

# Proposed Rules

Federal Register

Vol. 68, No. 231

Tuesday, December 2, 2003

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

### Agricultural Marketing Service

#### 7 CFR Part 900

[Docket Number FV03-900-1 PR]

#### Proposed Rule To Exempt Organic Producers and Marketers From Assessments for Market Promotion Activities Under Marketing Order Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion, including paid advertising, activities to marketing order programs administered by the Agricultural Marketing Service (AMS). AMS has identified 28 marketing order programs for which assessment exemptions may be established. The authority for this proposal is section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill). The 2002 Farm Bill also covers 16 national research and promotion programs. The research and promotion programs will be addressed separately at a later date.

**DATES:** Comments must be received by January 2, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by February 2, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed 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; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All

comments received will be made available for public inspection in the Office of the Docket Clerk at the Marketing Order Administration Branch, AMS, USDA, Room 2525-South; 1400 Independence Avenue, SW., Washington, DC 20250-0237 during regular business hours. A copy of this proposed rule may be found at <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0237, Room 2525-South; Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

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:**

**Executive Order 12866**

This proposed rule is being issued by the Department of Agriculture (USDA) in conformance with Executive Order 12866.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674)(Act), under which the 28 marketing order programs are established, provides that administrative proceedings must be exhausted before parties may file suit in court. Under the Act, any person subject to an order may file a petition with the Secretary of Agriculture 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. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The authority for this proposed rule is specified in section 10607 of the Farm Security and Rural Investment Act (Pub. L. 107-171; 2002 Farm Bill). The 2002 Farm Bill was enacted May 13, 2002. Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act; 7 U.S.C. 7401) was amended by the 2002 Farm Bill. This amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires the Secretary of Agriculture to amend any market research and promotion regulations to reflect this exemption.

USDA is proposing amendments to general regulations affecting 28 marketing order programs established under the Act for which it has oversight. These amendments would establish provisions for organic producers and marketers meeting the specified criteria to be exempt from paying assessments for market promotion, including paid advertising, activities.

The FAIR Act amendment covers 28 marketing order programs established under the Act (Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; California nectarines—7 CFR part 916; California peaches and pears—7 CFR part 917; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Washington/Oregon fresh prunes—7 CFR part 924; Southeastern California grapes—7 CFR part 925; Oregon/Washington winter pears—7 CFR part 927; cranberries grown in States of Massachusetts, *et al.*—7 CFR part 929; tart cherries grown in States of Michigan, *et al.*—7 CFR part 930; Oregon/Washington Bartlett pears—7

CFR part 931; California olives—7 CFR part 932; Oregon/California potatoes—7 CFR part 947; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; Texas melons—7 CFR part 979; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993).

These marketing order programs allow for promotion activities designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under the marketing order program. Some of these programs also authorize market promotion in the form of paid advertising. Promotion, including paid advertising, activities are paid for by assessments levied on handlers regulated under the various marketing orders.

Under this proposal, a new subpart would be added in 7 CFR part 900 General Regulations to specify the criteria for identifying persons eligible to obtain an assessment exemption for market promotion, including paid advertising; procedures for persons to apply for an exemption; procedures for calculating the assessment exemption; and other procedural details for the applicable marketing orders.

Prior to or during the assessment period, the person would submit an application for exemption to the applicable committee or board. The application would be reviewed by the committee or board to determine whether the applicant is eligible for an assessment exemption. If the application is disapproved, the marketing order committee or board will notify the handler of the reason(s) for disapproval. The Secretary may review any decisions made by the committees or boards at his/her discretion.

The marketing order's committee or board would compute the assessment rate for any person approved for an organic exemption. The exempt rate would be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures for the same assessment period, as approved by the Secretary, and applying that percentage to the assessment rate applicable to all persons for the assessment period.

Within 30 days following the applicable assessment period, the committee or board would re-compute the assessment rate for persons exempt under the section, based on the actual expenditures incurred during the assessment period. The exempt person would pay an additional assessment or be reimbursed or credited by the committee or board for the amount overpaid.

