regulation. The interim final rule removed these containers from the regulation.

Other Changes in the Regulations

Prior to the interim final rule, the name and telephone area codes of an inspection office in § 979.304(c)(4) were incorrect. To correct these references, the committee recommended that the name of the inspection office be changed to ''Texas Cooperative Inspection Program'' office and the telephone area codes be changed from ''210'' to ''956.''

In Marketing Order No. 979 the correct spelling of ''cantaloupe'' is used, and in §§ 979.180 and 979.304, ''cantaloup'' was misspelled. To correct the misspelling and for consistency, all references to ''cantaloup'' were changed to ''cantaloupe'' by the interim final rule.

This rule will continue to permit the South Texas melon industry to experiment with different types of containers prior to adding them to their approved container list. The committee believes this will allow handlers to more effectively accommodate retailer and customer needs.

The committee recommended these changes to assist the consuming public in receiving Texas melons in containers they desire. Permitting the South Texas melon industry to experiment with different types of containers without the need for rulemaking and adding tolerance to the approved honeydew bulk container have small entity orientation.

An alternative to the recommended changes would have been to keep the regulations as they are, however:

(1) It was the committee's desire to come up with a more workable bulk honeydew container regulation to make it more precise and eliminate potential problems. Not permitting a 1½ inch tolerance for each dimension on the bulk container could have prevented the industry from marketing honeydew melons in containers which might be manufactured slightly different from the sizes specified in the regulation.

(2) Not permitting the committee to quickly approve shipments for experimental purposes exempt from regulations or in experimental containers without rulemaking could have hindered the industry's ability to respond to market needs and prevented it from marketing more melons. Not providing the committee the flexibility to quickly respond to market demands for test containers or shipments could have resulted in the industry losing sales to other melon producing areas.

(3) The two permanent experimental containers were no longer needed because the containers have not been used for a number of years, and a new section was added to make it possible for the committee to quickly approve the use of experimental containers.

(4) Not updating the name and telephone numbers of the inspection office to accurately reflect the correct information could have caused confusion in the industry.

Although authorizing melon shipments for experimental purposes and the use of experimental containers will impose some additional reporting and recordkeeping requirements on melon handlers, this will be minimal. Currently, handlers making shipments of melons for special purposes, including experimental, are required to obtain a Certificate of Privilege to notify the committee of their intent to ship melons for these purposes. Also, handlers must prepare a special purpose shipment report on each shipment and forward it to the committee. The committee estimates that approximately two or four handlers might request approval for the use of experimental containers, which will increase the total reporting and recordkeeping burden by approximately .1 to .2 hours, and this time to currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules and duplicate, overlap or conflict with this rule.

Further, the committee's meeting was publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the March 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The committee itself is composed of 10 members, of which 9 are growers and handlers, and one represents the public. Also, the committee has a subcommittee to review certain issues and make recommendations to the committee. The subcommittee met on January 28, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on May 4, 1999. Copies of the rule were mailed by the committee's staff to all committee members and melon handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 6, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing an interim final rule, without change, was published in the **Federal Register** (64 FR 23754, May 4, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the intermin final rule amending 7 CFR part 979 which was published at 64 FR 23754 on May 4, 1999, is adopted as a final rule without change.

Dated: July 23, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19353 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–2 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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. The changes make the promotion program more effective and efficient, clarify the regulations, and improve program administration.

EFFECTIVE DATE: This final rule becomes effective August 1, 1999.

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, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

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 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 the date of the entry of the ruling.

This final rule revises the requirements regarding credit for promotion and advertising activities prescribed under 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. It provides for more effective promotion programs and improved clarity to the regulations, resulting in improved program administration and more efficient and effective use of industry promotion funds. This rule was unanimously recommended by the Board at meetings on December 2, 1998, and March 5, 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 989.41(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. These changes apply only to promotional activities conducted during the 1999–2000 and future crop years.

Revising Time Frames for Submitting Documentation

Section 981.441(a) provides that, 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. Currently, 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 at least 2 weeks prior to assessment billings. This 2-week period is also currently specified in § 981.441(b) and 981.441(e)(6)(ii). Assessments are typically billed in four installments for a crop year near the end of the following months—November, January, April, and August.

