

fruit's surface. This mold, caused by fruit juice on the surface of the fruit, usually begins to show after the kiwifruit has been in storage for over a month. In order to control this problem, a time limit on the validity of inspection certificates was established. The time limit initially established in 1985 was valid until January 15 or 21 days from the date of inspection, whichever was later.

In 1985, it appeared that kiwifruit harvested in October maintained its quality through the following mid-January. However, during the 1988/89 season, problems with black sooty mold once again resulted in the KAC reevaluating this position, and as a result the date was changed to December 1, to reduce the likelihood of moldy fruit entering commercial channels.

Again in 1991, the KAC changed the expiration date for initial inspection certificates from December 1 to the current expiration date of December 15. The KAC believed that the December 1 expiration date required shippers to have their fruit reinspected too soon after the initial inspection. For many shippers this was a financial burden.

The current period does not allow sufficient time to determine if damage from mold may develop. Sufficient time would need to elapse between the initial inspection, which may occur between October and December, and reinspection, which occurs after December 15. This revision would change the current December 15 inspection certificate expiration date. It would provide that a certificate remains valid until December 31 or 21 days from the date of inspection, whichever is later. Thus, the 21-day limitation would be in effect for all inspected kiwifruit regardless of the date on which it was inspected. This would mean that kiwifruit inspected and packed less than 21 days prior to December 31 would not have to be reinspected until 21 days later.

The KAC estimates that, annually, approximately 25 percent of the crop is reinspected. The reinspection rate is expected to be reduced slightly by making inspection certificates valid until December 31 or 21 days from the date of inspection. Extending the inspection certificate validation from December 15 to December 31 is not expected to have adverse effects on fruit quality.

Over the last five years, the harvest of California kiwifruit has begun later and later. In years past, the kiwifruit harvest began near the beginning of October, with a few starting dates recorded in late September. In recent years,

kiwifruit harvests have begun in mid-October due to natural conditions as well as increased grower consciousness about fruit maturity. Fruit that is mature tends to have higher sugar content and is of higher quality. Because of the later harvest dates, the time lapse from harvest to reinspection has decreased over the years.

This two-week change to the reinspection date is not expected to harm the industry's reputation for shipping quality California kiwifruit. Because of research done in the past five years, California growers understand the benefits of harvesting kiwifruit with a higher soluble solids content, which means harvesting at a later date. This, coupled with natural conditions that have also contributed to a delay in harvest, have reduced the number of days from harvest until reinspection.

The KAC also discussed the elimination of reinspection requirements as an alternative. There is however, strong support throughout the industry for maintaining reinspection as a means of assuring fruit quality. The KAC also discussed the use of a sliding reinspection date. This would allow fruit harvested later to be reinspected at a later date. However, it was determined that this would present enforcement problems as it would be difficult to track the harvest date of the entire California crop. The recommendation to establish the reinspection date at December 31 was a compromise agreed to unanimously by the KAC.

A proposed rule concerning this action was published in the August 25, 1995, Federal Register (60 FR 44282), with a 30-day comment period ending September 25, 1995.

One comment was received. The comment was submitted by the KAC and supported implementing the change set forth in the proposed rule. The comment stated that the reinspection requirement has always had a 21-day time period and noted that black sooty mold may develop as early as ten days after the fruit has been contaminated. The comment pointed out that the aggressive education of growers and packers as to why black sooty mold occurs and ways to prevent it has greatly reduced the occurrence of this condition over the last four years. The comment concluded by stating that the KAC believes that later reinspection is a natural and positive change for the industry.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the KAC, the comment received from KAC 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 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

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

2. Section 920.155 is revised to read as follows:

§ 920.155 Inspection requirement.

Certification of any kiwifruit which is inspected and certified as meeting grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53 during each fiscal year shall be valid until December 31 of such year or 21 days from the date of inspection, whichever is later.

Dated: October 23, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-26793 Filed 10-27-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 966

[Docket No. FV95-966-1IFR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 966 for the 1995-96 fiscal period. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by November 29, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1995-96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This interim final 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 250 producers of Florida tomatoes under this marketing order, and approximately 50 handlers. 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 Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee'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. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 7, 1995, and unanimously recommended a 1995-96 budget of \$2,025,000, \$190,000 less than the previous year. Budget

items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Office salaries, \$319,100 (\$297,300), depreciation, \$19,000 (\$18,200), employees' retirement program, \$50,500 (\$46,600), insurance and bonds, \$8,000 (\$7,000), payroll tax, \$22,150 (\$20,000), supplies and printing, \$8,500 (\$7,500), miscellaneous, \$2,000 (\$1,600), audit, \$3,750 (\$2,500), and research expense, \$245,000 (\$192,100). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Office rent, \$24,500 (\$24,700), and education and promotion expense, \$1,225,000 (\$1,500,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of \$0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 50,000,000 25-pound containers, will yield \$2,000,000 in assessment income. This, along with \$25,000 in interest and other income, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee 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 action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other

budget 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 action.

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 § 966.233 is added to read as follows:

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

§ 966.233 Expenses and assessment rate.

Expenses of \$2,025,000 by the Florida Tomato Committee are authorized, and an assessment rate of \$0.04 per 25-pound container of Florida tomatoes is established for the fiscal period ending July 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: October 23, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-26790 Filed 10-27-95; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 984

[Docket No. FV95-984-2IFR]

Walnuts Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 984 for the 1995-96 marketing year. Authorization of this budget enables the Walnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by November 29, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must

be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-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: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209-487-5901.

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. 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California walnuts are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts handled during the 1995-96 marketing year, which began August 1, 1995, and ends July 31, 1996. This interim final 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 in equity to review the Secretary's ruling not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 under this marketing order, and approximately 65 handlers. 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 budget of expenses for the 1995-96 marketing year was prepared by the Walnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. 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. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Because that rate will be applied to the actual quantity of certified merchantable walnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met September 8, 1995, and unanimously recommended a 1995-96 budget of \$2,280,175, \$109,403 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95