

potatoes. Therefore, the estimated assessment revenue for the 1997-98 fiscal period as a percentage of total grower revenue will range between .100 and .057 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are 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 will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Oregon-California potato 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.

In the interim final rule published in the **Federal Register** (62 FR 27169) on May 19, 1997, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. The comment period ended June 18, 1997, and no comments were received concerning the impacts of this action on small businesses.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined 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 action reduces the current assessment rate; (2) the 1997-98 fiscal period began on July 1, 1997, and

the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 62 FR 27169 on May 19, 1997, is adopted as a final rule without change.

Dated: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-21526 Filed 8-13-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV97-981-4 FR]

Almonds Grown in California; Amended Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases 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 enables the Board to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: *Martin Engeler*, Assistant 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; or *George Kelhart*, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; *Telephone:* (202) 690-3919, *Fax:* (202) 720-5698. 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 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 final 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 August 1, 1997, and continuing 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 final rule increases 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 an opportunity to participate and provide input.

The Board met on May 9, 1997, and 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 is higher than last year's established rate of 1 cent per pound; however, the Board also recommended a credit-back program whereby handlers can receive credit for their own promotional activities of up to 1 cent per pound against their assessment obligation. Handlers not participating in this program will remit the entire 2 cents to the Board. For administrative purposes, the Board will 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. The Board's initial recommendation indicated that 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. At a meeting held on July 1, 1997, the Board took action to implement the advertising portion of the assessment, after it is established. The Board also confirmed its intent to implement a generic paid advertising program.

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. In its recommendation, the Board utilized a production estimate of 681,600,000 pounds of edible almonds for the year. If realized, this will 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 will 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 promotional activities. Estimates of marketable production of almonds have been revised downward to 652,800,000 pounds since the Board's recommendation, which would result in administrative assessments of \$6,528,000 and estimated credit-back revenue of \$3,264,000. However, if assessment revenues fall short of initial projections due to a smaller crop, the Board maintains sufficient financial reserves to compensate for any such shortage. 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 will 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.

The assessment rate established in this rule will 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 is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are open to the public

and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent crop years will 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 final 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 final rule will 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 will 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 were originally estimated at 681,600,000 pounds which would provide \$10,224,000 in assessment income. The crop estimate was subsequently reduced to 652,800,000 pounds which if realized, would provide assessment revenue of \$9,792,000. However, in either scenario, 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 will be adequate to cover budgeted expenses. Funds in the reserve will 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 will 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 will 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 final rule will 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.

A proposed rule concerning this action was issued by the Department on July 3, 1997, and published in the **Federal Register** on July 7, 1997 (62 FR 36233). Copies of the proposed rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was 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 began 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. No comments to the proposed rule were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already receiving 1997-98 crop almonds from

growers, the crop year began August 1, and the assessment rate applies to all almonds received during the 1997-98 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, A 15-day comment period was provided for in the proposed rule, and no comments were received.

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.

§ 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: August 8, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-21525 Filed 8-13-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV97-985-1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base to New and Existing Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the number of regions established for issuing additional allotment bases to new producers from four to three, revises the procedure used for issuing additional allotment bases when no requests are received from a region for a class of spearmint oil, and eliminates obsolete language pertaining to the