#### Who Is Eligible for Exemption?

To be eligible for an exemption, the person must be subject to an assessment under a designated marketing order program. All of the marketing order programs assess handlers; *i.e.*, persons that handle the regulated commodity.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any non-organic or conventional products. For purposes of this proposed rule, “produce” means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber, and alter that product by means of feeding, slaughtering, or processing. Under this proposed rule, handlers, and processors and producers acting as handlers may be eligible for exemption if they meet the definition of “produce” as outlined in this proposed rule. This proposed rule provides for assessment exemptions for those regulated under marketing orders for domestic commodities. Thus, importers subject only to section 8e import regulations would not pay marketing order assessments and would not be eligible for an assessment exemption. Additionally, to be exempt, such persons must possess certification from a USDA-accredited certifying agent that the farm or handling operation meets the requirements of 100 percent organic as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

#### Examples

- A grower who produces and markets (handles) 100 percent certified organic, is certified as an organic handling operation, and pays the marketing order assessments, is eligible for an exemption for the portion of the assessments used for marketing promotion.
- A handler receives 100 percent of the commodity as certified organic and is certified as an organic handling operation. The handler alters (*e.g.*,

shells, slices, processes, or in some other way alters) the commodity and pays marketing order assessments. The handler is eligible for an exemption for the portion of the assessments used for marketing promotion.

- A grower who produces and markets (handles) both certified organic and conventional commodities is not eligible for the exemption because that person is not producing and marketing solely 100 percent certified organic commodities.

- A handler receives 100 percent of a commodity that is organic, and the handler is certified as an organic handling operation. The handler sorts, packages, markets, and pays assessments on the commodity. The handler is not eligible for the exemption because the handler did not alter (*e.g.*, shell, slice, process, or in some other way alter) the commodity.

The FAIR Act amendment also covers 16 national research and promotion programs. The research and promotion programs will be addressed separately at a later date. The 16 programs cover blueberries, beef, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (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.

As previously mentioned, assessments under the 28 marketing order programs are paid by handlers regulated under the various marketing orders. There are approximately 850 handlers regulated under the 28 marketing orders. USDA does not have precise numbers, but believes there may be approximately 84 persons who produce and market solely 100 percent organic products that might be exempt from paying assessments for market promotion, including paid advertising, under the 28 marketing order programs administered by AMS. Thus, the

estimated number of prospective applicants eligible for the assessment exemption may only represent approximately 9.9 percent of the total handler population.

Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. Although the exact size of the potential applicants is not known, USDA believes that the majority of persons who might qualify for an exemption may be classified as small entities.

Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002 (7 U.S.C 7401). The amendment provides that notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, shall be exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). The amendment further requires the Secretary of Agriculture to amend any research and promotion regulations to reflect this exemption.

USDA is proposing amendments to the general regulations affecting 28 marketing order programs established under the Act for which it has oversight. These amendments would establish provisions for organic producers and marketers meeting the specified criteria to be exempt from paying assessments for market promotion, including paid advertising.

The 28 marketing order programs allow for promotion activities designed to assist, improve, promote, the marketing, distribution, or consumption of the commodity covered under the marketing order. Some of the orders also include authority for paid advertising activities. Market promotion, including paid advertising, activities are paid for by assessments levied on handlers regulated under the various marketing orders.

Under this proposal, a new subpart would be added in 7 CFR Part 900 General Regulations to specify criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; procedures for applying for an exemption; procedures for calculating the assessment exemption; and other procedural details for the applicable marketing orders.

Regarding the impact of this proposed rule on affected entities, this rule would impose minimal additional costs incurred in filing the exemption application and in maintaining records needed to verify the applicant's exemption status during applicable assessment period. Such applicants will be required to submit an application and receive approval from the applicable committee or board to obtain the assessment exemption. USDA estimates that each applicant will submit one application annually. The annual burden for all of the marketing order industries is estimated to total about 42 hours.

The cost burden associated with the information collection would be \$420 for all applicants, or \$5.00 per applicant. The total cost has been estimated by multiplying the burden hours associated with the exemption application by \$10.00 per hour, a sum deemed reasonable should the applicants be compensated for their time.

Since this action potentially exempts from assessments agricultural producers and marketers, AMS believes that this rule would have a beneficial economic effect on exempted entities by reducing their assessment payments. During the 2001–2002 marketing season, assessments for the 28 marketing orders totaled \$44,400,000. Of that amount, about \$29,900,000 (or 65 percent) was made available for marketing promotion, including paid advertising, activities. USDA does not have precise information, but believes that about 1 percent on average of the total assessments are for certified organic commodities. Thus, assessments on organic commodities could total about \$440,000. Of that amount, about \$299,000 for marketing promotion, including paid advertising, might be exempt under this proposed rule if all of the approximate 84 handlers of the regulated commodities were eligible for the assessment exemption as specified in the proposed rule.

