

Agricultural Marketing Service, USDA

§ 981.408

through .399) and “Marketing percentage” regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart—Assessment Rates

§ 981.343 Assessment rate.

On and after August 1, 2005, an assessment rate of \$0.030 per pound is established for California almonds. Of the \$0.030 assessment rate, 60 percent per assessable pound is available for handler credit-back.

[70 FR 43273, July 27, 2005]

Subpart—Administrative Rules and Regulations

§ 981.401 Adjusted kernel weight.

(a) *Definition.* *Adjusted kernel weight* shall mean the actual gross weight of any lot of almonds: Less weight of containers; less moisture of kernels in excess of five percent; less shells, if applicable; less processing loss of one percent for deliveries with less than 95

percent kernels; less trash or other foreign material. The adjusted kernel weight shall be determined by sampling certified by the inspection agency.

(b) *Computation.* The computation of adjusted kernel weight shall be in the manner shown in the following examples. The examples are based on the analysis of a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with less than 95 percent kernels, and a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with 95 percent or more kernels. The first computation example is for the lot with less than 95 percent kernels containing the following: Edible kernels, 530 grams; inedible kernels, 120 grams; foreign material, 350 grams, and moisture content of kernels, seven percent. Excess moisture is two percent. The second computation example is for the lot with 95 percent or more kernels containing the following: Edible kernels, 840 grams; inedible kernels, 120 grams; foreign material, 40 grams; and moisture content of kernels, seven percent. Excess moisture is two percent. The example computations are as follows:

	Computation No. 1		Computation No. 2	
	Deliveries with less than 95 percent kernels		Deliveries with 95 percent or more kernels	
	Percent of sample	Weight (pounds)	Percent of sample	Weight (pounds)
1. Actual gross weight of delivery		10,000		10,000
2. Percent of edible kernel weight	53.0		84.0	
3. Less weight loss in processing ¹	1.00		0	
4. Less excess moisture of edible kernels (excess moisture×line 2) ...	1.06		1.68	
5. Net percent shell out (line 2 – lines 3 and 4)	50.94		82.32	
6. Net edible kernels (line 5×line 1)		5,094		8,232
7. Percent of inedible kernels (from sample)	12.0		12.0	
8. Less excess moisture of inedible kernels (excess moisture from sample×line 7)24		.24	
9. Net percent inedible kernels (line 7 – line 8)	11.76		11.76	
10. Total inedible kernels (line 9×line 1)		1,176		1,176
11. Adjusted kernel weight (line 6+line 10)		6,270		9,408

¹ Only applies to deliveries with less than 95 percent kernels.

[45 FR 68630, Oct. 16, 1980, as amended at 61 FR 42991, Aug. 20, 1996]

§ 981.408 Inedible kernel.

Pursuant to §981.8, the definition of inedible kernel is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold,

gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing: Provided, That the presence of web or frass shall

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not be considered serious damage for the purposes of determining inedible kernels, pieces, or particles of almond kernels.

[59 FR 39419, Aug. 3, 1994]

§981.413 Roadside stand exemption.

The term *at retail at a roadside stand* as used in §981.13 shall be defined to mean sales for home use and not for resale which are not in excess of 100 pounds net kernel weight to any one customer per day. Sales of almonds at certified farmers' markets in compliance with section 1392 of the regulations of the California Department of Food and Agriculture shall be construed as "roadside" sales for the purpose of §981.13 where these conditions are met.

[50 FR 30264, July 25, 1985]

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

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to §981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year. Credit, hereinafter termed "Credit-Back", will be granted in an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings. If the handler(s) conduct activi-

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ties and submit documentation according to applicable provisions in this section, their advertising assessment obligation will be reduced according to the amount of proven activities approved by the Board.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(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.