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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG76

Prevailing Rate Systems; Abolishment of Atlanta, Georgia, Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the Atlanta, Georgia, wage area. Printing and lithographic employees in Atlanta will now be paid rates from the regular Atlanta, Georgia, wage schedule.

DATES: This interim rule becomes effective on May 17, 1995. Comments must be received by June 16, 1995. Employees paid rates from the Atlanta, Georgia, special wage schedule for printing positions will continue to be paid rates from that schedule until their conversion to the regular Atlanta, Georgia, wage schedule on July 9, 1995, the effective date of the new Atlanta, Georgia, regular wage schedule.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Human Resources Systems Service, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Atlanta, Georgia, Printing and Lithographic wage schedule be abolished and that the regular Atlanta, Georgia, wage schedule apply to printing employees in the Atlanta, Georgia, wage area. This recommendation was based on the fact that the number of employees paid from this special schedule has declined in recent years from a total of 38 employees in 1993 to a current total of 25 employees, only 6 of whom are in grade levels benefiting from the special survey. The Atlanta, Georgia, special printing wage survey would produce special schedule rates lower than the regular area wage schedule rates for all but 6 of the 25 employees covered by the special printing schedule. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, Atlanta, Georgia, special printing schedule rates for the first eight grades are currently based on the Atlanta, Georgia, regular wage schedule rates.

In addition with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process. The last full-scale survey involved the substantial work effort of contacting 65 printing establishments spread over 15 counties in the Atlanta metropolitan area.

Upon abolishment of the Atlanta special printing schedule, the printing and lithographic employees will be converted to the regular schedule on a grade-for-grade basis. Their new rate of pay will be set at the rate for the step of the applicable grade of the regular schedule that equals the employees' existing scheduled rate of pay. When the existing rate falls between two steps, the employees's new rate will be set at the rate for the higher of those two steps. This conversion does not constitute an equivalent increase for within-grade increase purposes. In accordance with the OPM Operating Manual, *The Guide to Processing Personnel Actions*, this pay plan change will be processed as a ''Pay Adjustment,'' Nature of Action Code 894, authority code ZLM, citing this **Federal Register** notice as authority. Pay retention provisions will apply for the few employees not receiving increases upon conversion.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the May 1995 Atlanta, Georgia, survey must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraph (j)(5) is removed, and paragraphs (j)(6) through (j)(9) are redesignated as paragraphs (j)(5) through (j)(8), respectively.

[FR Doc. 95–12033 Filed 5–16–95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–4 FR]

Almonds Grown in California; Reduction of Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the expenses and assessment rate previously established under Marketing Order No. 981 for the 1994–95 crop year. This rule reduces the budget of expenses and rate which almond handlers may be assessed for funding expenses by the Almond Board of California (Board) that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone 202–720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final 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. 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 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate issued herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which began July 1, 1994, and ends June 30, 1995. 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), 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

A budget of expenses and rate of assessment for the 1994–95 crop year was recommended on May 18, 1994, by the Board, the agency responsible for local administration of the program. An interim final rule was issued in the **Federal Register** on July 14, 1994, (59 FR 35847) and a final rule was issued in the September 8, 1994 **Federal Register** (59 FR 46321). Approved expenditures totalled $9,435,262 with an approved assessment rate of 2.25 cents per pound. Of the 2.25 cents per pound, handlers could receive credit-back against their assessment obligation up to one cent per pound for their own promotional expenditures. Specific explanations of various expenditure categories and comparisons with a prior period are contained in the aforementioned final rule.

The Board met on September 14, 1994, and recommended, by a seven to two vote, postponing its paid advertising campaign and directly related activities until further notice. It also voted to postpone assessment billings pending evaluation of legal issues and future program activities. Generic public relations activities and other promotion-related activities to which the Board was contractually committed at that time are to be continued. This action was taken as a result of uncertainty created by legal decisions regarding the Board's former advertising and promotion program.

Specifically, the Ninth Circuit Court of Appeals ruled in December 1993, that aspects of the Board's former advertising and promotion program in the 1980's were unconstitutional. On remand, the district court subsequently awarded plaintiff handlers refunds of assessments and other money spent under the program. This decision was issued on September 6, 1994, which led to the Board's actions to postpone advertising activities at its September 14, 1994, meeting. The district court's remand decision is currently being appealed. In addition, several handlers filed legal challenges to the Board's current credit-back advertising and promotion program, pursuant to section 608(c)(15)(A) of the Act.

