

§ 944.400 [Amended]

4. In § 944.400, the word "limes," is removed in the section heading and each place it appears in the section.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-5080 Filed 3-4-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 984**

[Docket No. **FV02-984-1 FIR**]

**Walnuts Grown in California;
Decreased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002-03 anticipated expenses of \$2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, 1400 Independence Avenue SW, Stop 0237,

Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

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."

USDA 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 on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Board for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120

per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of USDA, 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 2001-02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002-03 expenditures of \$2,970,000 and an assessment rate of \$0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$3,124,800. The assessment rate is \$0.0004 lower than the \$0.0124 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002-03 year include \$2,438,403 for program expenses, including marketing and production research projects, \$333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, \$80,500 for office expenses, \$79,500 for other operating expenses, and \$38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001-02 were \$2,566,569 for program expenses including marketing and production research projects, \$313,200 for employee expenses, \$130,600 for office expenses, \$76,000 for other operating expenses, and \$38,431 as a reserve for a contingency.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 247,500,000 kernelweight pounds which should provide \$2,970,000 in assessment income and allow the Board to cover its expenses. 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, according to § 984.69.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other 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 USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2002-03 budget has been reviewed and approved by USDA. Those for subsequent marketing years will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small

agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over \$5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under \$5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual income over \$750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2002-03 expenditures of \$2,970,000. The assessment rate should generate sufficient income to meet the Board's 2002-03 anticipated expenses. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget.

Major categories in the budget recommended by the Board for the 2002-03 year include \$2,438,403 for program expenses, including marketing and production research projects, \$333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, \$80,500 for office expenses, \$79,500 for other operating expenses, and \$38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001-02 were \$2,566,569 for program expenses including marketing and production research projects, \$313,200 for employee expenses, \$130,600 for office expenses, \$76,000 for other operating expenses, and \$38,431 as a reserve for a contingency.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended

\$0.0120 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 247,500,000 kernelweight pound estimate of assessable walnuts for the year. 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 according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2002-03 could range between \$0.50 and \$0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2002-03 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action continues to decrease 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 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 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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.

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

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70146). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 21, 2003, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

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

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 67 FR 70146 on November 21, 2002, is adopted as a final rule without change.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-5081 Filed 3-4-03; 8:45 am]

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DEPARTMENT OF JUSTICE

8 CFR Parts 1001, 1003, 1101, 1103, 1205, 1208, 1209, 1212, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1292, 1337

[EOIR No. 137F1; OLC Order No. 2]

RIN 1125-AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. In a rule published in the **Federal Register** on February 28, 2003, the Department of Justice reorganized title 8 of the Code of Federal Regulations to reflect the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR,

by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003. This rule effects technical amendments to internal citations in chapter V.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305-0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616-4852.

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002, as amended, (“HSA”) transfers the functions of the Immigration and Naturalization Service (“Service” or “INS”) to the Department of Homeland Security (“DHS”). Public Law 107-296, title IV, subtitles D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (“HSA”). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review (“EOIR”) and other law determination and litigation functions. HSA, 116 Stat. at 2273. This rule reflects technical amendments to citations in 8 CFR chapter V.

Changes to section citations to sections within the same part of chapter V have already been accomplished in the rule published February 28, 2003. This rule sets out the tables of citation changes for citations to sections in other parts of both chapters I and V. Where appropriate, the changes are made to the conformed sections of chapter V, but there are instances where the conformed section and specific paragraph cite to authority that does not related to functions that will remain in the Department of Justice. Accordingly, these citations are changed to refer to the appropriate section of chapter I of this part as it is being transferred to the Department of Homeland Security. For example, authority of the Service that is contained in chapter I often requires a change in chapter V to eliminate “in this chapter” language and refer directly to the Service’s authority “in chapter I.” This is consistent with the Department of Justice long range plan in eliminating unnecessary duplication of provisions between chapter I and chapter V.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes only technical changes in cross-references in existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.