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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV05-981-1 FIR]

#### Almonds Grown in California; Revision to Requirements Regarding Credit for Promotion and Advertising

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the requirements regarding credit for promotion and advertising activities 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 order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule continues in effect the action that revised the requirements regarding the activities for which handlers may receive such credit. The changes expand the credit allowed for certain promotional activities, and help to clarify and simplify the regulations.

**DATES:** *Effective Date:* November 17, 2005.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 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."

USDA 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 an 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 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 continues in effect the action that revised the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule continues to revise the requirements regarding the activities for which handlers may receive such credit. The changes expand the credit allowed for certain promotional activities, and help to clarify and simplify the regulations. This action was unanimously recommended by the Board at a meeting on May 12, 2005.

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 Board recommended the following changes to those regulations.

#### Increasing Credit for Internet Promotion Activities

Section 981.441(e)(4)(ii)(K) allows handlers to receive credit against their assessment obligation for the development and use of Web-site activities on the Internet for advertising and public relations purposes. Prior to implementation of the interim final rule, allowable credit was limited to \$5,000 per year, and no credit was given for costs regarding E-commerce (which is equivalent to opening a store).

The Board recommended increasing the credit allowed for Internet promotional activities from \$5,000 to \$20,000 per year, adding credit for E-commerce (except for administration costs), and clarifying that no credit would be given to Intranet (inter-office

communication network). The Board determined that administration costs associated with E-commerce such as online payments and processing fees do not directly promote almonds and should thus be excluded from reimbursement under the program. This action expands the allowable credit and activities concerning Web sites and thus provides handlers more flexibility. Section 981.441(e)(4)(ii)(K) continues to be revised accordingly.

#### **Clarification Regarding Final Reimbursement Claims**

In order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Handlers must submit claims with appropriate documentation to the Board. Credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board within certain time frames throughout the crop year.

Section 981.441(e)(6)(iv) requires handlers to submit a statement of all outstanding credit-back commitments in full to the Board as of the close of the crop year (July 31) within 15 days after the crop year ends (August 15). Additionally, handlers must submit final claims pertaining to such outstanding commitments to the Board within 76 days after the crop year ends (October 15).

The Board recommended adding language to this section to clarify that final claims must be submitted "with all required elements," which includes invoices, proof of payment, and similar documentation. This will allow Board staff to process the final claims for a crop year and complete the necessary accounting functions to close the books for that crop year in a timely manner. Other comparable deadlines throughout the credit-back regulations contain this language. This addition helps to facilitate program administration. Section 981.441(e)(6)(iv) continues to be revised accordingly.

#### **Removal of Obsolete Language**

Prior to implementation of the interim final rule § 981.441 contained language throughout the section that referred to the 1998–99 crop year only. The Board recommended removing this language to help clarify and simplify the regulation. Section 981.441 continues to be revised accordingly.

#### **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 115 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 of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000.

Data for the 2003–04 crop year indicate that about 48 percent of the handlers shipped over \$6,000,000 worth of almonds and about 52 percent of the handlers shipped under \$6,000,000 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 \$261,248. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule continues in effect the action that revised § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the order, handlers may receive credit towards their assessment expenditures for marketing promotion activities, including paid advertising. This rule continues to increase the credit allowed for Internet promotion activities from \$5,000 to \$20,000 per year, adds credit for E-commerce (excluding administration), and clarifies that final reimbursement claims submitted to the Board by handlers for a crop year must include all applicable documentation. This final rule continues to remove obsolete language from the regulations that was applicable to the 1998–99 crop year.

Regarding the impact of this rule on affected entities, it is estimated that, for the 2003–04 crop year, about 18 percent of the industry's handlers participated in the credit-back program administered under the order. Increasing the credit allowed for Internet promotion activities and adding credit for E-commerce provides additional opportunities for handlers. The changes to specify that handlers must submit final claims with all required elements help to facilitate program administration. Finally, removing obsolete language clarifies and simplifies the regulations.

