 27, 2023 (88 FR 25565), and it received one comment. The commentor expressed opinions on the sustainability of almond production that did not address the merits of the proposed rule. The commentor did not support or oppose the proposal.

Multiple sections in the Order provide the authority for this action. The authorities are cited with the descriptions of each of the changes in the following narrative.

Section 981.42 of the Order provides the authority to establish quality control regulations for both incoming and outgoing product. Section 981.442 of the Order's administrative requirements establishes quality control regulations under that authority. Section 981.442(a) establishes the quality requirements for incoming product received by handlers. Section 981.442(b) establishes the quality requirements for outgoing product prior to being shipped by handlers.

This final rule modifies provisions in § 981.442(a) to clarify ambiguous language, remove irrelevant dates, and more clearly define "accepted user" as it is referenced in the regulations. The rule also relaxes the requirements for handlers in meeting their disposition obligation under the regulations. The incoming quality requirements have been amended to allow inedible kernels, foreign material, and other defects sorted from off-site cleaning facilities to

be credited to a handler's disposition obligation. In addition, almond meal will be allowed to meet the non-inedible portion of the disposition obligation, with the meal content to be determined in a manner acceptable to the Board.

In § 981.442(b), the rule amends the regulations to facilitate handlers utilizing off-site cleaning and treatment facilities in fulfillment of their quality control requirements. The action will allow the transfer of product for off-site cleaning without the transfer being considered a shipment, designates off-site treatment facilities as "custom processors," and establishes application and approval procedures for Board authorization of such custom processors. This final rule also clarifies the roles of the Technical Expert Review Panel (TERP) and the Board in administering the program as detailed in several provisions in § 981.442(b). Lastly, the rule refines the duties of a Direct Verifiable (DV) program auditor to disallow individuals who conduct process validations from being named as the DV auditor for that same equipment used in the treatment process.

Section 981.50 of the Order establishes handler reserve obligation requirements. Under those Order provisions, certain products are exempted from the reserve obligation, subject to the accountability of the Board. Section 981.450 establishes the provisions for exempt dispositions under the reserve obligation. This rule enhances the procedures currently in place for the Board to account for exempt dispositions. Moving forward, outlets for exempted product will need to be pre-approved by the Board in accordance with the requirements contained in § 981.442(a)(7). Finally, because "animal feed" encompasses "poultry feed," § 981.450 is simplified by removing any reference to the word "poultry."

Section 981.66(b) of the Order establishes the conditions governing the disposition of reserve product. Within that paragraph, diversion of reserve almonds to be manufactured into almond butter is listed as an allowable outlet for such product. Section 981.466 further defines "almond butter" as used in § 981.66. The expanded definition of almond butter is no longer relevant in the administration of the program. Therefore, this rule stays § 981.466 indefinitely.

Section 981.467 establishes the requirements regarding the disposition in reserve outlets by handlers. The section details the establishment of agents of the Board, delineates reserve credit in satisfaction of a reserve obligation, sets minimum prices, and

establishes certain dates pertaining to the reserve disposition obligations. As the Order is not currently regulating volume, and a significant portion of the requirements are outdated, the provisions in § 981.467 are not currently relevant to the administration of the Order. As such, this rule stays the entire section indefinitely.

Lastly, § 981.481 stipulates the requirements for submission of handler assessment payments, which include documentary requirements for proof of timely submission of assessment payments. Other than actual receipt of payment in the Board's office within 30 days of the invoice date on the handler's statement, the current provisions only identify the U.S. Postal Service postmark as proof of timely submission. This rule adds "or by some other verifiable delivery tracking system" to the section to allow handlers alternative delivery methods.

