



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS-SC-16-0045; SC16-981-2 PR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Almond Board of California (Board) to increase the assessment rate established for the 2016-17 through the 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds handled under the marketing order (order). Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) would be available as credit-back for handlers who conduct their own promotional activities. The assessment rate would return to \$0.03 for the 2019-20 and subsequent crop years, and the amount available for handler credit-back would return to \$0.018 per pound (60 percent). The Board locally administers the order and is comprised of growers and handlers of almonds grown in California. Assessments upon almond handlers are used by the Board to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The \$0.04 assessment rate would remain in effect until July 31, 2019. Beginning

August 1, 2019, the assessment rate would return to \$0.03 and would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. Comments should reference the document 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, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist or Jeffery Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: with Andrea.Ricci@ams.usda.gov or Jeffery.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed 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 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 (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed 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 proposed herein would be applicable to all assessable almonds beginning on August 1, 2016, through July 31, 2019. Beginning August 1, 2019, the assessment rate would return to the current \$0.03 and would remain in effect indefinitely unless modified, suspended, or terminated.

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. Such 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 not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate for the 2016-17 through 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds received. Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) would be available as credit-back for handlers who conduct their own promotional activities. The assessment rate would return to \$0.03 for the 2019-20 and subsequent crop years, and the amount available for handler credit-back would return to \$0.018 per pound (60 percent).

The California almond marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers 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 thus are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2005-06 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate of \$0.03 per pound that would continue in effect from crop year to

crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA. Of the \$0.03 per pound assessment, 60 percent (\$0.018) per pound was made available as credit-back for handlers who conducted their own promotional activities.

The Board met on April 12, 2016, and unanimously recommended 2016-17 expenditures of \$69,897,626 and an assessment rate of \$0.04 per pound of almonds received. In comparison, last year's budgeted expenditures were \$58,998,976. The proposed assessment rate of \$0.04 is \$0.01 higher than the rate currently in effect, and the credit-back portion of the assessment rate (\$0.024 per pound) would be \$0.006 more than the credit-back portion currently in effect.

The Board estimates a production increase of thirty percent, or 600 million pounds, by the 2019-20 crop year. This increase is nearly as much as their largest market currently consumes. Due to the size of the increase in forecasted production, the Board anticipates that increased market development projects and new marketing programs are required to successfully market the additional supply. Accordingly, the Board has recommended a new "Nut of Choice" marketing program.

The Board also anticipates needing additional funding for the industry's new "Crop of Choice" research program, as well as additional research to address concerns such as: changing water supply and quality systems; air quality and how it relates to harvesting, pesticide, and energy use; and bee health.

The three-year higher assessment rate is needed to fund the increase in marketing and research activities. The Board anticipates that by the 2019-20 crop year, the increase in production assessed at the reinstated \$0.03 per pound rate should generate sufficient revenue to cover the anticipated expenditures at that time. Therefore, beginning August 1, 2019, the assessment rate would return to \$0.03 per pound.

The following table compares major budget expenditures recommended by the Board for the 2015-16 and 2016-17 crop years:

Budget Expense Categories	2015-16	2016-17
Operations Expenses	\$ 7,904,000	\$ 8,404,000
Board Accelerated Innovation Management (AIM) Initiatives	1,500,000	1,000,000
Crop of Choice Initiatives	0	5,625,000
Reputation Management	1,826,350	2,000,000
Production Research	1,843,331	1,843,331
Environmental Research	1,039,790	1,039,790
Scientific Affairs/Nutrition	1,640,000	1,640,000
Global Market Development	38,583,756	38,583,756
Nut of Choice Initiatives	0	5,100,000
Technical & Regulatory Affairs	1,045,500	1,045,500
Industry Services	2,436,220	2,436,220
Almond Quality & Food Safety	790,800	790,800
Corporate Technology	389,229	389,229

The assessment rate recommended by the Board was derived by considering the anticipated 30 percent production increase in the next three years, anticipated expenditures plus additional program expenses, current production level, and maintaining adequate operating reserve funds. In its recommendation, the Board utilized an estimate of 1,835,290,000 pounds of assessable almonds for the 2016-17 crop year. If realized, this would provide estimated

assessment revenue of \$62,262,213, which reflects credit-back reimbursements and organic exemptions. In addition, it is anticipated that \$20,907,722 will be provided by other sources, including interest income, Market Access Program (MAP) funds, and operating reserve funds. When combined, revenue from these sources would be adequate to cover budgeted expenses.

Section 981.81 of the order authorizes the Board to maintain operating reserve funds consisting of an administrative-research portion and a marketing promotion portion, and states that the amount allocated to each portion shall not exceed six months' budgeted expenses for that activity area. Funds in the reserve at the end of the 2016-17 crop year are estimated to be approximately \$16,581,222, well within the amount permitted by the order.

The proposed assessment rate would continue in effect until July 31, 2019. Beginning August 1, 2019, the assessment rate would return to \$0.03 and would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for a specified 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 USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2016-17 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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 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 6,800 almond growers in the production area and approximately 100 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported in its 2012 Agricultural Census that there were 6,841 almond farms in the production area (California), of which 6,204 had bearing acres. The following computation provides an estimate of the proportion of producers (farms) and agricultural service firms (handlers) that would be considered small under the SBA definitions.

