

Rules and Regulations

Federal Register

Vol. 64, No. 200

Monday, October 18, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99-984-3 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 1999-2000 and subsequent marketing years from \$0.0133 per kernelweight pound to \$0.0118 per kernelweight pound of walnuts handled. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California (order). Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate decrease is possible because the 1999-2000 assessable poundage is expected to total 252,000,000 kernelweight pounds (almost 30 percent higher than last year). The \$0.0118 per kernelweight pound assessment rate will allow the Board to cover its 1999-2000 expenses. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: October 19, 1999. Comments received by December 17, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC

20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Diane Purvis, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Programs, 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, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning August 1, 1999, and continue until amended, suspended, or terminated. 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. Such 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 rule decreases the assessment rate established for the Board for the 1999-2000 and subsequent marketing years from \$0.0133 per kernelweight pound to \$0.0118 per kernelweight pound of walnuts. The assessment rate decrease is possible because the 1999-2000 assessable poundage is expected to total 252,000,000 kernelweight pounds (almost 30 percent higher than last year). The \$0.0118 per kernelweight pound assessment rate will allow the Board to cover its 1999-2000 expenses.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998-99 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate of \$0.0133 per kernelweight pound of walnuts that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and

information submitted by the Board or other information available to the Secretary.

The Board met on September 10, 1999, and unanimously recommended 1999–2000 expenditures of \$2,967,356 and an assessment rate of \$0.0118 per kernelweight pound of walnuts. In comparison, last year's budgeted expenditures were \$2,620,274. The assessment rate of \$0.0118 is \$0.0015 lower than the rate currently in effect. The lower assessment rate was recommended because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be the largest on record at 280,000 tons. The Board estimates that about 252,000,000 kernelweight pounds of the crop will be certified as merchantable and thus be subject to assessments. The recommended assessment rate should allow the Board to more than cover its expected expenses for 1999–2000.

The major expenditures recommended by the Board for the 1999–2000 year include \$2,413,038 for marketing and production research expenses, \$289,709 for general expenses, \$179,809 for office expenses, \$59,800 for a production research director, and \$25,000 as a contingency. Budgeted expenses for these items in 1998–99 were \$2,115,016 for marketing and production research expenses, \$246,643 for general expenses, \$163,815 for office expenses, \$59,800 for a production research director, and \$35,000 as a contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Walnut shipments for the year are estimated at about 252,000,000 kernelweight pounds which should provide \$2,973,600 in assessment income. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year (§ 984.69). The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the

Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1999–2000 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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 initial 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 5,000 producers of walnuts in the production area and approximately 48 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

During the 1997–98 marketing year, as a percentage, about 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts and 67 percent of the handlers shipped under 2.4 million kernelweight pounds. Using an average f.o.b. price of \$2.10 per kernelweight pound, the majority of California walnut handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 1999–2000 and subsequent marketing years from \$0.0133 per kernelweight pound to \$0.0118 per kernelweight pound of walnuts. The Board unanimously recommended 1999–2000 expenditures of \$2,967,356 and an assessment rate of \$0.0118 per kernelweight pound. The assessment rate of \$0.0118 is \$0.0015 lower than the 1998–99 rate. The quantity of assessable walnuts for the 1999–2000 marketing year is estimated at 252,000,000 kernelweight pounds.

Thus, the \$0.0118 rate should provide \$2,973,600 in assessment income and be adequate to cover this year's expenses. The lower assessment rate was recommended because this year's crop is estimated by the CASS to be the largest on record at 280,000 tons.

The major expenditures recommended by the Board for the 1999–2000 year include \$2,413,038 for marketing and production research expenses, \$289,709 for general expenses, \$179,809 for office expenses, \$59,800 for a production research director, and \$25,000 as a contingency. Budgeted expenses for these items in 1998–99 were \$2,115,016 for marketing and production research expenses, \$246,643 for general expenses, \$163,815 for office expenses, \$59,800 for a production research director, and \$35,000 as a contingency, respectively.

The Board reviewed and unanimously recommended 1999–2000 expenditures of \$2,967,356 which included increases in administrative and office expenses and research programs. Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The Board also considered alternative assessment rates of \$0.0120 and \$0.0123 per kernelweight pound in case the crop and amount of assessable walnuts are underestimated. However, the Board ultimately derived the rate of \$0.0118 per kernelweight pound of assessable walnuts by dividing the total recommended budget by the 252,000,000 kernelweight pound estimate of assessable walnuts for the 1999–2000 marketing year.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 1999–2000 season should average about \$0.65 per kernelweight pound of walnuts. Therefore, the estimated assessment revenue for the 1999–2000 marketing year as a percentage of total grower revenue should be less than 2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested

persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <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 this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 marketing year began on August 1, 1999, and the order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; (2) this action decreases the assessment rate for assessable walnuts beginning with the 1999–2000 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

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

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1999, an assessment rate of \$0.0118 per kernelweight pound is established for California merchantable walnuts.

Dated: October 12, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27133 Filed 10–15–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997, 998, and 999

[Docket Nos. FV99–997–2 IFR, FV99–998–1 IFR, and FV99–999–1 IFR]

Domestically Produced and Imported Peanuts; Change in the Maximum Percentage of Foreign Material Allowed Under Quality Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the outgoing quality control requirements currently prescribed under Marketing Agreement No. 146 (Agreement). The Agreement regulates the handling of peanuts grown in 16 States and is administered locally by the Peanut Administrative Committee (Committee). This rule relaxes the allowance for foreign material to .20 percent from .10 percent in the three “with splits” edible grade categories to make them consistent with the other seven edible grade categories, as unanimously recommended by the Committee. The same change applies to peanuts handled by handlers who have not signed the Agreement, and to imported peanuts.

DATES: Effective October 21, 1999; comments received by December 17,

1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket numbers and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, DC Marketing Field Office, or George Kelhart, Technical Advisor, both of the Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation from Jay Guerber, at the same address as above, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 (Agreement) (7 CFR part 998), regulating the handling of peanuts grown in 16 States. The Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601–674). Also, subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c3) and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271) provide that the Secretary of Agriculture shall require that all peanuts in the domestic and export markets fully comply with all quality requirements under the Agreement. This has been implemented through regulations governing peanuts handled by persons not subject to the Agreement (non-signers program) (7 CFR part 997) and regulations governing imports of peanuts (peanut import regulation) (7 CFR part 999). Thus, the Agreement and the non-signers regulations regulate the quality of domestically produced peanuts and the peanut import regulations regulate the quality of imported peanuts.

The Department of Agriculture (Department) 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