The Board believes that the changes effectuated herein are necessary to update the Order's administrative requirements to adapt to changes in the industry and to reflect current industry practices. Many of the revisions are conforming changes, but this final rule also makes changes to the quality control regulations that the Board views as essential to the continued efficient administration of the Order. The changes contained herein are expected to facilitate the orderly marketing of California almonds and benefit growers and handlers in the industry.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 7,600 almond growers in the production area and approximately 100 handlers subject to regulation under the Order. At the time this analysis was prepared, small agricultural almond producers were defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$3,750,000 (North American Industry

Classification System code 111335, Tree Nut Farming), and small agricultural service firms were defined as those having annual receipts equal to or less than \$34,000,000 (North American Industry Classification System code 115114, Postharvest Crop Activities) (13 CFR 121.201). The SBA thresholds for producers and handlers changed after the publication of the proposed rule. Thus, AMS changed the thresholds to reflect the currently applicable SBA thresholds in this final rule. The changes do not impact AMS's ultimate determination regarding the impact of the rule on small entities.

National Agricultural Statistics Service (NASS) reported in its 2017 Census of Agriculture (Census) that there were 7,611 almond farms in the production area, of which 6,683 had bearing acres. Additionally, the Census indicates that out of the 6,683 California farms with bearing acres of almonds, 4,425 (66 percent) have fewer than 100 bearing acres.

In its annual Noncitrus Fruits and Nuts Publication, NASS reported a 2021 crop year average yield of 2,210 pounds per acre and a season average grower price of \$1.86 per pound. Therefore, a 100-acre farm with an average yield of 2,220 pounds per acre would produce about 222,000 pounds of almonds (2,220 pounds times 100 acres equals 221,000 pounds). At \$1.86 per pound, that farm's production would be valued at \$412,920 (222,000 pounds times \$1.86 per pound equals \$412,920). Since the Census indicates that 66 percent of California's almond farms are less than 100 acres, it may be concluded that the majority of California almond growers had annual receipts from the sale of almonds of less than \$412,920 for the 2020–21 crop year, which is below the SBA threshold of \$3,750,000 for small producers. Therefore, the majority of growers may be classified as small businesses.

To estimate the proportion of almond handlers that would be considered small businesses, it was assumed that the unit value per pound of almonds exported in a particular year may serve as a representative almond price at the handler level. A unit value for a commodity is the value of exports divided by the quantity exported. Data from the Global Agricultural Trade System (GATS) database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2020 to July 2021 (combining shelled and inshell) was \$4.647 billion. The quantity of almond exports over that time-period was 2.162 billion pounds. Dividing the export value by the quantity yields a unit value of \$2.15

per pound (\$4.647 billion divided by 2.162 billion pounds equals \$2.15).

NASS estimated that the California almond industry produced 2.915 billion pounds of almonds in 2021. Applying the \$2.15 derived representative handler price per pound to total industry production results in an estimated total revenue at the handler level of \$6.267 billion (2.915 billion pounds \times \$2.15 per pound). With an estimated 100 handlers in the California almond industry, average revenue per handler would be approximately \$62.67 million (\$6.267 billion divided by 100). Assuming a normal distribution of revenues, most almond handlers shipped almonds valued at more than \$34,000,000 during the 2010–21 crop year. Therefore, the majority of handlers may be classified as large businesses.

This final rule revises multiple provisions in the Order's administrative requirements. This action amends regulations covering the Order's quality control, exempt dispositions, and interest and late charges provisions. In addition, it stays regulations contained in §§ 981.466 and 981.467. One of the sections that is stayed defines almond butter and the other regulates almond disposition in reserve outlets by handlers. Both sections are stayed indefinitely.

More specifically, in § 981.442(a), the rule clarifies ambiguous language, removes irrelevant dates, and more clearly defines the term "accepted user" as it is referenced in the regulations. It also relaxes the requirements for handlers in meeting their disposition obligation under the Order.

Additionally, in § 981.442(b), the rule change will allow the transfer of product for off-site cleaning without the transfer being considered a shipment, designate off-site treatment facilities as "custom processors," and establish application and approval procedures for Board authorization of custom processors. This action also clarifies the roles of the TERP and the Board in administering the program in several subparagraphs in the section. Further, this rule refines the definition of a DV program auditor to disallow individuals who conduct process validations from being named as the DV auditor for that same equipment used in the treatment process.

