

# Proposed Rules

Federal Register

Vol. 63, No. 142

Friday, July 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV98-981-2 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from \$0.02 to \$0.025 per pound established for the Almond Board of California (Board) under Marketing Order No. 981 for the 1998-99 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 enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 24, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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:** Diane Purvis, Marketing Assistant, and Martin J. Engeler, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone: (209) 487-

5901; Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632.

**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 marketing 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule 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 will be applicable to all assessable almonds beginning on August 1, 1998, and continue until amended, suspended, or terminated. 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 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 rule would increase the assessment rate established for the Board for the 1998-99 and subsequent crop years from \$0.02 per pound to \$0.025 per pound.

The California 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 an opportunity to participate and provide input.

For the 1997-98 and subsequent crop years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on June 4, 1998, and unanimously recommended 1998-99 expenditures of \$13,049,437 and an assessment rate of \$0.025 per pound of almonds. In comparison, last year's budgeted expenditures were \$11,333,876. The assessment rate of \$0.025 is \$.005 higher than the rate currently in effect. The higher rate is needed primarily because of a smaller crop this year. The 1997-98 crop was initially estimated at 681,600,000 pounds compared to 528,000,000 pounds estimated for the 1998-99 crop year. The higher assessment rate, when combined with other revenue sources, would generate adequate revenue to fund the recommended programs. The Board also recommended to continue the credit-back program whereby handlers could receive credit for their own promotional activities of up to \$0.0125 per pound against their assessment obligation. Handlers not

participating in this program would remit the entire \$0.025 to the Board.

The major expenditures recommended by the Board for the 1998–99 crop year include \$4,500,000 for paid generic advertising, \$2,500,000 for other domestic promotion programs, \$1,495,000 for international promotion, \$1,144,842 for salaries, \$700,000 for nutrition research, \$548,207 for production research, \$155,000 for market research, \$125,000 for travel, \$124,700 for quality control programs, \$100,700 for crop estimates, and \$100,000 for compliance audits.

Comparable expenditures recommended by the Board for the 1997–98 crop year were \$3,408,000 for paid generic advertising, \$3,174,000 for other domestic promotion programs, \$794,043 for international promotion, \$881,534 for salaries, \$695,000 for nutrition research, \$568,679 for production research, \$125,000 for market research, \$90,000 for travel, \$152,175 for quality control programs, \$95,400 for crop estimates, and \$92,500 for compliance audits.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 528,000,000 pounds of assessable almonds for the 1998–99 crop year. If realized, this would provide estimated assessment revenue of \$6,600,000 from all handlers, and an additional \$3,630,000 from those handlers who do not participate in the credit-back program, for a total of \$10,230,000. In addition, it is anticipated that \$2,819,437 would be provided by other sources, including interest income, Market Access Program reimbursement from the Department for international promotion activities, revenue generated from the Board's annual research conference, miscellaneous income, funds derived from the Board's authorized monetary reserve, and a grant from the State of California. When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 1998–99 crop year are estimated to be approximately \$3,500,000, which is within the maximum of approximately six months budgeted expenses as permitted by the order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation

and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 1998–99 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

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 7,000 producers of almonds in the production area and approximately 102 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Currently, about 57 percent of the handlers ship under \$5,000,000 worth of almonds and 43 percent ship over \$5,000,000 worth of almonds on an annual basis. In addition, based on reported acreage, production, and grower prices, and the total number of almond growers, the average annual grower revenue is estimated to be approximately \$160,000. 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 rule would increase the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent crop years from \$0.02 per pound to \$0.025 per pound. The Board unanimously recommended the increased assessment rate, and 1998–99 expenditures of \$13,049,437. The proposed assessment rate of \$0.025 is \$0.005 higher than the current rate. The quantity of assessable almonds for the 1998–99 crop year is estimated at 528,000,000 pounds. Income from assessments and other sources is expected to generate sufficient revenue to fund this year's expenses. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year.

The higher assessment rate is needed primarily because of a smaller crop this year. The 1997–98 assessable crop was initially estimated at 681,600,000 pounds, compared to 528,000,000 for the 1998–99 crop year. The higher assessment rate would help generate adequate revenue to fund the recommended programs.

The Board reviewed and unanimously recommended 1998–99 expenditures of \$13,049,437, compared to \$11,333,876 budgeted for the 1997–98 crop year. The major expenditures recommended by the Board for the 1998–99 crop year include \$4,500,000 for paid generic advertising, \$2,500,000 for other domestic promotion programs, \$1,495,000 for international promotion, \$1,144,842 for salaries, \$700,000 for nutrition research, \$548,207 for production research, \$155,000 for market research, \$125,000 for travel, \$124,700 for quality control programs, \$100,700 for crop estimates, and \$100,000 for compliance audits.

Comparable expenditures recommended by the Board for the 1997–98 crop year were \$3,408,000 for paid generic advertising, \$3,174,000 for other domestic promotion programs, \$794,043 for international promotion, \$881,534 for salaries, \$695,000 for nutrition research, \$568,679 for production research, \$125,000 for market research, \$90,000 for travel, \$152,175 for quality control programs, \$95,400 for crop estimates, and \$92,500 for compliance audits.

Prior to arriving at the recommended expenditure level and assessment rate, the Board considered alternatives and ultimately concurred on the recommended programs and expenditure level, and determined a rate of \$0.025 would be necessary to generate adequate revenue to fund the recommended programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1998–99 season could range between \$1.50 and \$2.00 per pound of almonds. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .97 and 1.3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform 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 June 4, 1998, 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 impose 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.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty 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 1998–99 crop year begins on August 1, 1998, and the marketing order requires that the rate of assessment for each crop year apply to all assessable almonds handled in such crop year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting.

#### 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 proposed to 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.

2. Section 981.343 is proposed to be revised to read as follows:

##### **§ 981.343 Assessment rate.**

On and after June 4, 1998, an assessment rate of \$0.025 per pound is established for California almonds. Of the \$0.025 assessment rate, \$0.0125 per assessable pound is available for handler credit-back.

Dated: July 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–19888 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### **Agricultural Marketing Service**

##### **7 CFR Part 987**

[Docket No. FV98–987–1 PR]

##### **Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from \$0.0556 to \$0.10 per hundredweight established for the California Date Administrative Committee (Committee) under Marketing Order No. 987 for the 1998–99 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 22, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632.

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:**

Diane Purvis, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date 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 will be applicable to all assessable dates beginning on October 1, 1998, and continue until amended, suspended, or terminated. 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection