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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS-FV-06-0196; FV06-984-2 FIR]

Walnuts Grown in California; Increased 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 increased 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.

EFFECTIVE DATE: April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, or Kurt J. 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 or 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.

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."

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 continues in effect the action that increased 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 2005-06 rate. 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 § 984.51(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.

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 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 continues in effect the action that increased 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 an anticipated interest income of \$5,000 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 (\$.67 to \$.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 continues in effect the action that increased 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 are 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.

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.

An interim final rule concerning this action was published in the **Federal Register** on November 16, 2006 (71 FR 66645). Copies of the rule were also mailed by the Board's staff to all Board members and walnut handlers. In addition, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. The rule provided for a 60-day comment period, which ended on January 16, 2007, 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

Marketing agreements, Walnuts, 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 71 FR 66645 on November 16, 2006, is adopted as a final rule without change.

Dated: February 28, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–3818 Filed 3–5–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26709; Directorate Identifier 2006–NM–202–AD; Amendment 39–14968; AD 2007–05–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires inspecting the carbon-fiber reinforced plastic main landing gear (MLG) door to determine whether certain part numbers are installed. For airplanes having certain doors, this AD requires inspecting the MLG outboard door for cracks, play, and loose sealant/bolts/nuts, and related