The NASS Census data indicates that out of the 6,204 California farms with bearing acres of almonds, 4,471 (72 percent) have fewer than 100-bearing acres.

In its most recently reported crop year (2014), NASS reported an average yield of 2,150 pounds per acre, and a season average grower price of \$3.19 per pound. A 100-acre farm with an average yield of 2,150 pounds per acre would produce about 215,000 pounds of almonds. At \$3.19 per pound, that farm's production would be valued at \$685,850.

Since Census of Agriculture indicates that the majority of California's almond farms are smaller than 100 acres, it could be concluded that the majority of growers had annual receipts from the sale of almonds in 2014-15 of less than \$685,850, well below the SBA threshold of \$750,000. Thus, over 70 percent of California's almond growers would be considered small growers according to SBA's definition.

According to information supplied by the Board, approximately 30 percent of California's almond handlers shipped almonds valued under \$7,500,000 during the 2014-15 crop year, and would therefore be considered small handlers according to the SBA definition.

This proposal would increase the assessment rate collected from handlers for the 2016-17 through the 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds received. Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) would be available as credit-back for handlers who conduct their own promotional activities, consistent with § 981.441 of the order's regulations and subject to Board approval. The Board unanimously recommended 2016-17 expenditures of \$69,897,626 and an assessment rate of \$0.04 per pound of almonds received. The proposed assessment rate of \$0.04 is \$0.01 higher than the 2015-16 rate, and the credit-back portion of \$0.024 per

pound would be \$0.006 higher than the current credit-back portion of \$0.018. The quantity of assessable almonds for the 2016-17 crop year is estimated at 1,835,290,000 pounds.

This would provide estimated assessment revenue of \$62,262,213, which reflects credit-back reimbursements and organic exemptions. In addition, it is anticipated that \$20,907,722 will be provided by other sources, including interest income, MAP funds, and operating reserve funds. When combined, revenue from these sources would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2016-17 crop year include \$8,404,000 for Operations Expenses, \$1,000,000 for Board AIM Initiatives, \$5,625,000 for Crop of Choice Initiatives, \$2,000,000 for Reputation Management, \$1,843,331 for Production Research, \$1,039,790 for Environmental Research, \$1,640,000 for Scientific Affairs/Nutrition, \$38,583,756 for Global Market Development, \$5,100,000 for Nut of Choice Initiatives, \$1,045,500 for Technical & Regulatory Affairs, \$2,436,220 for Industry Services, \$790,800 for Almond Quality & Food Safety, and \$389,229 for Corporate Technology.

Budgeted expenses for these items in 2015-16 were \$7,904,000 for Operations Expenses, \$1,500,000 for Board AIM Initiatives, \$0 for Crop of Choice Initiatives, \$1,826,350

for Reputation Management, \$1,843,331 for Production Research, \$1,039,790 for Environmental Research, \$1,640,000 for Scientific Affairs/Nutrition, \$38,583,756 for Global Market Development, \$0 for Nut of Choice Initiatives, \$1,045,500 for Technical & Regulatory Affairs, \$2,436,220 for Industry Services, \$790,800 for Almond Quality & Food Safety, and \$389,229 for Corporate Technology.

The Board estimates a production increase of thirty percent, or 600 million pounds, by the 2019-20 crop year. This increase is nearly as much as their largest market currently consumes. Increased market development investment, as well as new marketing programs will be required to successfully market the additional supply. Additional investment in research is also needed to address concerns such as: changing water supply and quality systems; air quality and how it relates to harvesting, pesticide, and energy use; and bee health. Accordingly, the three-year higher assessment rate is needed to fund the Board's new Nut of Choice marketing program and Crop of Choice research activities. The Board anticipates that by the 2019-20 crop year, the increased production assessed at the reinstated \$0.03 per pound rate should generate sufficient revenue to cover the anticipated expenditures at that time.

Prior to arriving at this budget and assessment rate, the Board held a strategic planning session in February 2016. The Board also considered recommendations made from its various committees including the Global Market Development Committee, Production Research Committee, and Environmental Committee. Alternative expenditure levels were discussed, based upon the relative value of various activities to the almond industry. The Board ultimately determined that 2016-17 expenditures of \$69,897,626 were appropriate, and the recommended assessment rate plus, income from other sources and operation reverse funds, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2016-17 season could range between \$3.21 and \$3.19 per pound of almonds. Therefore, the estimated assessment revenue for the 2016-17 crop year (disregarding any amounts credited pursuant to § 981.41 and § 981.441) as a percentage of total grower revenue could range between 1.24 and 1.25 percent, respectively.

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 growers. 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 April 12, 2016, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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 No. 0581-0178 (Vegetable and Specialty Crops.) No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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.

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.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2016-17 crop year begins on August 1, 2016, and the marketing order requires that the rate of assessment for each crop year apply to all assessable almonds handled during such crop year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; 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 revised to read as follows:

§ 981.343 Assessment rate.

For the period August 1, 2016, through July 31, 2019, the assessment rate shall be \$0.04 per pound for California almonds. Of the \$0.04 assessment rate, 60 percent per assessable pound is available for handler credit-back. On and after August 1, 2019, an assessment rate of \$0.03 per pound is established for California almonds. Of the \$0.03 assessment rate, 60 percent per assessable pound is available for handler credit-back.

Dated: July 12, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service

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