This rule also amends § 981.450 to require outlets for exempted product be Board-approved, in accordance with § 981.442(a)(7).

Further, § 981.466, which defines "almond butter" as it is used in § 981.66(b), is no longer relevant in the administration of the program and is stayed indefinitely. In addition, as the

Order is not currently regulating volume, § 981.467 is not necessary for the administration of the Order and is also stayed indefinitely.

Lastly, this action revises § 981.481 by adding "or by some other verifiable delivery tracking system" to the requirements to allow handlers alternative trackable delivery methods for demonstration of timely submission of assessment payments.

The authorities for the changes detailed above are contained in §§ 981.42, 981.50, 981.66, 981.67, and 981.81 of the Order.

The Board believes that the administrative requirement revisions effectuated herein are necessary to reflect changes in the industry and to update the regulations to reflect current practices. Many of the modifications are conforming changes, but this action also makes substantive changes to quality control requirements that the Board views as essential to the efficient administration of the Order. The changes contained herein are expected to facilitate the orderly marketing of California almonds and benefit growers and handlers in the industry.

Initially, the Board unanimously recommended the changes contained herein, along with other recommended changes that were subsequently removed from consideration. The Board unanimously recommended the changes contained herein at a meeting on September 30, 2022.

AMS anticipates this final rule will impose minimal, if any, additional costs on handlers or growers, regardless of size. The changes to the administrative requirements are intended to clarify certain provisions, remove ambiguous and obsolete language, and adapt the requirements to facilitate the orderly marketing of almonds. The benefits derived from this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The Board considered alternatives to this action, including making no changes to the current requirements and only making changes to some of the requirements. After consideration of all the alternatives, and in consultation with AMS, the Board determined that making the recommended changes is the best option to facilitate the Order's administration, contribute to the orderly marketing of almonds, and provide the greatest benefit to growers and handlers while maintaining the integrity of the Order.

Further, the Board's meeting was widely publicized throughout the California almond industry, and all interested persons were invited to

attend the meeting and participate in Board deliberations. Like all Board meetings, the September 30, 2022, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of the proposed action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0178 (Vegetable and Specialty Crops) and 0581–0242 (Almond Salmonella). This rule announces AMS's intent to request approval from OMB for amendments made to existing information collections under OMB Nos. 0581–0178 and 0581–0242, and for a new information collection under OMB No. 0581–NEW.

Upon publication of this final rule, AMS will submit a Justification for Change to OMB for the ABC Form 52—Direct Verifiable (DV) Program for Further Processing of Untreated Almonds Application Form (OMB No. 0581–0242). The form is necessary to administer the DV Program established by § 981.442(b)(6)(i) in the Order's quality control requirements. The rule changes the body that approves DV Program applications from the TERP to the Board. The instructions that accompany ABC Form 52 need to be revised accordingly.

Lastly, this final rule creates a new form for California almond handlers, titled ABC Form 55, "Custom Processor Application."

Title: Custom Processor Application (7 CFR part 981).

OMB Number: 0581–NEW.

Type of Request: New Collection.

Abstract: The information requirements in this request are essential to carry out the intent of the Act and to administer the Order. The Order is effective under the Act, and AMS is responsible for the oversight of the Order's administration.

The Order's quality control requirements for outgoing product require handlers to subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination. The Order's quality control requirements allow handlers to utilize off-site treatment facilities to fulfill that requirement. The Board unanimously recommended that the

Order's quality control requirements be amended to define off-site treatment facilities located within the production area as "custom processors" and to require such custom processors to annually apply to the Board for approval.

An individual desiring approval as a custom processor must demonstrate that their facility meets the Order's treatment process requirements and must submit an application to the Board. ABC Form 55, "Custom Processor Application," must be submitted directly to the Board once each year no later than July 31. The application provides the Board with the name of the applicant, the location of each treatment facility covered by the application, applicant contact information, and certification that the applicant's technology and equipment provide a treatment process that has been validated by a Board-approved process authority.

The Order authorizes the Board to collect certain information necessary for the administration of the Order. The information collected will only be used by authorized representatives of the AMS, including the AMS Specialty Crops Program regional and headquarters staff, and authorized employees of the Board. All proprietary information will be kept confidential in accordance with the Act and the Order.

The request for new information collection under the Order is as follows:

Custom Processor Application

Estimate of Burden: Public reporting burden for this collection of information is estimated to be an average of 0.5 hours per response.

Respondents: Nut processors located within the Order's area of production.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden on Respondents: 12.5 hours.

A 60-day comment period regarding the information collection related to this rule was imbedded in the proposed rule that was published on April 27, 2023 (88 FR 25565). The comment period closed June 26, 2023. One comment was received. The commenter expressed opinions on the sustainability of almond production but did not address the merits of the proposed information collection. Therefore, AMS made no changes to the information collection requirements as proposed.

Upon approval by OMB, this information collection will be merged with the information collection

currently approved under OMB No. 0581–0242 (Almond Salmonella).

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

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.

Further, the Board's meetings are widely publicized throughout the California almond industry, and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the December 7, 2020, June 17, 2021, and September 30, 2022, meetings were open to the public, and all entities, both large and small, were able to express their views on the proposed changes. Also, the Board has several appointed committees to review certain issues and make recommendations to the Board. The Board's Almond Quality, Food Safety, and Services Committee met several times in 2019 and discussed these changes in detail. Those meetings were also public meetings, and both large and small entities were able to participate and express their views. Finally, interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2023 (88 FR 25565). Copies of the proposed rule were also mailed or sent via email to all California almond handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending June 26, 2023, was provided for interested persons to respond to the proposal. One comment was received. The commenter expressed opinions on the sustainability of almond production that did not address the merits of the proposed rule. The commenter did not support or oppose the proposal. Therefore, AMS made no changes to the information collection requirements as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://>

www.ams.usda.gov/rules-regulations/moa/small-businesses. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, feedback from commenters, and other available information, AMS has determined that this final rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 981 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. Amend § 981.442 by:

- a. Revising paragraphs (a)(1), (a)(4)(i), and (a)(5);
- b. Revising the introductory text of paragraph (b);
- c. Revising paragraphs (b)(2), (b)(3)(i) and (v), and (b)(4)(i) and (v);
- d. Revising the introductory text of paragraph (b)(6)(i); and
- e. Revising paragraphs (b)(6)(i)(A), (C), and (D).

The revisions read as follows:

§ 981.442 Quality control.

(a) * * *

(1) *Sampling*. Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received from any incoming source. The sample shall be drawn before inedible kernels are removed from the lot after hulling/shelling, or before the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the grower for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of

the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

* * * * *

(4) * * *

(i) The weight of inedible kernels in excess of 2 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

* * * * *

(5) *Meeting the disposition obligation*. Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to Board-approved accepted users, which can include, but are not limited to, crushers, feed manufacturers, feeders, or dealers in nut wastes, located within the production area. Inedible kernels, foreign material, and other defects sorted from edible kernels by off-site cleaning facilities may be used towards that handler's disposition obligation or destroyed. Handlers shall notify the Board at least 72 hours prior to delivery of product to an off-site cleaning facility or accepted user location: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72-hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the

handler, and Part B by the accepted user. 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. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than September 30 succeeding the crop year in which the obligation was incurred. Almond meal can be used for meeting the non-inedible portion of the obligation. Meal content shall be determined in a manner acceptable to the Board.

* * * * *

(b) *Outgoing*. Pursuant to § 981.42(b), and except as provided in § 981.13 and in paragraph (b)(6) of this section, handlers shall subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination in accordance with the provisions of this section. Temporary transfer by a handler to an off-site cleaning facility is not considered a shipment under this section. Handlers may utilize off-site cleaning facilities within the production area, on record with the Board, to provide sorting services to separate inedible kernels, foreign material, and other defects from edible kernels. Product sent by a handler to an off-site cleaning facility is considered a temporary transfer, with ownership maintained by the handler, and accountability required for all product fractions and handler obligations pursuant to § 981.42.