Based on past experience with the program, the majority of handlers file claims for credit for their promotional activities during the later months of a crop year. The vast majority of claims are thus received at the Board's office near the third and fourth filing deadlines. Because of this, the Board's staff has found that it needs more time to review and process handler documentation for promotional claims submitted during this time to grant credit against handlers' assessment obligations at the time assessment notices are issued. Thus, the Board recommended that, in order for handlers to receive credit for their promotional activities on their third and fourth assessment billings (April and August), the documentation for such activities must be submitted to the Board 3 weeks, rather than 2 weeks, prior to those billings. However, this requirement should not apply to documentation submitted prior to the fourth assessment billing for activities conducted during the 1998–99 crop year. Handlers conducted activities and operated under program parameters in place throughout the 1998–99 crop year. They should be allowed to continue to follow those parameters for activities conducted during the 1998–99 crop year. Thus, the two week timeframe should apply to submission of documentation prior to the fourth assessment billing of the 1998–99 crop year. Appropriate changes are made to paragraphs (a), (b), and (e)(6)(ii) of § 981.441.

Section 981.441(e)(6)(iv) currently provides that final claims for credit-back advertising be submitted to the Board within 105 days after the close of the crop year, in situations when handlers

have filed a statement of credit-back commitments outstanding as of the close of the crop year. The Board recommended changing this 105-day time frame for several reasons. First, the deadline can cause confusion among handlers because it overlaps with the time frame for filing the first claims of the new crop year. In addition, the overlap creates program administration problems for Board staff with regard to reviewing claims and applying credit for two separate years during the same time period. Finally, the current deadline causes a delay in completion of the Board's year-end accounting practices and annual financial audit. Thus, the Board recommended that this deadline be reduced from 105 to 76 days after the close of the end of the crop year. This will eliminate confusion and program administration problems associated with the overlap period for filing claims, and allow the Board's end-of-year financial audit to be completed by December or earlier of the following crop year, as opposed to January or later. However, for reasons discussed in the preceding paragraph, the deadline should remain at 105 days for activities conducted during the 1998–99 crop year. Section 981.441(e)(6)(iv) is modified accordingly.

When handlers have not filed a statement of credit-back commitments outstanding at the close of a crop year, the deadline for filing final promotional claims with the Board is 2 weeks prior to the final assessment notice (mid-August). However, this deadline date is not clearly specified in the current regulations and has caused some confusion in the past. Therefore, the Board recommended establishing August 15 as the deadline for filing final claims in this situation. This will provide more clarity and reduce confusion regarding the deadline for filing final claims. Section 981.441(e)(6)(iv) is modified accordingly.

Redefining Growing Region

Section 981.441(e)(3) currently does not generally allow handlers to receive credit against their assessment obligation for outdoor advertising or sponsorships that are conducted in the major growing regions of California. The major growing regions currently listed in the regulation are the following 11 almond-growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties. The rationale for this exclusion is that historically, much of the outdoor advertising and sponsorship activities in the major growing areas have been to encourage growers to do business with specific handlers rather than encouraging consumption of almonds. This is contrary to the intent of this program, which is to promote the sale, consumption, or use of almonds.

The Board recommended removing this list of counties from the regulations and adding substitute language. Production and new acreage planted in the almond industry have increased significantly in recent years, and production areas have been shifting within the State. The current regulations do not take this into account, and the aforementioned list of counties no longer accurately reflects the major growing areas.

The Board believes a more effective approach will be to revise the regulations to specify that no credit be given for outdoor advertising activities conducted in any California county with more than 1,000 bearing acres of almonds. This approach will adequately define the major growing regions, and accommodate production shifts in the future. This, in effect, removes Sacramento County as a major growing area and thus allows outdoor advertising in that county. Sacramento County contains a major metropolitan area, which lends itself to the use of outdoor advertising, and is a minor almond growing area, with only 110 acres compared to an industry total of over 400,000 acres. The other 10 counties listed above continue to be regions ineligible for this type of credit. Other counties with significant almond acreage such as Kings, San Luis Obispo, Solano, Sutter, Tehama, Yolo, and Yuba are classified as major almond growing areas, and outdoor advertising in those counties, thus, will be considered ineligible for credit-back.

