

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

(in parentheses) are: Field travel and related expenses, \$17,000 (\$13,000), general insurance, \$6,800 (\$6,400), social security and hospital insurance taxes, \$9,286 (\$8,129), audit, \$8,900 (\$8,700), group life, retirement, and medical, \$45,861 (\$44,370), office salaries, \$41,740 (\$40,740), office rent, \$27,168 (\$26,419), office supplies and miscellaneous, \$20,000 (\$15,000), postage, \$7,000 (\$5,000), furniture, fixtures, and automobiles, \$25,000 (\$5,000), domestic market research and development, \$998,000 (\$953,000), walnut production research, \$718,420 (\$718,302), crop estimate, \$67,000 (\$60,000), and \$30,000 for the reserve for contingencies, for which no funding was recommended last year. Items which have decreased compared to the amount budgeted for 1994-95 (in parentheses) are: Administrative salaries, \$99,000 (\$101,712), and production research director, \$34,000 (\$40,000). All other items are budgeted at last year's amounts.

The Board also unanimously recommended an assessment rate of \$0.0116 per kernelweight pound of merchantable walnuts certified, \$0.0005 more than the previous year. This rate, when applied to anticipated shipments of 1,980,000 kernelweight pounds of merchantable walnuts, will yield \$2,296,800 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

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 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 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 Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the marketing year began on August 1, 1995, and the marketing order requires that the rate of assessment for the marketing year apply to all assessable walnuts handled during the marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and 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 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. A new § 984.346 is added to read as follows:

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

#### **§ 984.346 Expenses and assessment rate.**

Expenses of \$2,280,175 by the Walnut Marketing Board are authorized, and an assessment rate of \$0.0116 per kernelweight pound of merchantable walnuts is established for the marketing year ending July 31, 1996. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

Dated: October 23, 1995.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 95-26791 Filed 10-27-95; 8:45 am]

BILLING CODE 3410-02-P

#### **7 CFR Part 1099**

[DA-95-27]

#### **Milk in the Paducah, Kentucky, Marketing Area; Termination of Certain Provisions of the Order**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This rule terminates all but certain administrative provisions of the Paducah, Kentucky, Federal milk marketing order, effective upon publication in the Federal Register. The remaining provisions will be terminated at a later date. The termination is necessary because the terms and provisions of the order do not effectuate the declared policy of the Act.

**EFFECTIVE DATE:** November 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The dairy farmers and regulated handlers that were subject to the Paducah, Kentucky, order are now subject to comparable regulatory provisions of the order regulating the handling of milk in the adjacent Southeast marketing area. Accordingly, the Paducah order is no longer needed.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the