* * * * *

(2) *On-site versus off-site treatment*. Handlers shall subject almonds to a treatment process or processes prior to shipment either at their handling facility (on-site) or a custom processor (defined as a Board-approved off-site treatment facility located within the production area subject to the provisions of paragraph (b)(4)(v) of this section). Transportation of almonds by a handler to a custom processor shall not be deemed a shipment. A handler with an on-site treatment process or processes may use such facility to act as a custom processor for other handlers.

(3) * * *

(i) Validation means that the treatment technology and equipment have been demonstrated to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds.

Validation data prepared by a Board-approved process authority must be submitted to the Board, and accepted by the TERP, for each piece of equipment used to treat almonds prior to its use under the program.

* * * * *

(v) The TERP, in coordination with the Board, may revoke any approval for cause. The Board shall notify the process authority in writing of the reasons for revoking the approval. Should the process authority disagree with the decision, they may appeal the decision in writing to the Board, and ultimately to USDA. A process authority whose approval has been revoked must submit a new application to the TERP and await approval.

(4) * * *

(i) By May 31, each handler shall submit to the Board a Handler Treatment Plan (Treatment Plan) for the upcoming crop year. A Treatment Plan shall describe how a handler plans to treat his or her almonds and must address specific parameters as outlined by the Board for the handler to ship almonds. Such plan shall be reviewed by the Board, in conjunction with the inspection agency, to ensure it is complete and can be verified, and be approved by the Board. Almonds sent by a handler for treatment at a custom processing facility affiliated with another handler shall be subject to the approved Treatment Plan utilized at that facility. Handlers shall follow their own approved Treatment Plans for almonds sent to custom processors that are not affiliated with another handler.

* * * * *

(v) Custom processors shall provide access to the inspection agency and Board staff for verification of treatment and review of treatment records. Custom processors shall utilize technologies that have been determined to achieve, in total, a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by FDA or accepted by the TERP. Custom processors must submit a Custom Processor Application, ABC Form 55, to the Board annually by July 31. A custom processor who submits a timely application, and utilizes a treatment process or processes that has been validated by a Board-approved process authority and approved by the Board in conjunction with the TERP, shall be approved by the Board for handler use. The Board may revoke any such approval for cause. The Board shall notify the custom processor of the reasons for revoking the approval. Should the custom processor disagree with the Board's decision, it may appeal

the decision in writing to USDA. Handlers may treat their almonds only at custom processor treatment facilities that have been approved by the Board.

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(6) * * *

(i) Handlers may ship untreated almonds for further processing directly to manufacturers located within the U.S., Canada, or Mexico. This program shall be termed the Direct Verifiable (DV) program. Handlers may only ship untreated almonds to manufacturers who have submitted ABC Form No. 52, "Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds," and have been approved by the Board. Such almonds must be shipped directly to approved manufacturing locations, as specified on Form No. 52. Such manufacturers (DV Users) must submit an initial Form No. 52 to the Board for review and approval in conjunction with the TERP. Should the applicant disagree with the Board's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved DV Users with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. Approved DV Users desiring to make changes to their approved application must resubmit Form No. 52 to the Board for approval. The TERP, in coordination with the Board, may revoke any approval for cause. The Board shall notify the DV User in writing of the reasons for revoking the approval. Should the DV User disagree with the decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV User whose approval has been revoked must submit a new application to the Board and await approval. The Board shall issue a DV User code to an approved DV User. Handlers must reference such code in all documentation accompanying the lot and identify each container of such almonds with the term "unpasteurized." Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV User. While a third party may be involved in such transactions, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Approved DV Users shall:

