

handlers and the committee by making the procedures under both programs the same.

The committee met on April 16, 1997, and recommended revising § 920.112 to provide that the time periods for timely payment of assessments owed by handlers be reduced to 30 days of invoice so that the committee's time period would be consistent with the commission's time period and further recommended that this rule be effective in September for the 1997–1998 season. The committee also recommended including authority to revise this time period in the future, if deemed necessary. It would like to ensure that consistent accounting and administrative procedures could be implemented simultaneously in the future.

There is unanimous committee support to reduce the time periods specified for timely payment of assessments owed by handlers to 30 days of invoice for both types of inspections.

Currently, the time lapse between the date the fruit is shipped and the date assessments are due is between 60–90 days. Handlers normally receive payment for shipments within 30 days of shipment. Therefore, the impact of this action would not be significant as payments for shipments are normally received 30–60 days before assessments are due.

Handlers currently pay assessments of \$.0175 per tray or tray equivalent and have 60 days from date of invoice for in-line inspected kiwifruit and have 45 days from date of invoice for block inspected kiwifruit to pay their assessments before their assessments are considered delinquent. If handlers pay their assessments in a timely manner, they are not charged the simple interest rate of 1.5 percent per month or the 10 percent late charge.

Under this proposal, handlers would have 30 days from the invoice date before their assessments would be considered delinquent. This 30-day reduction in the time period for handlers receiving in-line inspection and 15-day reduction in the time period for handlers receiving block inspection would have no impact on handlers who pay their assessments in a timely manner. Even for those who do not pay in a timely manner, the impact would not be significant. For example, if a handler is delinquent in paying assessments, a simple interest rate of 1.5 percent interest per month and an assessment of \$.0175 per tray or tray equivalent would apply. During the peak month of March, 1996, less than 1.6 million trays or tray equivalents

were shipped. This equates to an approximate average of 26,667 trays for each of the 60 handlers, which when assessed at \$.1075 per tray generates a \$467 assessment per handler. If an account is 30 days delinquent, the handler is charged a 1.5 percent interest charge in the amount of \$7.00 and a 10 percent late charge in the amount of \$46.70 over the assessment. This action does not change the interest rate or the late charge percentage, but reduces the time period specified for timely payment to 30 days. If amounts are paid in a timely manner, no additional charges are incurred.

The majority of assessments owed by handlers are paid within the specified time periods.

This change would reduce the administrative and accounting burden for handlers and for the committee staff by making the committee's and the commission's time periods consistent. While no specific alternatives were suggested during the public meeting, the committee's recommendation and the rule proposed herein do provide for built-in alternatives and flexibility. Allowing the committee to further revise this time period to a later time period in the future, if deemed necessary, would ensure that consistent accounting and administrative procedures could be implemented simultaneously in the future. This rule would be applied uniformly to all handlers and was viewed by the committee as the best solution.

This action would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit 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.

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

In addition, the committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The committee itself is composed of 12 members. Two of these members are handlers and producers, 9 are producers only, and one is a public member. The majority are small entities, with one producer member having annual receipts over \$500,000. Thus, committee

recommendations can be considered to represent the interests of small business entities in the industry. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 920.112 is revised to read as follows:

#### § 920.112 Late payments.

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit shall be deemed late if not received within 30 days of invoice, or such other later time period as specified by the committee. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

Dated: June 30, 1997.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*  
[FR Doc. 97–17605 Filed 7–3–97; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV97–981–4 PR]

#### Almonds Grown in California; Amended Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate for the Almond Board of California (Board) under Marketing Order No. 981 for the 1997–98 and subsequent crop years. The Board is responsible for local administration of the marketing order

which regulates the handling of almonds grown in California. Authorization to assess almond handlers would enable the Board to incur expenses that are reasonable and necessary to administer the program.

**DATES:** Comments must be received by July 22, 1997.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. 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.

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler or Mary Kate Nelson, Marketing Specialists, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable almonds beginning August 1, 1997, and continuing until amended, suspended, or terminated. This proposal would 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 the Secretary 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 the Secretary 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 the Secretary'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 proposal would increase the assessment rate established for the Board for the 1997-98 and subsequent crop years from 1 cent to 2 cents per pound of almonds received by handlers.

The almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The Board met on May 9, 1997, and unanimously recommended 1997-98 expenditures of \$11,333,876.49 and an assessment rate of 2 cents per pound of almonds received by handlers. In comparison, last year's budgeted expenditures were \$6,426,500. The primary reason for the increase for the upcoming crop year is the inclusion of funding for a generic paid advertising program. The assessment rate would be higher than last year's established rate of 1 cent per pound; however, the Board also recommended a credit-back program whereby handlers could receive credit for their own promotional activities of up to 1 cent per pound against their assessment obligation. Handlers not participating in this program would remit the entire 2 cents to the Board. For administrative

purposes, the Board would separate the assessment into two portions when billing handlers; an administrative portion of 1 cent per pound and an advertising portion of 1 cent per pound. Implementation of the advertising portion of the assessment and the generic advertising program may be impacted by the outcome of litigation relative to advertising and promotion conducted under marketing orders. The Board recommended not implementing the advertising portion of the assessment until further action of the Board is taken.

The Board recommended that the major expenditures for the 1997-98 fiscal period should include \$4,084,000 for information and research programs, \$3,408,000 for paid generic advertising, \$881,534 for salaries, \$794,043 for international programs, \$568,679 for production research, \$95,400 for crop estimates, and \$90,000 for travel. Budgeted expenses for major items in 1996-97 were \$3,333,500 for information and research, \$731,534 for salaries, \$660,500 for international programs, \$558,131 for production research, \$91,160 for crop estimates, and \$97,470 for travel.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. Production of edible almonds for the year is estimated at 681,600,000 pounds which should provide revenue of \$6,816,000 from administrative assessments (681,600,000 pounds at 1 cent per pound). In addition, it is anticipated that \$3,408,000 would be derived from the portion of assessments eligible for credit-back but received by the Board from handlers who do not obtain credit for their own activities. Income derived from handler assessments, along with interest income, Market Access Program reimbursement for international promotion activities, research conference revenue, miscellaneous income, and funds derived from the Board's authorized monetary reserve would be adequate to cover budgeted expenses. Any unexpended funds from the 1997-98 crop year may be carried over to cover expenses during the first four months of the 1998-99 crop year.

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 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Currently, about 58 percent of the handlers ship under \$5,000,000 worth of almonds and 42 percent ship over \$5,000,000 worth of almonds on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately \$156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule would increase the assessment rate established for the Board for the 1997-98 and subsequent crop years from 1 cent to 2 cents per pound of almonds, of which up to 1 cent would be credited to handlers for their own promotional activities. The Board unanimously recommended 1997-98 expenditures of \$11,333,876.49 and an assessment rate of 2 cents per pound of almonds. The assessment rate of 2 cents is 1 cent more than the rate currently in effect. The primary reason for the increase for the upcoming crop year is the inclusion of funding for a generic paid advertising program.

The Board recommended that the major expenditures for the 1997-98 crop year should include \$4,084,000 for information and research programs, \$3,408,000 for paid generic advertising, \$881,534 for salaries, \$794,043 for international programs, \$568,679 for production research, \$95,400 for crop estimates, and \$90,000 for travel. Alternative rates of assessment were considered during the budgeting process. Keeping the assessment rate at 1 cent was considered but not

recommended because it would not generate the income necessary to administer the program. In order to fund the programs recommended by the Board for the 1997-98 season, it was determined that the assessment rate recommended by the Board, when applied to the preliminary crop estimate, would be necessary to generate sufficient revenue. Costs of various programs, desired and overall spending levels, and desired levels of monetary reserve were considered during the budgeting process.

Handlers' receipts of assessable almonds for the year are estimated at 681,600,000 pounds which should provide \$10,224,000 in assessment income. Income derived from handler assessments, along with interest income, Market Access Program reimbursement, research conference revenue, miscellaneous income, and funds derived from the Board's authorized reserve would be adequate to cover budgeted expenses. Funds in the reserve would be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1997-98 season could range between \$1.00 and \$1.50 per pound of almonds. Therefore, the estimated assessment revenue for the 1997-98 crop year as a percentage of total grower revenue could range between 1 and 1.5 percent.

While this rule would impose some additional costs on handlers, the costs would be minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, 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 on all issues. Like all Board meetings, the May 9, 1997, meeting was a public meeting 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.

This proposed rule would not impose any 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with 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, would tend to effectuate the declared policy of the Act.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997-98 crop year begins on August 1, 1997, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other budget actions issued in past years.

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

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

For the reasons set forth in the preamble, it is proposed that 7 CFR part 981 be amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### § 981.343 [Amended]

2. Section 981.343 is amended by removing "July 1, 1996," and adding in its place "August 1, 1997," by removing "\$0.01 cent" and adding in its place "2 cents," and by adding as the last sentence "Of the 2 cent assessment rate, 1 cent per assessable pound is available for handler credit-back."

Dated: June 30, 1997.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division.*  
[FR Doc. 97-17606 Filed 7-3-97; 8:45 am]

BILLING CODE 3410-02-P