

* * * * *

Dated: October 25, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-28372 Filed 10-29-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99-981-4 IFR]

Almonds Grown in California; Revisions to Requirements Regarding Credit For Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. The changes also clarify existing regulations.

DATES: This interim final rule becomes effective November 2, 1999; comments received by January 3, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698 or E-mail: moab.docketclerk@usda.gov. All 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.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, 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 marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the

petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The changes also clarify existing regulations. The changes are intended to encourage and support almond product development and thus increase the demand for almonds. This rule was unanimously recommended by the Board at a meeting on July 12, 1999, with additional justification approved via facsimile vote during the week of August 30, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441.

The Department implemented several Board-recommended changes to the regulations regarding the criteria that must be met in order for handlers to receive credit for their promotional activities in July 1999 (64 FR 41023, July 29, 1999). However, the Department did not implement one Board recommendation concerning credit for promoting almond products at that time because of concerns regarding the lack of specified criteria to be used in reviewing claims and concerns about the claims review process. The Board and its staff reconsidered the issue, further developed the concept, and submitted a revised recommendation addressing the Department's concerns.

This rule implements the revised recommendation.

Current regulations crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation, as specified in § 981.441(e)(iv), was included because it was believed that while promoting almond products was important, such activity might also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. This maximum level is specified in § 981.441(a).

The almond industry has historically been one of rapid growth. Recent years have been no exception, as almond acreage has increased substantially in the last decade. When coupled with increasing yields, production is expected to achieve record levels in coming years. The industry is faced with the prospect of selling these larger crops at a profitable return to producers. In order to achieve this, it is recognized that consumption and demand for almonds must be increased. Because a substantial portion of almonds are used as ingredients, an important method of increasing almond consumption is through increasing the consumption of almond products.

The current regulations allowing only partial credit for promotion of all almond products are believed to have created a disincentive for handlers to develop, create and promote almond products. Therefore, the Board recommended and the Department is implementing revised regulations to allow maximum credit-back to handlers for promoting almond products, under certain conditions.

After the effective date of this interim final rule, handlers will be able to receive credit against their assessment obligations in an amount not to exceed 66⅔ percent of their proven expenditures for qualified activities for promotion of almond products. In order to receive this level of credit, the product must be owned or distributed by the handler and such ownership or distributorship must be stated on the package. Handler ownership or distributorship is required in order to eliminate the possible occurrence of utilizing industry funds to promote businesses outside the almond industry.

In addition, the product must display the handler's brand, or the words "California Almonds" on the primary, face label. This requirement is intended to ensure that the clear intent is to

promote the consumption and use of California almonds, which is the basic requirement for all promotion under the almond order.

Under the rule, maximum credit is not allowed for promotion of mixed nut products. In the case of mixed nuts, and for other promotional activities of almond products that do not meet the aforementioned criteria, the amount of credit allowed continues to be the lesser of 66⅔ percent of the handler's actual payment or that portion of the product weight represented by almonds. Mixed nuts do not qualify for the maximum credit because the thrust of eligible credit-back promotion activities is to promote the consumption and use of California almonds, not other nuts. Also, many almond handlers are involved in handling and marketing other nuts, and almond funds could possibly be used to promote other nut industries and other nuts. Therefore, mixed nuts continue to be subject to the reduced level of credit-back based on the portion of the product weight represented by almonds. Accordingly, appropriate changes have been made to § 981.441(e)(4).

Finally, this rule adds specific language to the introductory text of § 981.441(e)(4) clarifying that no promotion of almonds or almond products shall be eligible for credit-back if the promotion results in price discounting of the handler's product. An example of price discounting is as follows. A retail store routinely places advertisements in a local newspaper for various products in an attempt to attract customers. The advertisement includes a handler's almonds. The handler makes arrangements with the retailer to pay for the advertisement. In essence, this "discounts" the price of the product to the retailer. While these types of arrangements occur, it is not the intent of promotion under the almond order to subsidize such activities through the credit-back program. Price discounting has not been allowed under the program, and this rule adds specific language to the regulations for clarity.

The Board recommended that this rule be applied retroactively to August 1, 1999. This would allow the revised regulations to apply to all promotional activities conducted from the beginning of the 1999–2000 crop year forward. The crop year began August 1, 1999, and ends July 31, 2000. Section 981.441 specifies the procedures that the Board follows in granting credit and billing handlers. The effective date of the rule is one day after publication in the **Federal Register**, and the provisions of this revised regulation will be applied at that time. Handler activities were

conducted under program parameters in effect prior to the effective date of this interim final rule. Therefore, those parameters for activities conducted prior to this rule's effective date should be followed. Accordingly, handlers promoting products containing almonds prior to the effective date of this rule will be eligible to receive Credit-Back based on the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For activities conducted on or after the effective date of this rule, the activities must meet the revised criteria, and handlers will be eligible to receive Credit-Back at the maximum of 66⅔ percent for promoting almond products, if the percent for promoting almond products, if the activities meet the revised criteria in this rule. Submission of documentation should continue to be made in accordance with the provisions of the regulations as amended by the final rule that appeared in the July 29, 1999, **Federal Register** at 64 FR 41023.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Based on the most current data available, about 54 percent of the handlers ship under \$5,000,000 worth of almonds and 46 percent ship over \$5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately \$195,000. In view of the foregoing, it can be

concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under § 981.441 of the administrative rules and regulations of the order, and clarifies the intent of one aspect of the existing regulations. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit by allowing maximum credit for promoting almond products, under certain conditions. The revisions also clarify existing regulations regarding disallowing promotional activities that result in price discounting. The changes are intended to encourage and support almond product development and thus increase the demand for almonds.