(A) Subject such almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA or established by a process authority accepted by the TERP, in accordance with and subject to the provisions and procedures of paragraph (b)(3) of this section. Establish means that the treatment process and protocol have been evaluated to ensure the technology's ability to deliver a lethal treatment for *Salmonella* bacteria in almonds to achieve a minimum 4-log reduction;

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(C) Have their treatment technology and equipment validated by a Board approved process authority and accepted by the TERP. Documentation must be provided with their DV application to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation shall be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated;

(D) Have their technology and procedures verified by a Board-approved DV auditor to ensure they are being applied appropriately. A DV auditor may not be an employee of the manufacturer that they are auditing. A DV auditor may not be the same individual who conducted the process validation accepted by the TERP for the equipment being audited. DV auditors must submit a report to the Board after conducting each audit. DV auditors must submit an initial application to the Board on ABC Form No. 53, "Application for Direct Verifiable (DV) Program Auditors," and be approved by the Board in coordination with the TERP. Should the applicant disagree with the decision concerning approval, they may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved DV auditors with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. Approved DV auditors whose status has changed must submit a new application. The Board, in coordination with the TERP, may revoke any approval for cause. The Board shall notify the DV auditor in writing of the reasons for revoking the approval. Should the DV auditor disagree with the

decision to revoke, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV auditor whose approval has been revoked must submit a new application to the Board and await approval;

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■ 3. Revise § 981.450 to read as follows:

§ 981.450 Exempt dispositions.

As provided in § 981.50, any handler disposing of almonds for crushing into oil, or for animal feed, may have the kernel weight of these almonds excluded from their program obligations, so long as:

(a) The handler qualifies as, or delivers such almonds to, a Board-approved accepted user;

(b) Each delivery is made directly to the accepted user by June 30 of each crop year; and

(c) Each delivery is certified to the Board by the handler on ABC Form 8.

§§ 981.466 and 981.467 [Stayed]

■ 4. Sections 981.466 and 981.467 are stayed indefinitely.

■ 5. Revise § 981.481 to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.81(e), the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office within 30 days of the invoice date shown on the handler's statement, unless an envelope containing the payment has been legibly postmarked by the U.S. Postal Service or some other verifiable delivery tracking system as having been remitted within 30 days of the invoice date. The interest charge shall be a rate of one and a half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30-day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office within 60 days of the invoice date, unless an envelope containing the payment has been legibly postmarked by the U.S. Postal Service or some other verifiable delivery tracking system as having been remitted within 60 days of the invoice date. The late

payment charge shall be 10 percent of the unpaid balance.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1220; Project Identifier MCAI–2023–00478–T; Amendment 39–22553; AD 2023–19–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200 series airplanes; Model A330–200 Freighter series airplanes; Model A330–300 series airplanes; Model A330–800 series airplanes; Model A330–900 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. This AD was prompted by a report of cracks found in the fuel control unit housing assembly of a Honeywell GTCP331–350 auxiliary power unit (APU), which caused fuel leakage in the APU compartment. This AD requires replacing any affected APU fuel control unit or affected APU, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 6, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 6, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1220; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for

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

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- For Honeywell International Inc. service information incorporated by reference in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: myaerospace.honeywell.com/wps/portal.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1220.

FOR FURTHER INFORMATION CONTACT:

Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email Timothy.P.Dowling@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Model A330–200 series airplanes; Model A330–200 Freighter series airplanes; Model A330–300 series airplanes; Model A330–800 series airplanes; Model A330–900 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. The NPRM published in the **Federal Register** on June 27, 2023 (88 FR 41516). The NPRM was prompted by AD 2023–0057, dated March 16, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0057) (also referred to as the MCAI). The MCAI states cracks were found in the fuel control unit housing assembly of a Honeywell GTCP331–350 APU, which caused fuel leakage in the APU compartment. This condition, if not addressed, could lead to an uncommanded in-flight shutdown of the APU, or a fire in the APU compartment, possibly resulting in damage to the airplane.