

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV04-981-3 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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 is 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.

**EFFECTIVE DATE:** August 1, 2004.

**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](mailto: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 issued herein will 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 increases 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 is 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 assessment rate of \$0.025 is \$0.005 higher than the rate currently in effect, and the credit-back portion of the assessment rate is \$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 is 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 will 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 will 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 will be within the amount permitted by the order.

The assessment rate established in this rule will 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 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 USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2004–05 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

#### Final 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 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 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 increases 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 is 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 2004–05 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 assessment rate of \$0.025 is \$0.005 higher than the current rate, and the credit-back portion is \$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 assessment rate will 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 from other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. The projected financial reserve at the end of 2004–05 will be \$3,067,437, which is 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 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 May 20, 2004, 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.

USDA 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 June 16, 2004 (69 FR 33584). 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 USDA and the Office of the Federal Register. A 10-day comment period ending June 28, 2004, was provided for interested persons to respond to the proposal. No comments were received.

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.

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.

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 Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and the crop year begins on August 1, 2004. Further, handlers are aware of this rule which was recommended by the Board at a public meeting. Also, a 10-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, 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, 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: July 8, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–15857 Filed 7–8–04; 3:39 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 51

[Docket No. 00–002–2]

RIN 0579–AB42

### Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action makes it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

**DATES:** *Effective Date:* August 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra A. Donch, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

#### SUPPLEMENTARY INFORMATION:

#### Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella*. It affects both animals and humans. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock.

Brucellosis is mainly a disease of cattle, bison, and swine. *Brucella abortus* affects mainly bovines; *B. suis* affects mainly swine. Goats, sheep, and horses are also susceptible to *B. abortus*. In horses, the disease is known as fistulous withers. A third strain of *Brucella*, *B. melitensis*, affects mainly goats and sheep.

The continued presence of brucellosis in a herd or flock seriously threatens the health of other animals. To prevent any