

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 present 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.

If implemented and collected, 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 would 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 would reduce the budget to \$5,235,262. The reduced budget would 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.

If the assessment rate is reduced with no portion being creditable, there will be no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the current rate of 2.25 cents. Under the current established 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 would 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.

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

Interested persons are invited to submit their views and comments on this proposal. Comments received within 30 days of publication of this proposed rule in the **Federal Register** will be considered prior to any final action being taken.

#### 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 981.341 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: March 21, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-7336 Filed 3-23-95; 8:45 am]

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#### 7 CFR Part 1036

[Docket No. DA-95-13]

#### Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Termination of Certain Provisions of the Order

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

**ACTION:** Proposed termination of rule.

**SUMMARY:** This document invites written comments on a proposal to terminate the advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania order. Termination of the provisions was requested by several associations of dairy farmers whose milk is pooled under the order. Termination would eliminate redundant expenses in administering regional advertising and promotion programs without affecting producers' participation.

**DATES:** Comments are due on or before April 7, 1995.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/ Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:**

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-2357.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the following provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered:

Sections 1036.105 through 1036.122, the undesignated center heading

preceding them, and the reference to these provisions in § 1036.73.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 14th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures before the process to appoint a new Board is initiated in April.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed termination, requested by Milk Marketing Inc. (MMI), Dairylea Cooperative Inc., and Tri-County Producers Cooperative, all associations of dairy farmers whose milk is pooled on the Eastern Ohio-Western Pennsylvania Federal milk order, would eliminate the advertising and promotion provisions of that order.

The cooperatives stated that the primary purpose of these provisions, at the time of their implementation, was to increase producer participation in the advertising and promotion of milk and dairy products. However, the Dairy and Tobacco Adjustment Act of 1985 mandated that all dairy farmers contribute to such activities through a national program spanning all Federal order marketing areas (7 CFR part 1150). The cooperatives asserted that the advertising and promotion provisions of the order are redundant and create unnecessary expenses in view of the existence of qualified regional programs that are funded under the national advertising and promotion program. The efficiency and effectiveness of producer funds would be enhanced with termination of the Federal order advertising and promotion provisions. Thus, the cooperatives requested removal of the advertising and promotion provisions to eliminate administrative costs without affecting the integrity of the Federal order program.

Section 608c(16)(A) of the Act authorizing Federal milk orders provides that any order provisions may be terminated separately whenever the Secretary makes a determination that such provisions obstruct or do not tend to effectuate the declared policy of the Act.

Therefore, comments are sought to determine whether the aforementioned provisions should be terminated.

**List of Subjects in 7 CFR Part 1036**

Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: March 21, 1995.

**Lon Hatamiya,**  
Administrator.

[FR Doc. 95-7335 Filed 3-23-95; 8:45 am]

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**Animal and Plant Health Inspection Service****9 CFR Parts 1 and 3**

[Docket No. 93-076-6]

RIN 0579-AA59

**Animal Welfare; Marine Mammals**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule regarding the establishment of standards for "swim-with-the-dolphin" interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

**DATES:** Consideration will be given only to written comments on Docket No. 93-076-2 that are received on or before March 24, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93-076-2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1228, (301) 734-8699.

**SUPPLEMENTARY INFORMATION:** On January 23, 1995, we published in the **Federal Register** (60 FR 4383-4389, Docket No. 93-076-2) a proposal to