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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Doc. No. AMS-FV-09-0020; FV09-984-3 FR]

#### Walnuts Grown in California; Increased Assessment Rate and Changes to Regulations Governing Reporting and Recordkeeping

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Walnut Board (Board) for the 2009–10 and subsequent marketing years from \$0.0131 to \$0.0177 per kernelweight pound of assessable walnuts. This rule also changes reporting and recordkeeping regulations in conformance with amendments made on March 3, 2008, to the marketing order that regulates the handling of walnuts grown in California. The Board locally administers the marketing order. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wray, 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:

*Debbie.Wray@ams.usda.gov* or *Kurt.Kimmel@ams.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@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, 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 established herein will be applicable to all assessable walnuts beginning on September 1, 2009, and continue until amended, suspended, or terminated.

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 2009–10 and subsequent marketing years from \$0.0131 to \$0.0177 per kernelweight pound of assessable walnuts. It also makes conforming changes to reporting and recordkeeping regulations, which are needed to reflect recent marketing order amendments.

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 growers 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 2008–09 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0131 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 May 18, 2009, and unanimously recommended 2009–10 expenditures of \$5,894,100 and an assessment rate of \$0.0177 per kernelweight pound of assessable walnuts. In comparison, last year’s budgeted expenditures were \$3,809,000. The assessment rate of \$0.0177 is \$0.0046 per pound higher than the rate currently in effect. The increased assessment rate is necessary to cover increased expenses for domestic market promotion, research activities, and administrative expenses. The higher assessment rate should generate sufficient income to cover anticipated 2009–10 expenses.

The following table compares major budget expenditures recommended by the Board for the 2008–09 and 2009–10 marketing years:

| Budget expense categories            | 2008–09   | 2009–10   |
|--------------------------------------|-----------|-----------|
| Employee Expenses .....              | \$410,500 | \$535,000 |
| Travel/Board Expenses .....          | 100,000   | 120,000   |
| Office Costs/Annual Audit .....      | 142,500   | 164,750   |
| Program Expenses Including Research: |           |           |
| Controlled Purchases .....           | 5,000     | 5,000     |
| Crop Estimate .....                  | 110,000   | 120,000   |
| Production Research * .....          | 805,000   | 805,000   |
| Contingency-Research Issues .....    | 30,000    | 100,000   |
| Domestic Market Development .....    | 2,135,000 | 4,030,500 |
| Reserve for Contingency .....        | 71,000    | 13,850    |

\* Includes Research Director's compensation.

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 333,000,000 kernelweight pounds, which should provide \$5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two year's budgeted expenses. If not retained in a financial reserve, 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 of the order.

The estimate for merchantable shipments is based on historical data, which is an average of the three prior years' production of 370,000 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (370,000 tons × 2,000 pounds per 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 2009–10 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Recent amendments to the order (73 FR 11328, March 3, 2008) changed the Board's name to "California Walnut Board" (CWB), changed the Board's marketing year from August 1 through July 31 to September 1 through August 31, and replaced the term "handler carryover" with the term "handler inventory." To reflect these changes, the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at a meeting on February 27, 2009.

Section 984.456(a) is revised to specify that beginning on September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts in that marketing year. Section 984.471 is revised by changing the term "carryover" to "inventory", by requiring handlers to report September 1 inventory information by September 15, and by changing the names of the related inventory forms to "CWB Form No. 4" and "CWB Form No. 5." Section 984.476 is revised to require that handlers file reports of walnut import receipts with the Board by December 5 for receipts between September 1 and November 30, by March 5 for receipts between December 1 and the end of February, by June 5 for receipts between March 1 and May 31, and by September 5 for receipts between June 1 and August 31; and to change the name of the reporting form to "CWB Form No. 7." Section 984.480(d) is revised to specify that inventories of all walnut quantities held on September 1 must be reported to the Board. The acronym "WMB" is replaced with "CWB" in form names described in the following sections not previously listed above: §§ 984.456(b), 984.464(c), 984.472(a), and 984.472(b). Finally, in order to update the regulations, gender-specific language is changed in §§ 984.456(b)

and 984.472(a) to replace "he" and "his" with "he/she" and "his/her."