Based on our estimate that there might be a total of 84 handlers exempt from assessments for marketing promotion activities conducted under the various marketing orders, the assessments for eligible persons would be reduced by an average of almost \$3,600 (\$299,000 divided by 84) on an annual basis.

There is some variation among the 28 marketing orders on the percent of assessments used for marketing promotion, including paid advertising. Thus, the actual reduction in assessments would vary among the various orders. In fact, the amounts

allocated for marketing promotion as a percentage of the total marketing order budgets range from less than 5 percent to almost 60 percent.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the reporting and recordkeeping provisions that would be generated by this proposed rule will be submitted to the Office of Management and Budget (OMB) under OMB No. 0581–NEW. As explained later, USDA plans to request emergency approval.

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

There are no viable alternatives to proposing these organic assessment exemption procedures. The FAIR Act requires USDA to take this action to lessen the assessment costs for persons who produce and market solely 100 percent organic products. In drafting the exemption procedures, every effort has been made to minimize the burden on the persons impacted, and to simplify the process. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the additional costs related to the reporting required.

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 OTHER INFORMATION CONTACT** section.

A 30-day comment period is provided for interested persons to submit written comments on the criteria for identifying persons eligible to obtain an assessment exemption, and the procedural details for obtaining an assessment exemption under the various marketing orders. Thirty days is deemed appropriate because this action was mandated by Congress under the 2002 Farm Bill and is intended to provide relief to producers and marketers of solely 100 percent organic products. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received within 60 days after the date of publication of this proposal in the **Federal Register**.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice also announces

that AMS is seeking emergency approval for a new information collection request enabling organic producers and marketers to apply for exemptions from paying market promotion assessments under the following 28 Federal marketing orders: 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, and 993. The emergency request is necessary because insufficient time is available to follow normal clearance procedures.

*Title:* Organic Producer and Marketer Market Promotion Assessment Exemption under 28 Federal Marketing Orders.

*OMB Number:* 0581–NEW.

*Type of Request:* New collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Act, orders may authorize production and marketing research, including paid advertising, as mentioned earlier. Production and marketing research and development, including paid advertising, activities to promote the various commodities are paid for with assessments levied on handlers regulated under the 28 Federal marketing orders.

On May 13, 2002, section 501 of the FAIR Act was amended (7 U.S.C. 7401) to exempt any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

To be exempt from paying assessments for marketing promotion, including paid advertising expenses, under the specified marketing orders, the certified organic producer and marketer would submit an application, “Certified Organic Producer and Marketer Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders” to the marketing order committee or board. The application would need to be submitted to the committee or board prior to or during the applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. This application would

include the applicant’s name, name and address of the company, telephone and fax numbers, a copy of the applicant’s organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. The burdens associated with obtaining the certifications under the Organic Foods Production Act of 1990 have already been approved by OMB under OMB Control No. 0581–0181.

If the applicant complies with these requirements and is eligible for a market promotion assessment exemption, the committee or board would approve the exemption and notify the applicant within 30 days of receiving the applicant’s application. The Secretary may review any decisions made by the committees or boards at his/her discretion.

The respective marketing orders (*e.g.*, 7 CFR 932.61 and 7 CFR 981.70) also provide that handlers maintain, and make available, all records necessary to demonstrate compliance with order requirements for two years. The burdens on handlers for such recordkeeping requirements are included in the information collection requests previously approved by OMB for the respective marketing orders under the following OMB Control Numbers: OMB No. 0581–0178 for marketing order Nos. 947, 948, 955, 956, 958, 959, 966, 979, 982, 984, 987, 989, and 993; OMB No. 0581–0189 for marketing order Nos. 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, and 931; OMB No. 0581–0142 for marketing order No. 932; OMB No. 0581–0071 for marketing order No. 981; and OMB No. 0581–0065 for marketing order No. 985.

The information collection would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs’ regional and headquarters staff, and authorized Committee and Board employees. Authorized Committee and Board employees will be the primary users of the information, and AMS will be the secondary user.

