

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 247,500,000 kernelweight pounds which should provide \$2,970,000 in assessment income and 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 assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective 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 2002–03 budget has been reviewed and approved by USDA. Those for subsequent marketing years will also 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 approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small

agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over \$5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under \$5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual income over \$750,000. 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 to decrease the assessment rate established for the Board and collected from handlers for the 2002–03 and subsequent marketing years from \$0.0124 to \$0.0120 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2002–03 expenditures of \$2,970,000. The assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget.

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.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended

\$0.0120 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 247,500,000 kernelweight pound estimate of assessable walnuts for the year. 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.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2002–03 could range between \$0.50 and \$0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2002–03 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the 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 13, 2002, 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.

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 21, 2002 (67 FR 70146). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 21, 2003, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop