

**§ 944.400 [Amended]**

4. In § 944.400, the word "limes," is removed in the section heading and each place it appears in the section.

Dated: February 26, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-5080 Filed 3-4-03; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 984**

**[Docket No. FV02-984-1 FIR]**

**Walnuts Grown in California;  
Decreased 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 decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002-03 anticipated expenses of \$2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** April 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, 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, 1400 Independence Avenue SW, Stop 0237,

Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

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](mailto: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."

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, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, 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 to decrease the assessment rate established for the Board for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120

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 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 2001-02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0124 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 September 13, 2002, and unanimously recommended 2002-03 expenditures of \$2,970,000 and an assessment rate of \$0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$3,124,800. The assessment rate is \$0.0004 lower than the \$0.0124 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002-03 year include \$2,438,403 for program expenses, including marketing and production research projects, \$333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, \$80,500 for office expenses, \$79,500 for other operating expenses, and \$38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001-02 were \$2,566,569 for program expenses including marketing and production research projects, \$313,200 for employee expenses, \$130,600 for office expenses, \$76,000 for other operating expenses, and \$38,431 as a reserve for a contingency.