Regarding alternatives, the Board formed a task force that met on January 26, March 1, and April 1, 2005, to review the credit-back regulations. The task force considered several changes to the regulations, including whether handlers should receive credit for travel to trade shows, sponsorships, and sweepstakes. The task force also reviewed a handbook that Board staff developed to facilitate administration of the credit-back regulations. The task force's recommendations were reviewed by the Board's Public Relations and Advertising Committee on May 11, 2005, and by the full Board on May 12, 2005. Ultimately, the Board decided that the changes discussed herein are warranted at this time.

This action imposes no additional reporting or recordkeeping requirements on either small or large California 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 and assigned OMB No. 0581–0178. 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, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all task force, committee and Board meetings, those meetings held on January 26, March 1, April 1, May 11, and May 12, 2005, were all public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on June 27, 2005. Copies of the rule were mailed or sent via facsimile by the Board's staff to all Board members, alternates and almond handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided a 30-day comment period which ended on August 26, 2005. 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 finalizing the interim rule, without change as published in the **Federal Register** (70 FR 36816 on June 27, 2005) will tend to effectuate the declared policy of the Act.

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

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

#### PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 70 FR 36816 on June 27, 2005, is adopted as a final rule without change.

Dated: October 13, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05-20859 Filed 10-17-05; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Parts 430 and 431

**RIN 1904-AB54**

#### Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Energy (DOE) is publishing this technical amendment to place in the Code of Federal Regulations the energy conservation standards, and related definitions, that Congress prescribed in the Energy Policy Act of 2005 for certain consumer products and commercial and industrial equipment.

**DATES:** *Effective Date:* October 18, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-1851, e-mail: [linda.graves@ee.doe.gov](mailto:linda.graves@ee.doe.gov), or Thomas DePriest, Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: [Thomas.DePriest@hq.doe.gov](mailto:Thomas.DePriest@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Summary of Today's Action
- III. Procedural Requirements
- IV. Approval of the Office of the Secretary

#### I. Background

The Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109-58) was enacted on August 8, 2005. Among the provisions of Subtitle C of Title I of EPACT 2005 are provisions that amend Part B of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291-6309), which provides for an energy conservation program for consumer products other than automobiles, and Part C of Title III of EPCA (42 U.S.C. 6311-6317), which provides for a program, similar to the one in Part B, for certain commercial and industrial equipment. In addition to

provisions directing DOE to undertake rulemakings to promulgate new or amended energy conservation standards for various consumer products and commercial and industrial equipment, Congress itself prescribed new efficiency standards and related definitions for certain consumer products and commercial and industrial equipment.

By today's action, DOE is placing in the Code of Federal Regulations (CFR), for the benefit of the public, the energy conservation standards and related definitions that Congress has prescribed for various consumer products and commercial and industrial equipment. In this technical amendment, DOE is not exercising any of the discretionary authority that Congress has provided in EPACT 2005 for the Secretary of Energy to revise, by rule, several of the product or equipment definitions and energy conservation standards.<sup>1</sup> DOE may exercise this discretionary authority at a later time in rulemakings to establish test procedures or efficiency standards for these products and equipment.

#### II. Summary of Today's Action

DOE is placing the new energy conservation standards and related definitions into 10 CFR part 430 ("Energy Conservation Program for Consumer Products") or 10 CFR part 431 ("Energy Efficiency Program for Certain Commercial and Industrial Equipment"), as appropriate given the nature or type of the product or equipment. Apparently due to an error in legislative drafting, EPACT 2005 includes provisions dealing with the definitions, test procedures and standards for several types of commercial equipment in a section that amends sections 321, 323 and 325 of Part B of EPCA. Part B contains provisions for the "Energy Conservation Program for Consumer Products Other Than Automobiles." DOE anticipates that this error will be corrected through legislation, and that the provisions will become amendments to Part C of EPCA for "Certain Industrial Equipment." Because the location of the provisions within the statute and the Code of Federal Regulations does not affect either their substance or applicable procedures, DOE is placing them in the appropriate CFR part based on their nature or type. DOE provides a "cross-walk" in Table 1 that shows the location of the standards for the products and equipment in EPACT 2005 and in the Code of Federal Regulations.

<sup>1</sup> See, for example, section 135(a)(2)(B) (the definition of "medium base compact fluorescent

lamp"); section 135(a)(3) (the definition of "commercial prerinse spray valve"); and section

135(c)(4) (standards for medium base compact fluorescent lamps).