The Board again met on November 30, 1994, and recommended, by a seven to three vote, reducing the assessment rate by eliminating the portion applicable to credit-back to handlers for their own promotional activities (one cent), and by eliminating the portion of the remaining assessment applicable to generic promotion activities. The resulting assessment rate the Board recommended handlers pay was .47 cents per pound. Concurrently, the Board again postponed assessment billings pending further evaluation of the Board's financial status. These actions were taken because of the apparent lack of support by some handlers at the time for generic promotion and credit-back programs, demonstrated by legal challenges filed by such handlers representing a significant portion of the industry volume. One Board member commented that since the handlers who have filed legal challenges are not likely to pay the advertising assessment, it is not equitable for the remainder of the

industry to shoulder the expense of an advertising program.

The Board met again on February 1, 1995, and recommended, by a six to four vote, to further reduce the assessment rate. The Board recommended an assessment rate of .25 cents per pound. This action was taken after the Board further evaluated its financial position and current and future program activities.

An assessment rate of .25 cents per pound will generate income of $1,675,000 based on an estimated assessable crop of 670 million pounds. When combined with cash and cash equivalents held by the Board, this will provide the Board with sufficient income to meet its administrative expenses and those promotional expenses to which it is contractually obligated for the remainder of the current fiscal year.

To reduce the budget of expenses previously approved ($9,435,262), the Board deleted the funds budgeted for reserve replenishment ($300,000) and at its November 30, 1994, meeting, postponed a major portion ($3.9 million) of the $4.7 million funds budgeted for promotional activities. These revisions will reduce the budget to $5,235,262. The reduced budget will provide the Board with sufficient capital to carry into the next fiscal year to finance operations prior to collection of future assessments.

Concerns were raised that the reduction of the assessment rate mid-way through the crop year may generate complaints from those handlers who relied on the final rule of September 8, 1994, which established an assessment rate of 2.25 cents per pound, of which handlers could receive credit-back up to one cent per pound for their own promotional expenditures. Some handlers have incurred expenses that would be eligible for credit-back under the provisions of that rule.

Under this assessment rate reduction, there is no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the previously established rate of 2.25 cents. Under the previous assessment of 2.25 cents, if handlers claimed credit-back for the entire one cent, they would still be required to pay 1.25 cents per pound to the Board. Handlers will pay significantly less even if they conducted advertising for which they believed credit-back would be obtained. In addition, benefits are derived from advertising undertaken by these handlers.

A proposed rule concerning this rule was published in the March 24, 1995, **Federal Register** (60FR 15523), with a 30-day comment period. Two comments were received.

The first comment received was from an independent handler who was concerned that some handlers will make their final accountings to growers prior to the finalization of the proposed rule. If handlers make final payment to their growers based on the proposed assessment and USDA modifies the proposal, the commenter states that some of these handlers will file petitions against USDA for modifying the proposal under section 608c(15)(A) of the Act. However, this final rule does not modify the proposed rule and both handlers and growers had adequate notice of this change. In addition, the marketing order does not regulate contractual relationships between handlers and growers.

The second comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that although it concurs with the cancellation of the advertising component of the order until legal disputes are resolved, USDA's assertion that this cancellation of the advertising program would not have a significant economic impact on a substantial number of small entities was illogical. SBA contends that rational businesses are not going to subject themselves to the increased paperwork generated by the advertising program for insignificant economic gain and USDA appears to be avoiding its responsibilities under the RFA.

Although SBA's comment seems to relate to the implementation of the almond promotional program, rather than the elimination of that program, consideration was given to the impact of this rule on large and small handlers. As stated previously in this final rule and in the proposed rule, concerns were raised about the handlers who have incurred expenses that would be eligible for credit-back. It was determined that handlers will pay significantly less even if they conducted advertising for which they believed they would be entitled to credit-back as well as derive benefits from the advertising they conducted.

Another determination made in this rule and in the proposed rule was that the action taken by the Board to minimize financial liability in the event the pending litigation is decided unfavorably to the Board, is sensible and reduces economic risk to handlers.

For the above reasons, USDA disagrees with the SBA's assertion that this action fails to meet the requirements of the RFA. The program's impact on small businesses has been properly addressed in this document and in the proposed rule.

This rule reduces the assessment obligation imposed on handlers. The assessments are uniform for all handlers. The assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the Board's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces the assessment rate currently in effect; (2) this rule should be in effect as soon as possible because the 1994 crop year began on July 1, 1994; and (3) the proposed rule provided a 30-day comment period and the only comments received did not oppose the reduction.

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.

Note: The following section will not appear in the Code of Federal Regulations.

2. Section 981.341 is revised to read as follows:

§ 981.341 Expenses and assessment rate.

Expenses of $5,235,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at .25 cents per kernel pound of almonds. Of the .25 cents assessment rate, none is available for handler credit-back pursuant to § 981.441.

Dated: May 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

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