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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV98–981–2 FR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate from $0.02 to $0.025 per pound of almonds 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 crop year began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 15, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Martin J. Engeler, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 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 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 increases 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, will generate adequate revenue to fund the recommended expenses and programs. The Board also recommended to continue the credit-back program whereby handlers can receive credit for their own promotional activities of up to $0.0125 per pound against their assessment obligation. Handlers not participating in this program will 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. Budgeted expenses for these items in 1997–98 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 will 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 will 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 will 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 (§ 981.81).

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 will be in effect for an indefinite period, the Board will 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 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 1998–99 budget has been approved; 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 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 increases 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 1998–99 expenditures of $13,049,437 and an assessment rate of $0.025 per pound. This is compared to $11,333,876 budgeted for the 1997–98 crop year and an assessment rate of $0.025 for 1998–99 that is $.005 higher than the 1997–98 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 and programs. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding 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.

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 will help generate adequate revenue to fund the recommended expenses and programs.

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 per pound of assessable almonds is necessary to generate adequate revenue to fund the recommended expenses and 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 increases 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 are 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.

This rule imposes 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 proposed rule concerning this action was published in the **Federal Register** on July 24, 1998 (63 FR 39755). 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 30-day comment period ending August 24, 1998, was provided for interested persons to respond to the proposal. One comment in support of the proposed rule was received from a large cooperative handler. This handler supports increasing the assessment rate and continuing the credit-back program mentioned earlier.

The proposed regulatory language in § 981.343 incorrectly stated that the assessment rate of $0.025 per pound of assessable almonds would apply on and after June 4, 1998. The date should have been August 1, 1998, and has been corrected.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board, the comment received, 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 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 the 1998–99 crop year began on August 1, 1998, and the marketing order requires the assessment rate to apply to all almonds received during the 1998–99 and subsequent crop years. Further, handlers are already receiving 1998–99 crop year almonds from growers, the Board needs to have sufficient funds to cover its expenses that are incurred on a continuous basis, and handlers are aware of this rule which was recommended unanimously at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and a comment was received in support of this action from a large cooperative almond handler.

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.

2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 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: September 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–24535 Filed 9–11–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–03–AD; Amendment 39–10487]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–6B11 (CL–415 Variant) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws a direct final rule with request for comments that adopted a new airworthiness directive (AD), applicable to all Bombardier Model CL–215–6B11 (CL–415 Variant) series airplanes. That action would have required revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to address a temporary loss of battery bus power during engine failure and consequent erroneous indications of hydraulic system pressure, brake pressure, rudder pressure, and rudder and elevator reversion to manual mode. Since the issuance of the direct final rule, the Federal Aviation Administration (FAA) has received a written adverse comment. Accordingly, the direct final rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The FAA published a direct final rule with request for comments in the **Federal Register** on July 9, 1998 (63 FR 37063). That direct final rule amended part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all Bombardier Model CL–215–6B11 (CL–415 Variant) series airplanes, to require revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to address a temporary loss of battery bus power during engine failure and consequent erroneous indications of hydraulic system pressure, brake pressure, rudder pressure, and rudder and elevator reversion to manual mode. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The specified actions were intended to ensure that the flightcrew is advised of the potential hazard associated with a temporary loss of battery bus power during failure of the left engine or the left generator on the left engine and of the procedures necessary to address it.

Actions Since the Issuance of the Direct Final Rule

During the comment period for the direct final rule, the FAA received a written adverse comment. Accordingly, the direct final rule is hereby withdrawn.

Withdrawal of this direct final rule constitutes only such action, and does