

assessment revenue for the 2006–07 production year as a percentage of total grower revenue could range between .040 and .042 percent.

While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, decreasing the assessment rate will reduce the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California pistachio industry and all interested persons were invited to attend the meeting and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the May 23, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting and recordkeeping on either small or large pistachio 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 25, 2006 (71 FR 50374). Copies of the proposed rule were also mailed or sent via facsimile to all pistachio handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2006, was provided for interested persons to respond to the proposal. 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 committee 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 that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–07 production year began on September 1, 2006, and pistachio handlers are already receiving 2006–07 crop pistachios from growers. The decreased assessment rate applies to all pistachios received during the 2006–07 year and subsequent seasons. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

#### **PART 983—PISTACHIOS GROWN IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 983.253 is amended by revising paragraph (a) to read as follows:

#### **§ 983.253 Assessment rate.**

(a) On and after September 1, 2006, a continuing assessment rate of \$0.0007 per pound of assessed-weight pistachios is established for California pistachios. The assessment obligation of each handler shall be computed by applying the assessment rate to the assessed weight computed pursuant to § 983.6.

\* \* \* \* \*

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–9252 Filed 11–14–06; 1:09 pm]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 984**

[Docket No. FV06–984–2 IFR]

#### **Walnuts Grown in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2006–07 and subsequent marketing years from \$0.0096 to \$0.0101 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** November 17, 2006. Comments received by January 16, 2007 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. Comments should reference the docket number 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

Shereen Marino, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: [Shereen.Marino@usda.gov](mailto:Shereen.Marino@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto: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 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 (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, 2006, 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 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 increases the assessment rate established for the Board for the 2006-07 and subsequent marketing years from \$0.0096 to \$0.0101 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 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005-06 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0096 per kernelweight 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 8, 2006, and unanimously recommended 2006-07 expenditures of \$3,222,860 and an assessment rate of \$0.0101 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$2,937,600. The assessment rate of \$0.0101 per kernelweight pound of assessable walnuts is \$0.0005 per pound higher than the rate currently in effect. The higher assessment rate is necessary to cover increased expenses including increased salaries, operating expenses and research for the 2006-07 marketing year.

The following table compares major budget expenditures recommended by the Board for the 2005-06 and 2006-07 marketing years:

Budget expense categories	2005-06	2006-07
Administrative Staff/Field Salaries & Benefits .....	\$360,000	\$415,000
Travel/Board Expenses .....	80,000	75,000
Office Costs/Annual Audit .....	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases .....	5,000	5,000
Crop Acreage Survey .....	85,000	.....
Crop Estimate .....	95,000	100,000
Production Research Director .....	75,000	75,000
Production Research .....	500,000	650,000
Domestic Market Development .....	1,550,000	1,750,000
Reserve for Contingency .....	55,100	10,360

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 318,600,000 kernelweight pounds which should provide \$3,217,860 in assessment income. Assessment income combined with interest income should 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 estimate for merchantable shipments is based on the California Agricultural Statistics Service's crop estimate for the crop year of 354,000 tons (inshell). Pursuant to § 981.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (354,000 tons × 2,000 pounds/ton × .45).

The assessment rate established in this rule will continue in effect indefinitely unless modified,

suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect 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 2006–07 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

#### Initial 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 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 currently 44 handlers of California walnuts subject to regulation under the marketing order and approximately 5,150 growers in the production area. Small agricultural

service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

Current industry information suggests that 16 of the 44 handlers (36 percent) shipped over \$6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Twenty-eight of the 44 walnut handlers (64 percent) shipped under \$6,500,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than \$750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the average yield per acre for 2003–05 is 1.567 tons. A grower with 353 acres with average yields would produce approximately 553 tons. The average of grower prices for 2003–05 (published by NASS) is \$1,357 per ton. At that average price, the 553 tons produced on 353 acres would yield approximately \$750,000 in annual revenue. The 2002 Agricultural Census indicated 56 walnut farms (just under one percent of the 7,025 walnut farmers in 2002) were 500 acres or larger. The 500 acre threshold in the census data is somewhat larger than the 353 acres that would produce \$750,000 in revenue