The Board further believes that modifying the regulations in this manner will better reflect the original intent of the regulation, and allow more flexibility for shifts in production within the growing area. Section 981.441(e)(3) is modified accordingly. The Board also recommended that sponsorship be completely eliminated as a credit-back activity; this recommendation is discussed below.

Revisions to List of Credit-Back Activities

Section 981.441(e)(4)(ii) lists 13 other market promotion activities for which credit may be granted. These activities currently include marketing research (except pre-testing and test-marketing of paid advertising); trade and consumer product publicity; printing costs for promotional material; direct mail printing and distribution; retail in-store demonstrations; point-of-sale materials (not including packaging); sales and marketing presentation kits; trade fairs and exhibits; trade seminars; 50/50 advertising with retailers; couponing (printing, distribution, and handling costs only); purchase of Board-produced promotional materials; and sponsorships.

The Board recommended revising the requirements regarding trade and consumer product publicity. Trade and consumer product publicity includes disseminating information through various communications media to attract public attention. Handlers often hire an outside agency to conduct such activities. Usually, such an agency charges a fee for its work. In the past, this agency fee has been included as part of the credit-back activity, as agency fees for paid advertising are. However, in the case of trade and consumer product publicity, the Board has encountered difficulties in associating agency fees to particular credit-back activities, and determining whether this fee is appropriate, because there is no standard fee or guidelines for such fees. For paid advertising, this does not pose a problem because there is a standard agency fee that can easily be associated directly to a particular activity. Thus, the Board recommended that agency fees for publicity no longer be included as a credit-back activity. All of the other allowable activities associated with publicity (such as materials) which can be directly tied to a specific publicity campaign will still be eligible for credit.

The Board also recommended that trade seminars be removed from this list of credit-back activities. Trade seminars include special events designed to educate the trade about the almond industry and its products. Although Board records indicate there has been no use of this area as a credit-back activity by handlers, the Board believes that there is a high possibility of misuse in this area. Trade seminars are not well defined and standardized activities; thus, lavish entertainment or elaborate sales meetings are characterized as trade seminars. Trade shows will remain as a credit-back activity, however. These events are widely used and the activities are well-defined and standardized, such as setting up booths to exhibit merchandise to customers. Thus, the Board recommended that trade seminars be removed from the list of credit-back activities.

The Board also recommended that handlers' purchases of Board-produced promotional materials be removed from the list of credit-back activities. Board funds are used to develop various

promotional materials that are made available to handlers. In the past, handlers purchased such materials from the Board and received promotion credit. However, the Board has recently developed an allocation system whereby handlers may receive a certain percentage of promotional material produced by the Board free of charge. Each handler's allocation for a crop year is based on the percentage of almonds handled during the prior year. Handlers may purchase additional material at cost. This new system, not covered by the credit-back regulations, allows Board staff to plan more effectively and to purchase materials more cost effectively, while maintaining a promotional tool for handlers. Since this new system was developed, the Board determined that continuing to allow credit for purchase of Board-produced promotional material results in overlap of two similar programs. Therefore, the Board recommended that purchase of such material be removed from the list of credit-back activities.

In addition, the Board recommended that sponsorship be removed from the list of credit-back activities. Sponsorship includes the financial support of an event or person carried out by another group or person. Sponsorship can be targeted towards consumers, the trade, or may be undertaken for general goodwill. A review of sponsorship claims submitted in the past indicates several claims appear to fall into the category of general goodwill rather than to promote the sale and consumption of almonds as the primary purpose. Further, Board staff has had difficulty in determining a reasonable rate for crediting some of the activities due to a lack of an industry standard. Finally, Board staff has found that many of the most effective activities typically claimed as sponsorship can be applicable under other credit-back areas in the regulations. Thus, the Board recommended that sponsorship be removed from the list of credit-back activities.

The Board also recommended that a new credit-back activity be added to the regulations concerning use of the Internet. Several handlers have or are developing web-sites to promote their almonds. This is a rapidly developing communication medium becoming widely recognized as a valuable promotional tool. Thus, the Board believes handlers should be allowed credit for development and use of the Internet for promotional purposes. Because of the vast array of uses of the Internet, however, the Board believes guidelines should be implemented regarding crediting handlers' expenditures in this area. Thus, the Board recommended that handlers be allowed up to $5,000 credit against their assessment obligation for the development and use of a web-site on the Internet for advertising and public relations purposes. No credit is given for costs regarding E-commerce (which is equivalent to opening a store), Extranet (private web sites within the Internet), or portions of a web-site that target the farming or grower trade. The Board believes these types of activities lend themselves to potential abuses and do not necessarily advance the intent of the program, which is to promote the sale, use, and consumption of almonds.

