

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 03-022-4]

RIN 0579-AB81

#### Mexican Hass Avocado Import Program

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** We are correcting errors in the preamble to a proposed rule that would amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year. The proposed rule was published in the **Federal Register** on May 24, 2004 (69 FR 29466-29477, Docket No. 03-022-3).

**DATES:** We will consider all comments that we receive on Docket No. 03-022-3 on or before July 23, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03-022-3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 03-022-3.

- E-mail: Address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03-022-3" on the subject line.

- Agency Web site: Go to <http://www.aphis.usda.gov/ppd/rad/cominst.html> for a form you can use to

submit an e-mail comment through the APHIS Web site.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799.

**SUPPLEMENTARY INFORMATION:** On May 24, 2004, we published a proposed rule in the **Federal Register** (69 FR 29466-29477, Docket No. 03-022-3) in which we proposed to amend the fruits and vegetable regulations in 7 CFR part 319 to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We also proposed to allow the distribution of the avocados during all months of the year. To reflect these proposed changes, we also proposed to make other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States.

This document corrects errors in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. Specifically, in the discussion of the findings of the pest risk assessment (PRA) prepared for the proposed rule, there is a series of bullet points in which we report the results of the PRA's evaluation of the phytosanitary measures that would be

applied under the proposed rule. In two of those bullet points, we have updated the estimated number of fruit-fly-infested avocados that would (1) enter fruit fly susceptible areas each year and (2) be discarded in fruit fly susceptible areas each year to reflect changes made to the PRA itself shortly before the publication of the proposed rule.

Therefore, this document corrects the **SUPPLEMENTARY INFORMATION** section of the proposal as follows:

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04-11709, published on May 24, 2004 (69 FR 29466-29477), make the following corrections:

1. On page 29467, column 1, line 23, is corrected by removing the number "143" and adding the number "208" in its place.

2. On page 29467, column 1, line 32, is corrected by removing the number "8" and adding the number "11" in its place.

Done in Washington, DC, this 9th day of June, 2004.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-13557 Filed 6-15-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04-981-3 PR]

#### Almonds Grown in California; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Almond Board of California (Board) for the 2004-05 and subsequent crop years from \$0.020 to \$0.025 per pound of almonds received. Of the \$0.025 per pound assessment, \$0.014 would be available as credit-back for handlers who conduct their own promotional activities. The Board locally administers 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 begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by June 28, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail:

*moab.docketclerk@usda.gov*, or Internet: <http://www.regulations.gov>. Comments should reference the docket 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: *Jay.Guerber@usda.gov*.

**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 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 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 proposed herein would be applicable to all assessable almonds beginning August 1, 2004, 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 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 rule would increase the assessment rate established for the Board for the 2004-05 and subsequent crop years from \$0.020 to \$0.025 per pound of almonds received. Of the \$0.025 per pound assessment, \$0.014 would be available as credit-back for handlers who conduct their own promotional activities.

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 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 2003-04 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate 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.

The Board met on May 20, 2004, and recommended 2004-05 expenditures of \$24,027,344. In comparison, last year's budgeted expenditures were \$20,547,385. The recommended assessment rate of \$0.025 would be \$0.005 higher than the rate currently in effect, and the credit-back portion of the assessment rate would be \$0.004 more than the rate currently in effect.

The major expenditures recommended by the Board for the 2004-05 crop year include \$7,115,000 for advertising and market research, \$9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), \$1,730,000 for salaries, \$1,200,000 for nutrition research, \$947,321 for production research, \$808,000 for food quality programs, \$460,042 for environmental research, \$200,000 for travel, \$130,000 for office rent, \$125,000 for a crop estimate, and \$95,000 for an acreage survey. Budgeted expenses for these items in 2003-2004 were \$6,375,312 for advertising and market research, \$7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), \$1,500,000 for salaries and wages, \$1,000,000 for nutrition research, \$850,332 for production research, \$823,948 for food quality programs, \$254,903 for environmental research, \$200,000 for travel, \$122,472 for office rent, \$120,750 for a crop estimate, and \$90,780 for an acreage survey.