The request for approval of the new information collection under the 28 Federal marketing orders is as follows:

**Form FV–649, Certified Organic Producer and Marketer Application for Exemption From Marketing Promotion Assessments Paid Under Federal Marketing Orders**

*Estimate of Burden:* Public reporting burden for this collection of information

is estimated to average 30 minutes per response.

*Respondents:* Eligible Certified Organic Producers and Marketers.

*Estimated Number of Respondents:* 84.

*Estimated Number of Responses per Respondent:* 1

*Estimated Total Annual Burden on Respondents:* 42 hours.

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

A sixty-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581–NEW and be sent to moab.docketclerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record. 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.

**List of Subjects in 7 CFR Part 900**

Administrative practices and procedures, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 900 is proposed to be amended to read as follows:

**PART 900—GENERAL REGULATIONS**

1. The authority citation for part 900 is revised to read as follows:

*Authority:* 7 U.S.C. 610 and 7 U.S.C. 7401.

2. Add a new subpart heading “Assessment Exemptions” after § 900.601, and add a new § 900.700 to read as follows:

**§ 900.700 Exemption from assessments.**

(a) This section specifies criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising, and procedures for applying for an exemption for 7 CFR parts 906, 915, 916, 917, 922, 923, 924, 925, 927, 929, 930, 931, 932, 947, 948, 955, 956, 958, 959, 966, 979, 981, 982, 984, 985, 987, 989, and 993. For the purposes of this section, the term "assessment period" means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term "marketing promotion expenditures" mean expenses incurred under the various marketing order for marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity.

(b) Any handler that produces and markets solely 100 percent organic products produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and the regulations issued under that Act, is subject to assessments under a part or parts specified in paragraph (a) of this section, and does not produce or market any conventional or non-organic products shall be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising. For purposes of this section, *produce* means to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. Any handler so exempted shall be obligated to pay the portion of the assessment for other authorized activities under such part or parts.

(c) To be exempt from paying assessments for these purposes under a part or parts, the handler shall submit an application to the committee or board established under the applicable part or parts prior to or during the assessment period. This application shall include the handler's name and address, the name and address of the company, telephone and fax numbers, a copy of the organic farm or organic handling operation certificate(s) provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502) for the purposes specified in paragraph (b) of this section, and the handler's certification that the handler meets all of the applicable requirements for an assessment exemption as

provided in this section. The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter as long as the handler continues to be eligible for the exemption. If the handler complies with these requirements and is eligible for an assessment exemption, the committee or board will approve the exemption and notify the handler within 30 days of receiving the handler's application. If the application is disapproved, the committee or board will notify the handler of the reason(s) for disapproval. The Secretary may review any decisions made by the committees or boards at his/her discretion.

(d) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The Secretary shall review the assessment rate for eligible persons and, if appropriate, approve the assessment rate.

(e) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the rate applicable to exempt handlers.

(f) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board immediately and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

Dated: November 25, 2003.

**A.J. Yates,**

*Administrator,*

*Agricultural Marketing Service.*

[FR Doc. 03-29958 Filed 12-1-03; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003-NE-48-AD]

RIN 2120-AA64

**Airworthiness Directives; Hamilton Sundstrand Corporation (Formerly Hamilton Standard Division) Model 568F Propellers**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain serial numbered (SN) propeller blades installed in Hamilton Sundstrand Corporation (formerly Hamilton Standard Division) 568F propellers. This proposed AD would require replacement of propeller blades, part numbers (P/N's) R815505-3 and R815505-4 that have a serial number (SN) of FR1699 to FR20021010, with serviceable blades. This proposed AD is prompted by reports of these composite propeller blades found at inspection, with random areas of missing adhesive under the compression wrap, which exposed the steel tulip part of the blade. We are proposing this AD to prevent propeller blade failure due to corrosion-induced fatigue, which could result in blade separation and possible loss of airplane control.

**DATES:** We must receive any comments on this proposed AD by February 2, 2004.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE-48-AD, 12 New England Executive Park, Burlington, MA 01803-5299.
- By fax: (781) 238-7055.
- By e-mail: [9-ane-adcomment@faa.gov](mailto:9-ane-adcomment@faa.gov).

You can get the service information identified in this proposed AD from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM-EE50, One Hamilton Road, Windsor Locks, CT 06096.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.