Appropriate changes have been made to the list of credit-back activities specified in § 981.441(e)(4)(ii) to incorporate all of these changes.

Recommendation Regarding Credit-Back for Almond Products

Section 981.441(a) specifies that handlers may be granted credit against their assessment obligation for an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities. Section 981.441(e)(iv) provides that 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. For example, if a handler paid $1,000 in advertising costs to promote a product which contained 60 percent almonds by weight, such handler is able to file a claim for credit against his or her assessment obligation of 60 percent of $1,000, or $600. The amount of credit is 66⅔ percent of $600, or $400. If the product contained 70 percent almonds by weight, the handler is eligible to receive a credit against his or her assessment of 66⅔ percent of the 70 percent, or $467.

The Board recommended adding an exception to this portion of the regulations. Specifically, handlers who own almond-containing ''unique'' or ''non-traditional'' products would be allowed to request that the Board grant them a one-year exemption from this ''percentage rule.'' Thus, in the above example, a handler could request from the Board an exemption and receive credit for 66⅔ percent of his or her advertising costs for the product, or $667, regardless of the weight of the almonds in the product. The Board believes that this special exception would provide handlers incentive to produce and advertise unique almond products, resulting in increased almond sales for the industry. Board members would be responsible for reviewing such requests from handlers and determining whether an exception would be granted on a case-by-case basis.

The Department has concerns with this recommendation. Although there was support for this concept at the industry meetings which led to the recommendations, those participating in the meetings were not able to develop criteria to define a ''unique'' or ''non-traditional'' product. Thus, there are no specific parameters for Board staff to review claims against. Because of this, the recommendation calls for the Board itself, rather than staff, to determine what products would qualify (Board staff currently reviews all promotion claims). It is unclear how the Board would make such determinations. The lack of criteria could potentially lead to subjective decision-making and Board members reviewing claims could create potential conflicts of interest. The purpose of these regulations is to provide a clear set of guidelines that can be applied uniformly by Board staff to avoid these situations. While the Department supports the concept of providing incentive for new product development, it is not proceeding with this recommendation at this time because of the aforementioned concerns.

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 action 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 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 final rule revises § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain of their direct expenditures for marketing promotion activities, including paid advertising. This rule makes several revisions to the requirements regarding the activities for which handlers may receive such credit. These revisions include: Revising the time frames and clarifying deadlines for when handlers must submit documentation to the Board on activities conducted; redefining the growing region eligible for credit for certain types of outdoor advertising; revising the list of creditable activities by eliminating credit for fees charged by advertising and public relations agencies for publicity, trade seminars, purchase of Board-produced promotional material, and sponsorships; and adding use of the Internet as a promotional tool as a new, credit-back activity.

Regarding the impact of this rule on affected entities, the changes specified herein are designed to provide for a more effective and efficient use of the industry's advertising and promotion funds, and to improve program administration. Requiring handlers to submit documentation to the Board 3 weeks, as opposed to 2 weeks, prior to the Board's April and August assessment billings changes the timing, but not the frequency, of the filings submitted by handlers. This change is not expected to increase the reporting burden on handlers, but rather provide the Board's staff sufficient time to review the material and credit handlers' accounts in a more timely manner. Clarifying the deadline for filing claims at the end of a crop year will eliminate confusion among handlers and allow the Board to complete its year-end accounting practices more timely. Redefining the growing region eligible for credit for outdoor advertising to include only counties with less than 1,000 bearing acres of almonds will help ensure that credit only be given for outdoor advertising that encourages consumers to buy almonds (as opposed to such advertising done in larger bearing counties directing growers to specific handlers). This change also adds flexibility to the regulations to accommodate production shifts in the future. Adding the Internet as a credit-back activity will allow handlers to take advantage of a new communication medium and provide them with a new promotional opportunity that can be used to offset a portion of their assessment obligation. Removing certain activities available for credit-back is not expected to negatively impact handlers, as numerous promotional activities remain for them to offset a portion of their assessment obligation. The activities removed have received little use in the past, and in some cases lend themselves to potential abuses that result in ineffective use of promotional funds. The changes are expected to be equally beneficial to all handlers who conduct their own promotional activities and to the industry as a whole.