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural growers are defined as those having annual receipts of less than \$750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008–09. The average yield for the 2008–09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008–09 crop at \$1,210 per ton, which is lower than the previous five-year average of \$1,608 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of

1.50 tons per acre would have been expected to produce about 150 tons of walnuts during 2007–08. At \$2,290 per ton, that farm's production would have had an approximate value of \$344,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$344,000 in 2007–08. This is well below the SBA threshold of \$750,000; thus, the majority of California's walnut growers could be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds

of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2007–08 marketing year and could therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate established for the Board and collected from handlers for the 2009–10 and subsequent marketing years from \$0.0131 to \$0.0177 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2009–10 expenditures of \$5,894,100 and an assessment rate of \$0.0177 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0177

is \$0.0046 higher than the 2008–09 assessment rate. The quantity of assessable walnuts for the 2009–10 marketing year is estimated at 370,000 tons. Thus, the \$0.0177 rate should provide \$5,894,100 in assessment income and 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 2008–09 and 2009–10 marketing years:

| Budget expense categories            | 2008–09   | 2009–10   |
|--------------------------------------|-----------|-----------|
| Employee Expenses .....              | \$410,500 | \$535,000 |
| Travel/Board Expenses .....          | 100,000   | 120,000   |
| Office Costs/Annual Audit .....      | 142,500   | 164,750   |
| Program Expenses Including Research: |           |           |
| Controlled Purchases .....           | 5,000     | 5,000     |
| Crop Estimate .....                  | 110,000   | 120,000   |
| Production Research * .....          | 805,000   | 805,000   |
| Contingency-Research Issues .....    | 30,000    | 100,000   |
| Domestic Market Development .....    | 2,135,000 | 4,030,500 |
| Reserve for Contingency .....        | 71,000    | 13,850    |

\* Includes Research Director's compensation.

The Board reviewed and unanimously recommended 2009–10 expenditures of \$5,894,100. 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. 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 333,000,000 kernelweight pounds, which should provide \$5,894,100 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, 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 of the order.

According to NASS, the season average grower prices for the years 2007 and 2008 were \$2,290 and \$1,210 per ton, respectively. These prices provide a range within which the 2009–10 season average price could fall. Dividing these average grower prices by 2,000 pounds

per ton provides an inshell price per pound range of \$0.605 to \$1.15. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2009–10 price range estimate of \$1.34 to \$2.56 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0177 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2009–10 marketing year as a percentage of total grower revenue would thus likely range between 0.691 and 1.321 percent.

As a result of amendments to the order on March 3, 2008 (73 FR 11328), the Board unanimously recommended conforming changes to the order's reporting and recordkeeping regulations at its meeting on February 27, 2009. These conforming changes reflect amendments to the marketing year, terminology, and Board name. The conforming changes include the date when a handler may become an agent of the Board to dispose of reserve walnuts. Conforming changes replace the term "carryover" with "inventory" and modify the first of three dates in a marketing year when handlers are required to report their inventory to the Board. Further conforming changes

include the dates that handlers must report to the Board their receipts of walnuts from outside of the United States and for what periods. Another conforming change modifies the first of three dates in a marketing year wherein handlers must indicate in their books and records the quantity of walnuts they held. Finally, conforming changes replace the Board name acronym "WMB" with "CWB" in form numbers. In addition to these conforming changes, gender-specific language is changed from "he" and "his" to "he/she" and "his/her". There are no viable alternatives to these proposed conforming changes.

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 growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meetings were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the May 18, 2009, and February 27, 2009, meetings were public meetings, and all entities, both

large and small, were able to express views on this issue.

This final rule implements conforming changes to several Board forms previously approved by the Office of Management and Budget (OMB), under OMB No. 0581-0178, Vegetable and Specialty Crops. These changes will not affect the burden approved under that collection. The revised forms were submitted to OMB through a change of worksheet and approved on July 23, 2009. 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.

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 proposed rule concerning this action was published in the **Federal Register** on August 28, 2009 (74 FR 44300). Copies of the proposed rule were also mailed or sent via facsimile to walnut 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 28, 2009, was provided to allow 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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 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 2009–10 marketing year began on September 1, 2009, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and 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. Also, the reporting and recordkeeping regulations need to be brought into conformance with amendments made to the order in 2008, and revised forms need to be used by handlers in the 2009–10 marketing year. Finally, a 30-day comment period was provided for in the proposed rule, and no comments in opposition to the rule were received.

