

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

**PART 966—TOMATOES GROWN IN FLORIDA**

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new subpart titled "Assessment Rates" consisting of a new § 966.234 and a new subpart heading titled "Handling Regulations" are added immediately preceding § 966.323, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

**Subpart—Assessment Rates****§ 966.234 Assessment rate.**

On and after August 1, 1996, an assessment rate of \$0.03 per 25-pound container is established for Florida tomatoes.

**Subpart—Handling Regulations**

Dated: November 22, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96-30485 Filed 11-27-96; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 984**

[Docket No. FV96-984-1 IFR]

**Walnuts Grown in California; Assessment Rate**

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

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

**SUMMARY:** This interim final rule establishes an assessment rate for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1996-97 and subsequent marketing years. The Board is responsible for local administration of the marketing 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.

**DATES:** Effective on August 1, 1996. Comments received by December 30, 1996 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, FAX 202-720-5698. 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:**

Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209-487-5901; FAX 209-487-5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918; FAX 202-720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

**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 (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, 1996, and continuing 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. 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.

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.

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 California walnuts in the production area and approximately 55 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 of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

The California walnut marketing 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 of 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.

The Board met on September 6, 1996, and unanimously recommended 1996-97 expenditures of \$2,301,869 and an

assessment rate of \$0.0117 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were \$2,280,175. The assessment of \$0.0117 is \$0.0001 higher than last year's established rate. Major expenditures recommended by the Board for the 1996-97 marketing year include \$232,684 for general expenses, \$150,508 for office expenses, \$1,840,677 for research expenses, \$48,000 for a production research director, and \$30,000 for the reserve. Budgeted expenses for these items in 1995-96 were \$246,847, \$140,908, \$1,828,420, \$34,000, and \$30,000, 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 198,000,000 kernelweight pounds which will yield \$2,316,600 in assessment income, which will be adequate to cover budgeted 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 five months after the end of the year.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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 1996-97 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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 Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 marketing year began on August 1, 1996, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such 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 30-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. A new subpart titled "Assessment Rates" and a new § 984.347 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

#### **Subpart—Assessment Rates**

##### **§ 984.347 Assessment rate.**

On and after August 1, 1996, an assessment rate of \$0.0117 per

kernelweight pound is established for California merchantable walnuts.

Dated: November 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-30484 Filed 11-27-96; 8:45 am]

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## **Commodity Credit Corporation**

### **7 CFR Part 1499**

#### **Foreign Donation of Agricultural Commodities**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** These regulations govern the provision of agricultural commodities by Commodity Credit Corporation pursuant to section 416(b) of the Agricultural Act of 1949 or the Food for Progress Act of 1985 for distribution in foreign countries.

**EFFECTIVE DATE:** December 30, 1996.

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

Director/CCCPSD, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031; Washington, D.C. 20250-1031; telephone (202) 720-3573.

**SUPPLEMENTARY INFORMATION:** This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

- (1) Would have an annual effect on the economy of less than \$100 million;
- (2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and
- (5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

#### **Regulatory Flexibility Act**

This rule deals primarily with requirements imposed upon foreign governments and non-profit entities distributing humanitarian grant food supplies overseas. Therefore, the rule does not have a significant impact upon a substantial number of small business