Current regulations concerning crediting handlers' promotion of almond products limit any such credit to the portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. This limitation was included because it was believed that while promoting almond products was important, such activity may also promote and increase sales of other ingredients in the product. Therefore, the amount of credit handlers could receive was established at less than the maximum of 66⅔ percent. It is now believed that the potential for increasing demand for almonds by providing incentive through allowing maximum credit alleviates the prior concerns regarding promoting other ingredients.

Regarding the impact of this rule on affected entities, the changes specified herein regarding credit for product development are designed to provide incentive to almond handlers to create, develop, and promote almond products. Almonds are widely used as ingredients in other products, thus an important method of increasing almond consumption and demand is through increasing sales of almond products. Handlers in the almond industry will be rewarded for their innovation in developing almond products, while the entire industry will benefit from the resulting increased demand. Thus, the impact on all growers and handlers in the almond industry is expected to be positive. This is an additional tool for the industry to use to increase demand

for their product in the face of increasing supplies.

The changes regarding price discounting clarify that handlers can not receive credit-back for promotional activities that result in price discounting of product. This activity has not been allowed under the regulations as it does not meet the intent of the program; the changes merely clarify the existing regulations. Disallowing price discounting results in a more efficient and effective use of industry promotion funds.

Alternatives to the changes were considered. One alternative was to leave the regulations as they currently exist. However, this does not address the issue of providing incentive and encouragement to handlers to promote almond products. Another alternative was to allow maximum credit only for new or unique products, with the Board to determine what products fit that description. This alternative was initially recommended by the Board but was not implemented by the Department because of concerns regarding the lack of specified criteria to be used in reviewing claims, and concerns about the claims review process. A third alternative considered was to allow maximum credit-back for all promotions concerning almond products. However, it was determined that certain criteria should be applied to product promotions to meet the intent of the program, for the following reasons. To receive maximum credit-back, the product must be owned or distributed by the handler, to ensure that credit is not granted for promoting products or businesses outside the almond industry. Packages must be labeled with the handler's name or the words "California Almonds" to help ensure the intent is to promote the consumption and use of California almonds, which is the basic requirement for all promotion under the order. Mixed nuts are subject to a reduced level of credit-back because handlers are and can be involved in handling and marketing other nuts, and if maximum credit were allowed, this could result in almond industry funds being used to promote other nut industries and other nuts. Moreover, the thrust of eligible credit-back promotion activities is to promote the consumption of California almonds, not other nuts, and it would not be appropriate to give mixed nut products the full 66⅔ credit.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information

collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0071. 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. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998, and March 5, 1999. The Department subsequently implemented all of the Board's recommended changes, except for those relating to almond products. The Board again recommended the changes associated with almond products on July 12, 1999, and its Public Relations and Advertising Committee and staff developed further clarification and justification for those changes which were approved by a Board facsimile vote during the week of August 30, 1999. All of these meetings were open to the public, and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable and specialty crop marketing agreements and orders may be viewed at the following website: <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 matter 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.

This rule invites comments on a change to the credit-back promotional requirements prescribed under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The almond crop year began on August 1, 1999, and this rule should be in effect as closely as possible to that time so handlers can avail themselves of the additional opportunities for receiving promotional credit; (2) these changes were unanimously recommended by the Board and interested persons had an opportunity to provide input; (3) handlers are aware of these changes which were recommended at a public meeting; and (4) a 60-day comment period is provided for in this rule and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.441, the introductory text of paragraph (e)(4) and paragraph (e)(4)(iv) are revised and a new paragraph (e)(4)(v) is added to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

* * * * *

(e) * * *

(4) Credit-Back shall be granted for those qualified activities specified

below, except that Credit-Back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

* * * * *

(iv) Except as otherwise provided in paragraph (e)(4)(v) of this section, when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less: *Provided*, That, except for mixed nut products, the amount of Credit-Back for qualified promotional activities for products containing almonds shall be granted at 66⅔ percent of proven expenditures, if the product is owned or distributed by the handler and such ownership or distributorship is stated on the package: *Provided Further*, That to receive any level of credit, the product must display the handler's name, the handler's brand, or the words "California Almonds" on the primary, face label.

(v) When products containing almonds are promoted prior to November 2, 1999, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less.

* * * * *

Dated: October 25, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–28373 Filed 10–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1439 and 1477

RIN 0560–AF82

1999 Livestock Indemnity Program; 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule sets forth the terms and conditions for the 1999 Livestock Indemnity Program, authorized by the 1999 Emergency Supplemental Appropriations Act. The program will provide monetary assistance to producers for livestock losses due to natural disasters occurring between May 2, 1998, and May 21, 1999. Also, this rule sets out a clarifying

change regarding offsets and withholdings from payments made in the crop disaster program operated under 7 CFR Part 1477.

DATES: Effective November 1, 1999. Comments on this rule and information collection must be received by January 3, 2000, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to: Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202) 720–7641, or send by e-mail to: rebecca_davis@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PECD, FSA, USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis at (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, the administrative remedies must be exhausted.