#### 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. Section 984.347 is revised to read as follows:

##### § 984.347 Assessment rate.

On and after September 1, 2009, an assessment rate of \$0.0177 per kernelweight pound is established for California merchantable walnuts.

■ 3. Amend § 984.456 by revising paragraphs (a) and (b) to read as follows:

##### § 984.456 Disposition of reserve walnuts and walnuts used for reserve disposition credit.

(a) Beginning September 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts of such marketing year. The agency shall be established upon execution of an “Agency Agreement for Reserve Walnuts” setting forth the terms and conditions specified by the Board for the sale of reserve walnuts in authorized outlets.

(b) Any handler who desires to transfer disposition credit in excess of his/her reserve obligation to another handler shall submit a request to the Board for such transfer on CWB Form No. 17 signed by both handlers and the Board shall credit such transfer.

\* \* \* \* \*

■ 4. Amend § 984.464 by revising paragraph (c) to read as follows:

##### § 984.464 Disposition of substandard walnuts.

\* \* \* \* \*

(c) Each handler who disposes of substandard walnuts to an approved crusher, livestock feed manufacturer or livestock feeder shall upon shipment report to the Board on CWB Form No. 20, the quantities disposed of or shipped.

■ 5. Section 984.471 is revised to read as follows:

##### § 984.471 Reports of handler inventory.

Reports of handler inventory as of September 1, January 1, and April 1 of each marketing year shall be submitted to the Board on CWB Form No. 4 for inshell walnuts and on CWB Form No. 5 for shelled walnuts, on or before September 15, January 15, and April 15 respectively, of that marketing year.

■ 6. Section 984.472 is revised to read as follows:

##### § 984.472 Reports of merchantable walnuts shipped.

(a) Reports of merchantable walnuts shipped during a month shall be submitted to the Board on CWB Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts: the quantity shipped; whether they were shipped into domestic or export channels; and for exports, the quantity by country of destination. If a handler makes no shipments during any month he/she shall submit a report marked “None.” If a handler has completed his/her shipments for the season, he/she shall mark the report “Completed,” and he/she shall not be required to submit any additional CWB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased and the quantity inspected and certified as merchantable walnuts.

■ 7. Section 984.476 is revised to read as follows:

##### § 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall

file with the Board, on CWB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before December 5 for such walnuts received during the period September 1 to November 30; on or before March 5 for such walnuts received during the period December 1 to February 28 (February 29 in a leap year); on or before June 5 for such walnuts received during the period March 1 to May 31; and on or before September 5 for such walnuts received during the period June 1 to August 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

■ 8. Amend § 984.480 by revising paragraph (d) to read as follows:

**§ 984.480 Books and other records.**

\* \* \* \* \*

(d) The quantities held on September 1, January 1, and April 1 of each marketing year.

Dated: October 27, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-26368 Filed 11-2-09; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Doc. No. AMS-FV-09-0045; FV09-987-2 FR]

#### Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Date Administrative

Committee (Committee) for the 2009–10 and subsequent crop years from \$0.60 to \$0.75 per hundredweight of dates handled. The Committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 4, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Senior 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: [Terry.Vawter@ams.usda.gov](mailto:Terry.Vawter@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.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@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, 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 date 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 dates beginning October 1, 2009, and continue until amended, suspended, or terminated.

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 Committee for the 2009–10 and subsequent crop years from \$0.60 to \$0.75 per hundredweight of dates handled.

The California date marketing order provides authority for the Committee, 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 Committee are producers and handlers of California dates. They are familiar with the Committee'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 2008–09 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2009, and unanimously recommended 2009–10 expenditures of \$200,000 and an assessment rate of \$0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were \$176,384. The assessment rate of \$0.75 is \$0.15 higher than the rate currently in effect. The Committee recommended a higher assessment rate to cover increased expenses including increased marketing and promotion efforts, and nutritional research. Income generated through the higher assessment rate combined with reserve funds should be sufficient to cover anticipated 2009–10 expenses.

Section 987.72(c) states that the reserve may not exceed 50 percent of