

cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581-0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A proposed rule concerning this action was published in the **Federal Register** on December 30, 2003 (68 FR 75148). Copies of the rule were mailed or sent via facsimile to all Board members and cherry handlers. Finally, this rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending January 14, 2004, was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other 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 handlers are already shipping cherries from the 2003-2004 crop and this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

#### PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

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

■ 2. Section 930.253 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

#### § 930.253 Final free and restricted percentages for the 2003-2004 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2003, which shall be free and restricted, respectively, are designated as follows: Free percentage, 75 percent and restricted percentage, 25 percent.

Dated: February 6, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-3069 Filed 2-11-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. FV04-984-1 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 that decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2003-04 and subsequent marketing years from \$0.0120 to \$0.0101 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2003-04 anticipated expenses of \$2,863,350. The lower assessment rate is primarily due to a lower budget and a larger crop. The Board locally administers the marketing order (order) that 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 began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** March 15, 2004.

**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](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 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, 2003, 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 2003–04 and subsequent marketing years from \$0.0120 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 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 2002–03 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0120 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 12, 2003, and unanimously recommended 2003–04 expenditures of \$2,863,350 and an assessment rate of \$0.0101 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$2,970,000. The assessment rate of \$0.0101 is \$0.0019 lower than the \$0.0120 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 315,000 tons (283,500,000 kernelweight pounds merchantable), and the budget is about 4 percent less than last year's budget. 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 2003–04 include \$2,348,000 for program expenses, which includes marketing and production research projects, the salary for the production research director, the cost of the Board's crop acreage survey and production estimate, and compliance purchases, \$334,625 for employee expenses such as administrative and office salaries, payroll taxes and workers compensation, and other employee benefits, \$83,000 for office expenses such as rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture, \$82,000 for other operating expenses, such as management travel, field travel, Board expenses, general insurance and financial audits, and \$15,725 as a reserve for contingencies. Budgeted expenses for these items in 2002–03 were \$2,438,403, \$333,100, \$80,500, \$79,500, and \$38,497, respectively.

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 283,500,000 kernelweight pounds, which should provide \$2,863,350 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 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 2003–04 budget and those for subsequent marketing

years will 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 incomes 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 2003–04 and subsequent marketing years from \$0.0120 to \$0.0101 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2003–04 expenditures of \$2,863,350 and an assessment rate of \$0.0101 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2003–04 anticipated expenses. The lower assessment rate is primarily due to a lower budget and a larger crop.

Major categories in the budget recommended by the Board for 2003–04 include \$2,348,000 for program expenses, which includes marketing and production research projects, the salary for the production research director, the cost of the Board's crop acreage survey and production estimate, and compliance purchases, \$334,625 for employee expenses such as administrative and office salaries, payroll taxes and workers compensation, and other employee benefits, \$83,000 for office expenses such as rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture, \$82,000 for other operating expenses, such as management travel, field travel, Board expenses, general insurance, and financial audits, and \$15,725 as a reserve for contingencies. Budgeted expenses for these items in 2002–03 were \$2,438,403, \$333,100, \$80,500, \$79,500, and \$38,497, respectively.

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 \$0.0101 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 283,500,000 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 2003–04 could range between \$0.50 and \$0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2003–04 marketing year as a percentage of total grower revenue could range between 1.4 and 2 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 12, 2003, 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, 2003 (68 FR 65629). 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 20, 2004, 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 68 FR 65629 on November 21, 2003, is adopted as a final rule without change.

Dated: February 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–3036 Filed 2–11–04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV03–989–6 FIR]

#### Raisins Produced From Grapes Grown in California; Revision of Varietal Types

**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 that revised the list of varietal types of raisins specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action continues to combine the Oleate and Related Seedless varietal type (Oleates) with the Natural (sun-dried) Seedless varietal type (Naturals), and make conforming changes to the order's volume and quality regulations. This action addresses changing cultural practices in the California raisin industry.

**EFFECTIVE DATE:** March 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Senior 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