industry to shoulder the expense of an advertising program.

The Board met again on February 1, 1995, and recommended, by a six to four vote, to further reduce the assessment rate. The Board recommended an assessment rate of .25 cents per pound. This action was taken after the Board further evaluated its financial position and current and future program activities.

An assessment rate of .25 cents per pound will generate income of $1,675,000 based on an estimated assessable crop of 670 million pounds. When combined with cash and cash equivalents held by the Board, this will provide the Board with sufficient income to meet its administrative expenses and those promotional expenses to which it is contractually obligated for the remainder of the current fiscal year.

To reduce the budget of expenses previously approved ($9,435,262), the Board deleted the funds budgeted for reserve replenishment ($300,000) and at its November 30, 1994, meeting, postponed a major portion ($3.9 million) of the $4.7 million funds budgeted for promotional activities. These revisions will reduce the budget to $5,235,262. The reduced budget will provide the Board with sufficient capital to carry into the next fiscal year to finance operations prior to collection of future assessments.

Concerns were raised that the reduction of the assessment rate mid-way through the crop year may generate complaints from those handlers who relied on the final rule of September 8, 1994, which established an assessment rate of 2.25 cents per pound, of which handlers could receive credit-back up to one cent per pound for their own promotional expenditures. Some handlers have incurred expenses that would be eligible for credit-back under the provisions of that rule.

Under this assessment rate reduction, there is no assessment for these handlers to claim credit-back against. However, an assessment rate of .25 cents per pound is significantly lower than the previously established rate of 2.25 cents. Under the previous assessment of 2.25 cents, if handlers claimed credit-back for the entire one cent, they would still be required to pay 1.25 cents per pound to the Board. Handlers will pay significantly less even if they conducted advertising for which they believed credit-back would be obtained. In addition, benefits are derived from advertising undertaken by these handlers.

A proposed rule concerning this rule was published in the March 24, 1995, **Federal Register** (60FR 15523), with a 30-day comment period. Two comments were received.

The first comment received was from an independent handler who was concerned that some handlers will make their final accountings to growers prior to the finalization of the proposed rule. If handlers make final payment to their growers based on the proposed assessment and USDA modifies the proposal, the commenter states that some of these handlers will file petitions against USDA for modifying the proposal under section 608c(15)(A) of the Act. However, this final rule does not modify the proposed rule and both handlers and growers had adequate notice of this change. In addition, the marketing order does not regulate contractual relationships between handlers and growers.

The second comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that although it concurs with the cancellation of the advertising component of the order until legal disputes are resolved, USDA's assertion that this cancellation of the advertising program would not have a significant economic impact on a substantial number of small entities was illogical. SBA contends that rational businesses are not going to subject themselves to the increased paperwork generated by the advertising program for insignificant economic gain and USDA appears to be avoiding its responsibilities under the RFA.

Although SBA's comment seems to relate to the implementation of the almond promotional program, rather than the elimination of that program, consideration was given to the impact of this rule on large and small handlers. As stated previously in this final rule and in the proposed rule, concerns were raised about the handlers who have incurred expenses that would be eligible for credit-back. It was determined that handlers will pay significantly less even if they conducted advertising for which they believed they would be entitled to credit-back as well as derive benefits from the advertising they conducted.

Another determination made in this rule and in the proposed rule was that the action taken by the Board to minimize financial liability in the event the pending litigation is decided unfavorably to the Board, is sensible and reduces economic risk to handlers.

For the above reasons, USDA disagrees with the SBA's assertion that this action fails to meet the requirements of the RFA. The program's impact on small businesses has been properly addressed in this document and in the proposed rule.

This rule reduces the assessment obligation imposed on handlers. The assessments are uniform for all handlers. The assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the Board's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces the assessment rate currently in effect; (2) this rule should be in effect as soon as possible because the 1994 crop year began on July 1, 1994; and (3) the proposed rule provided a 30-day comment period and the only comments received did not oppose the reduction.

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.

Note: The following section will not appear in the Code of Federal Regulations.

2. Section 981.341 is revised to read as follows:

§ 981.341 Expenses and assessment rate.

Expenses of $5,235,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at .25 cents per kernel pound of almonds. Of the .25 cents assessment rate, none is available for handler credit-back pursuant to § 981.441.

Dated: May 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

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