with average yields and average prices. Thus, it can be concluded that the number of large walnut farms in 2006 is still likely to be not much above one percent. 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 increases the assessment rate established for the Board and collected from handlers for the 2006–07 and subsequent marketing years from \$0.0096 to \$0.0101 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2006–07 expenditures of \$3,222,860 and an assessment rate of \$0.0101 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0101 is \$0.0005 higher than the 2005–06 rate. The quantity of assessable walnuts for the 2006–07 marketing year is estimated at 318,600,000 merchantable kernelweight pounds. Thus, the \$0.0101 rate should provide \$3,217,860 in assessment income. Assessment income combined with interest income should be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2005–06 and 2006–07 marketing years:

Budget expense categories	2005–06	2006–07
Administrative Staff/Field Salaries & Benefits .....	\$360,000	\$415,000
Travel/Board Expenses .....	80,000	75,000
Office Costs/Annual Audit .....	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases .....	5,000	5,000
Crop Acreage Survey .....	85,000	
Crop Estimate .....	95,000	100,000
Production Research Director .....	75,000	75,000
Production Research .....	500,000	650,000
Domestic Market Development .....	1,550,000	1,750,000
Reserve for Contingency .....	55,100	10,360

Prior to arriving at this budget, the Board considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. 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.

According to NASS, the season average grower prices for years 2004 and 2005 were \$1,390 and \$1,520 per ton, respectively. Dividing these average grower prices by 2,000 pounds per ton

provides an inshell price per pound range of between \$.70 and \$.76. Adjusting by a few cents above and below those prices (\$0.67 to \$0.79 per inshell pound) provides a reasonable price range within which the 2006–07 season average price is likely to fall. Dividing these inshell prices per pound by the 0.45 conversion factor designated in the order yields a 2006–07 price range estimate of \$1.49 and \$1.76 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0101 (per kernelweight pound) is divided by the

low and high estimates of the price range and then multiplied by 100. The estimated assessment revenue for the 2006–07 marketing year as a percentage of total grower revenue would likely range between .7 and .6 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. 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 8, 2006, 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 AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA 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: <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 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 handlers have begun shipping walnuts for the 2006–07 marketing year. The marketing year began on August 1, 2006, and the assessment rate applies to all walnuts shipped during the 2006–07 and subsequent seasons. With the assessment rate in effect prior to publication of this rule, the Board would not generate sufficient revenue to meet its budgeted expenses for the 2006–07 marketing year. The Board needs to have sufficient funds to pay its

expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in prior years. This interim final rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 984

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

■ 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, 2006, an assessment rate of \$0.0101 per kernelweight pound is established for California merchantable walnuts.

Dated: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–9251 Filed 11–14–06; 1:09 pm]

**BILLING CODE 3410–02–P**

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 50

**RIN 3150–AH95**

#### Criticality Control of Fuel Within Dry Storage Casks or Transportation Packages in a Spent Fuel Pool

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations that govern domestic licensing of production and utilization facilities so that the requirements governing criticality control for spent fuel pool storage racks do not apply to the fuel within a spent fuel transportation package or storage cask when a package or cask is in a spent fuel pool. These packages and casks are subject to separate criticality control requirements. This action is necessary

to avoid applying two different sets of criticality control requirements to fuel within a package or cask in a spent fuel pool.

**DATES: Effective Date:** The final rule will become effective January 30, 2007, unless significant adverse comments are received by December 18, 2006. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change (refer to "Procedural Background" in the Supplementary Information section of this document for further details). If the rule is withdrawn, timely notice will be published in the **Federal Register**. Comments received after December 18, 2006 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH95 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

**Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

**E-mail comments to:** [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher at (301) 415–5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415–1966].

**Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document