

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. FV99-984-3 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased 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 assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** February 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maureen Pello, Marketing Specialist, 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, P.O. 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, P.O. 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 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 continues to decrease 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 handled.

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 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 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 5,000 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 continues to decrease 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.

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 current 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 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 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.

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.

An interim final rule concerning this action was published in the **Federal Register** on October 18, 1999 (64 FR

56131). Copies of that rule were also mailed to all handlers, Board members, and alternate members. The rule was also made available through the Internet by the Office of the Federal Register. A 60-day comment period ending December 17, 1999, was provided to allow interested persons to respond to the rule. No comments were received.

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.

#### 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

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 64 FR 56131 on October 18, 1999, is adopted as a final rule without change.

Dated: January 6, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-713 Filed 1-11-00; 8:45 am]

BILLING CODE 3410-02-P

#### EMERGENCY STEEL GUARANTEE LOAN BOARD

##### 13 CFR Part 400

RIN 3003-ZA00

#### Loan Guarantee Decision; Availability of Environmental Information; Correction

**AGENCY:** Emergency Steel Guarantee Loan Board.

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

**SUMMARY:** On December 23, 1999 the Emergency Steel Guarantee Loan Board

published amendments to the Emergency Steel Guarantee Loan Board regulations. An error in drafting one of the regulatory changes occurred. This rule corrects that error.

**DATES:** This rule is effective January 11, 2000. Comments may be submitted no later than March 13, 2000.

**ADDRESSES:** Comments may be submitted to: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, D.C. 20230, (202) 219-0584.

**SUPPLEMENTARY INFORMATION:** On December 23, 1999 the Emergency Steel Guarantee Loan Board published amendments of the Emergency Steel Guarantee Loan Board regulations. Three changes to the Board's regulations were made in this notice. An error in drafting § 400.205(a), Application Process, occurred. This notice correct § 400.205(a) to reflect the intent of the Board.

In response to industry concerns over the time frame for the submission of completed applications, the deadline for the submission of applications was extended from December 30, 1999, to January 31, 2000. Currently, § 400.205(a) requires that applications be provided to a delivery service on or before January 30, 2000, with "delivery guaranteed" before 8:00 P.M. on January 30, 2000, in order to meet the Board's submission deadline. The correct date for applications with "delivery guaranteed" should be before 8:00 P.M. on January 31, 2000.

#### Administrative Law Requirements

##### Executive Order 12866

This interim final rule has been determined not to be significant for purposes of Executive Order 12866.

##### Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

#### Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

#### Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

#### Intergovernmental Review

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

#### Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on state, local and tribal governments or the private sector.

#### Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

#### Executive Order 12630

This rule does not contain policies that have takings implications.

#### List of Subjects in 13 CFR Part 400

Loan Programs—Steel.

**Jay E. Dittus,**

*Executive Director, Emergency Steel Guarantee Loan Board.*

For the reasons set forth in the preamble, the Emergency Steel Guarantee Loan Board amends 13 CFR part 400 as follows:

#### PART 400—[AMENDED]

1. The authority citation for part 400 continues to read as follows:

**Authority:** Pub. L. 106-51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 400.205 is amended by revising paragraph (a) to read as follows:

##### § 400.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington, D.C. 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with "delivery guaranteed" before 8 p.m. on January 31, 2000, will be accepted for