Several alternatives to the changes were considered. The first alternative in all cases was to leave the regulations as they currently exist. However, this does not address the changes in the industry, technology, or promotional practices. Nor does it address the administrative inefficiencies and the potential program abuses that have been identified. Alternatives to the recommendations concerning removing certain activities from the list of credit-back activities included leaving the activities in the regulations, with further definition and clarification added. However, it was determined that this would lead to increased regulations and guidelines, with no assurance of solving the problems. In addition, most of the activities being removed have been used very infrequently by handlers. The removal of credit for purchase of Board-produced promotional materials was replaced by an alternative system whereby handlers are provided a free allocation of such materials, with the option of purchasing additional materials at cost.

Regarding the changing of dates for submitting documents to the Board, different dates were considered. However, it was determined that the dates ultimately recommended allow the minimum amount of time necessary for Board staff to review documents, apply credit to handlers' assessment accounts, and to complete year-end accounting practices in a timely manner. Alternatives to changing the growing region definition included using a different acreage number as a threshold to defining a producing county. However, the industry agreed for purposes of the credit-back program, 1,000 acres was appropriate. Another alternative considered was to remove the restriction of outdoor advertising in almond growing counties, but that does not address the problem of handlers advertising to growers.

It was determined that the changes herein are the best way to address the situation at this time. These regulations were designed to reflect the industry's practices, and these revisions are intended to respond to an evolving marketplace and changing promotional practices. Changes have been and will continue to be recommended based on industry and program experiences.

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's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, the December 2, 1998, and March 5, 1999, meetings were public meetings 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. The March 5, 1999, meeting was held to finalize the Board's recommendations. All of these meetings were open to the public, and both large

and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on June 10, 1999 (64 FR 31153). Copies of the rule were mailed to all Board members and almond handlers. The proposal was also made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the proposal. The comment period ended July 12, 1999. No comments were received.

The Department made some changes to the amendatory language as stated in the proposed rule for clarity and conformity between provisions. These changes include a change pertaining to the development and use of web-sites on the Internet for advertising and public relations purposes. The words ''for such activities'' were added to the proviso in paragraph (e)(4)(ii)(K) of § 981.441 to clarify that handlers may be allowed up to $5,000 credit against their assessment obligation for activities concerning web-sites and the Internet. Another change conforms language in paragraph (b) of § 981.441 to be consistent with the change requiring handlers to submit documentation to the Board three weeks prior to the third and fourth assessment billings in order to offset a portion of the assessment obligation. Language was added to paragraphs (a), (e)(6)(ii), and (e)(6)(iv) to clarify that the changes do not apply to promotional activities conducted prior to the 1999–2000 crop year.

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.

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: (1) This rule should be in effect by August 1, the beginning of the 1999–2000 crop year; (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 public meetings; and (4) 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. Section 981.441 is amended by revising the second sentence in paragraph (a), paragraphs (b), (e)(3), (e)(4)(ii), the first sentence in paragraph (e)(6)(ii), and paragraph (e)(6)(iv) to read as follows:

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

(a) * * * 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: *Provided,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit in the form of a payment from the Board, or as an offset to that portion of the assessment. * * *

(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: *Provided,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit. If the handler(s) conduct activities 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.

* * * * *

(e) * * *

(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) * * *

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided,* That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes: *Provided,* That Credit-Back shall be limited to $5,000 per year for such activities, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

* * * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided,* That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further,* That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. * * *

(iii) * * *

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims

pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998–99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

* * * * *

Dated: July 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 715 and 741

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Credit Union Membership Access Act amended certain audit and financial reporting requirements of the Federal Credit Union Act. The National Credit Union Administration has received and reviewed public comments on its proposed rule implementing those amendments. As revised to reflect commenters' suggestions and to enhance clarity, the final rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

DATES: Effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance at (703) 518–6360, or Steven W. Widerman, Trial Attorney, Office of General Counsel, at (703) 518–6557, National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Credit Union Membership Access Act

