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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AE97

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds that were recently appropriated.

The DIPP indemnifies dairy farmers and manufacturers for losses suffered with respect to milk and milk products, through no fault of their own.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, P.O. Box 2415, Washington, D.C. 20013–2415, at (202) 720–7320.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

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 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR part 760 set forth in this final rule do not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Most recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 1997, (the Act) Public Law 104–180, 110 Stat. 1569, which authorizes the program to be carried out until the funds appropriated under the Act are expended. The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR 760.1–760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to make a technical amendment by adding a new authority pursuant to the Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon date of publication in the Federal Register.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Programs

The authority citation for Subpart Dairy Indemnity Payment Programs is revised to read as follows:

Authority: Pub. L. 104–37, 109 Stat. 310; Pub. L. 104–180, 110 Stat. 1569.

Signed in Washington, DC, on November 21, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–31072 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV96–981–4FR]

Almonds Grown in California; Interest and Late Payment Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements interest and late payment charges on past due assessments owed under the almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule implements authority contained in the marketing order to allow the Board to collect late payment and interest charges for past due assessments owed the Board by handlers, and will contribute to the efficient administration of the program.

EFFECTIVE DATE: This final rule becomes effective December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, Fax # (202) 720–5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' This 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 final 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 date of the entry of the ruling.

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.

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 95 handlers and approximately 8,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, 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. The majority of handlers and producers of California almonds may be classified as small entities.

This final rule implements regulations concerning collection of assessments under the California almond marketing order. This rule allows the Board to impose interest and late payment charges on past due assessment accounts. Although the vast majority of handlers are timely in remitting their assessments, there are a few who are not. This rule provides incentive for handlers to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all industry handlers. It will not impose any costs on handlers who pay their assessments on time, and will contribute to the efficient administration of the program. Therefore, the AMS has determined that this action will not have a significant economic effect on a substantial number of small entities.

Section 981.81 of the almond marketing order provides authority for the Board to assess handlers of California almonds to fund authorized activities. This section was recently amended to authorize the Board, with the approval of the Secretary, to impose interest and late payment charges on past due assessments.

The Board met on July 24, 1996, and unanimously recommended implementing the order authority regarding interest and late payment charges. Although most handlers remit assessments in a timely manner, historically there have been a few who do not. Those handlers are able to reap the benefits of Board programs at the expense of others. In addition, they are able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs. In effect, this provides handlers with an interest free loan.

Implementing interest and late payment charges will provide an incentive for handlers to pay assessments on time, which will improve compliance with the order. It will decrease the number of actions taken against handlers failing to pay assessments on time through administrative remedies or the Federal courts. These remedies can be costly and time consuming and often add to an already overburdened legal system. This rule removes any economic advantage gained by those handlers who do not pay on time, thus helping to ensure a program that is equitable to all. This is also consistent with standard business practices.

For 1996–97 crop year assessments, interest charges of one and one half percent per month will be charged for assessments 30 days or more late. In addition, assessments remaining unpaid for 60 days will be charged a 10 percent late payment charge. For prior crop year assessments past due, the Board recommended an interest rate of one and one half percent per month and a late payment charge of 20 percent, after handlers are provided an initial grace period to come into compliance.

While the Board's recommendation contemplated calculating interest and late payment charges from the original invoice date, the Department has determined that no interest or late payment charges will accrue prior to the effective date of this rule. Interest or late payment charges will only be applicable to assessments accrued and billed after the effective date of this rule.

The proposed rule concerning this action was published in the September 13, 1996, Federal Register (61 FR 48428), with a 30-day comment period

ending October 15, 1996. Two comments were received.

The Board commented that it supports the rule, in part, but it requested that the Department reconsider allowing the application of interest and late payment charges on assessments delinquent prior to the effective date of the final rule. The Board commented that the proposed rule ignored the industry's recommendations with regard to assessments which are delinquent prior to the effective date of the final rule and no one should be allowed to benefit from a ''free ride'' at the expense of other handlers. The Board believes that allowing handlers a short period of notice, such as 60 days, before imposing interest and late payment charges after the final rule is effective would give handlers ample opportunity to become current with all assessments past due. Those that do not become current during the notice period should be subject to interest and late payment charges, the Board believes. The Board further states that it believes this is consistent with the order language.

The Department does not believe that the Board's recommendation would be consistent with the order language. The amended order language states that assessments not paid within the prescribed period of time ''subsequent'' to approval by the Secretary shall be subject to interest or late payment charges. This language clearly indicates that only after the authority is implemented by a final rule should assessments be subject to interest and late payment charges. Although the Board may disagree with the Department's position that the order authorizes it to charge interest and late payment charges only on handlers who fail to pay assessments accrued and billed after the effective date of the final rule, the Department believes that the clear language and the intent of the order amendment is being met with this action and the long term benefits of this final rule will be significant to the effective administration of the order. For the above stated reasons, no change is being made to the rule in response to the Board's comment.

The second comment was submitted by an attorney on behalf of an almond handler. This commenter requested clarification on the portion of the rule which states that no interest or late payment charges will accrue prior to the effective date of the rule and that interest and late payment charges will only be applicable to assessments accrued and billed after the effective date of the rule. As an example, he asked if a handler could be charged interest or late payment charges for assessments accrued in 1993. The commenter's interpretation of this language was that it would not. The commenter is correct. Only those assessments accrued and billed after the effective date of this final rule will be subject to interest and late payment charges.

The commenter also asked if a handler has filed a petition in good faith under section 608 15(a) of the Act, challenging the constitutionality of any or all portions of the almond marketing order, and withholds assessments pending the outcome of this action, is the handler subject to interest and late payment charges from the time the assessments were originally accrued and billed? The commenter stated that interest and late payment charges should not apply during the pendency of a 15(a) proceeding because the Department will not stipulate to a refund of assessments in the event the handler prevails. The commenter proposed an exemption from interest and late payment charges for those assessments owed for promotion and advertising programs if the handler has filed a 15(a) petition. The handler would maintain such assessments in an interest bearing account and the funds would ultimately be the property of the prevailing party.

It is the Department's position that filing a 15(a) petition does not relieve a handler from complying with marketing order requirements. If a handler prevails in a legal proceeding challenging the validity of marketing order provisions, the Department would comply with any final unappealable order granting relief to petitioners. Petitioners have the opportunity to argue relief remedies in the appropriate legal forum. For the foregoing reasons, no change is being made to the rule in response to this comment.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

After consideration of all relevant matter presented, including the information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be implemented as soon as possible so that the Board will be in a position to implement an incentive for handlers to make timely assessment payments. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed 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. A new § 981.481 is added to read as follows:

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.481, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

Dated: December 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–31027 Filed 12–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.