The Board recommended increasing the assessment rate from \$0.020 per pound to \$0.025 per pound of almonds handled. Of the \$0.025 per pound assessment, \$0.014 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 recommended increasing the assessment rate to generate adequate revenue to fund the Board's 2004-05 budgeted expenses and to maintain a financial reserve. Section 981.81(c) authorizes a financial reserve of approximately one-half year's budgeted expenses. One-half of the 2004-05 crop year's budgeted expenses of \$24,027,344 equals \$12,013,672. The Board's financial reserve at the end of the 2004-05 crop year is projected to be \$3,067,437, which is well within the authorized reserve.

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 1,056,000,000 pounds of assessable almonds for the 2004–05 crop year. If realized, this would provide estimated assessment revenue of \$11,616,000 from all handlers, and an additional \$8,131,200 from those handlers who do not participate in the credit-back program, for a total of \$19,747,200. In addition, it is anticipated that \$7,347,581 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 2004–05 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 2004–05 crop year are estimated to be approximately \$3,067,437, which would be within the amount permitted by the order.

The proposed assessment rate 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 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 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 2004–05 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), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 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 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over \$5,000,000 worth of almonds and about 62 percent of handlers shipped under \$5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately \$199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2004–05 and subsequent crop years from \$0.020 to \$0.025 per pound of almonds. Of the \$0.025 per pound assessment, \$0.014 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 met on May 20, 2004, and recommended 2004–2005 expenditures of \$24,027,344 and an assessment rate of \$0.025 per pound. Of the \$0.025 per pound assessment, \$0.014 per pound would be available as credit-back for handlers who conduct their own promotional activities. The proposed assessment rate of \$0.025 would be \$0.005 higher than the current rate, and the credit-back portion would be \$0.004 more than the current rate. The quantity of assessable almonds for the 2004–05 crop year is estimated at 1,056,000,000 pounds. The proposed assessment rate would provide estimated assessment revenue of \$11,616,000 from all handlers, and an additional \$8,131,200 from those handlers who do not participate in the credit-back program, for a total of \$19,747,200. In addition, it

is anticipated that \$7,347,581 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources would be adequate to cover budgeted expenses. The projected financial reserve at the end of 2004–05 would be \$3,067,437, which would be within the maximum permitted under the order.

The major expenditures recommended by the Board for the 2004–05 crop year include \$7,115,000 for advertising and market research, \$9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), \$1,730,000 for salaries, \$1,200,000 for nutrition research, \$947,321 for production research, \$808,000 for food quality programs, \$460,042 for environmental research, \$200,000 for travel, \$130,000 for office rent, \$125,000 for a crop estimate, and \$95,000 for an acreage survey. Budgeted expenses for these items in 2003–2004 were \$6,375,312 for advertising and market research, \$7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), \$1,500,000 for salaries and wages, \$1,000,000 for nutrition research, \$850,332 for production research, \$823,948 for food quality programs, \$254,903 for environmental research, \$200,000 for travel, \$122,472 for office rent, \$120,750 for a crop estimate, and \$90,780 for an acreage survey.

The Board considered alternative assessment rate levels, including the portion available for handler credit-back. After deliberating the issue, the Board recommended increasing the assessment rate to \$0.025 per pound, with \$0.014 available for handler credit-back. In arriving at its budget, the Board considered information from its various committees. Alternative expenditure levels were discussed by these groups, based on the value of various activities to the industry. The committees ultimately recommended appropriate activities and funding levels, which were adopted by the Board.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2004–05 season could range between \$1.50 and \$1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2004–05 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a

percentage of total grower revenue could range between 1.2 and 1 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 producers. 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 May 20, 2004, 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 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.

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

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2004–05 crop year begins on August 1, 2004, 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) a final decision on the increase should be made as soon as possible so handlers can plan accordingly; (3) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, 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.

On and after August 1, 2004, an assessment rate of \$0.025 per pound is established for California almonds. Of the \$0.025 assessment rate, \$0.014 per assessable pound is available for handler credit-back.

Dated: June 10, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–13690 Filed 6–14–04; 12:56 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–NM–131–AD]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 727, 727C, 727–100, –100C, and –200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727, 727C, 727–100, –100C, and –200 series airplanes. This proposal would require an inspection of the forward trunnion attach fittings of the main landing gear (MLG), inspections of the attach fitting holes of the forward trunnion attach fittings if necessary, replacement of the forward trunnion attach fittings if necessary, and corrective actions if necessary. This action is necessary to detect and correct cracks and corrosion on the attach fitting holes of the forward trunnion attach fittings of the MLG, which could result in the collapse of the

MLG. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by August 2, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain “Docket No. 2003–NM–131–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.