Section 201(a) of the Credit Union Membership Access Act (CUMAA), Public Law 105–219, 112 Stat. 918 (1998), added two new subsections to section 202(a)(6) of the Federal Credit Union Act (FCUA), 12 U.S.C. 1782(a)(6)(C) and (D). Subsection (C) addresses accounting principles, generally requiring credit unions having assets of $10 million or more to follow generally accepted accounting principles (GAAP) in all reports or statements filed with the NCUA Board.[1] 12 U.S.C. 1782(a)(6)(C). The NCUA Board, and State credit union supervisors under applicable statutes, are given the authority to require credit unions having less than $10 million in assets to follow GAAP. 12 U.S.C. 1782(a)(6)(C)(iii).

Subsection (D) imposes audit requirements for large federally-insured credit unions—those having assets of $500 million or more. A credit union at or above that level of assets, whether State-or Federally-chartered, is required to obtain an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards (GAAS)—hereinafter referred to as a ''financial statement audit.'' Furthermore, that audit must be performed by an independent certified public accountant or public accountant licensed to do so by the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(i). For a breakdown of State-licensing requirements for persons who perform audits, see proposed rule, 64 FR 777n.2.

A federally-chartered credit union having total assets of less than $500 million but more than $10 million is subject to only one requirement under subsection (D). If that credit union elects to obtain the financial statement audit required of a credit union having assets of $500 million or more, the audit must be performed consistent with the accountancy laws and licensing requirements of the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(ii). The appropriate State or jurisdiction normally is the State in which the credit union is principally located.

Subsection (D) imposes no minimum audit requirements at all on federally-chartered credit unions having total assets of less than $500 million but more than $10 million that do not voluntarily elect to obtain a financial statement audit performed in accordance with GAAS (as credit unions having assets of $500 million or more must obtain under subsection (D)(i)). *See* § 715.2(f) (GAAS definition). Only in the case of a financial statement audit performed in accordance with GAAS, whether by choice or by law, do State accountancy laws and licensing requirements apply.[2] Subsection (D) is silent regarding audits of federally-chartered credit unions having assets of $10 million or less, and Federally-insured State-chartered credit unions (FISCUs) having assets of less than $500 million.

With respect to financial statement audits, the threshold set by subsection (D) at $500 million for requiring a financial statement audit puts federally-insured credit unions in parity with other federally-insured depository institutions. The institutions supervised by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of Comptroller of the Currency and the Federal Reserve Board are required to obtain a financial statement audit if they have assets of $500 million or more.[3] 12 CFR 363. For institutions having assets of less than $500 million, the Federal Financial Institutions Examination Council (FFIEC) has proposed audit options similar to two of those which this final rule prescribes for credit unions. FFIEC, *Policy Statement on External Auditing Programs of Banks and Savings Associations*, 63 FR 7796 (Feb. 17, 1998) (*FFIEC Policy Statement*).

B. Proposed Rule

On January 6, 1999, NCUA published a Notice of Proposed Rule, 64 FR 776 (Jan. 6, 1999), establishing new part 715 to implement the statutory minimum audit requirements imposed by

[1] In lieu of GAAP, the NCUA Board may prescribe ''an accounting principle * * * that is no less stringent than [GAAP].'' 12 U.S.C. 1782(a)(6)(c)(ii).

[2] FCUA section 202(a)(6)(D)(ii), 12 U.S.C. 1782(a)(6)(D)(ii), provides: If a Federal credit union that is not required to conduct and audit under clause (i), and that has total assets of more than $10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.'' (emphasis added.) ''Such an audit'' refers back to ''an audit under clause (i)'' of section 1782(a)(6)(D). A clause (i) audit is a financial statement audit performed in accordance with GAAS. The clause (ii) requirement to follow State accountancy and licensing laws is triggered only when a credit union voluntarily chooses a financial statement audit.

[3] The statute authorizing 12 CFR 363, originally established a $150 million asset floor for requiring a financial statement audit. 12 U.S.C. 1831m(j)(2). However, the banking agencies exercised their statutory authority to increase the asset floor to $500 million, thereby exempting two-thirds of all institutions required under § 1831m to obtain a financial statement audit. 12 CFR 363.1(a) 58 FR 31332 (June 2, 1993).