

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 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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2008–2009 fiscal period begins on July 1, 2008, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the northern Colorado potato shipping season begins in July; (3) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 948, the suspension of § 948.215 is lifted.

Dated: July 22, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–17089 Filed 7–24–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS–FV–08–0054; FV08–984–1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Walnut Board (Board) for the 2008–09 marketing year from \$0.0122 to \$0.0158 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2008–09 marketing year begins August 1, 2008. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 11, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. 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, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Martin J. Engeler, 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: Martin.Engeler@usda.gov, or Kurt.Kimmel@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@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 proposed herein would be applicable to all assessable walnuts beginning on August 1, 2008, and continue until amended, suspended, or terminated. This 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 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 would increase the assessment rate established for the Board for the 2008–09 and subsequent marketing years from \$0.0122 to \$0.0158 per kernelweight pound of assessable walnuts. The 2008–09 marketing year begins on August 1, 2008, and ends on August 31, 2009. Due to a recent amendment to the order changing the definition of marketing year, the 2008–09 marketing year will cover a 13-month period (73 FR 11328, March 3, 2008). Subsequent marketing years will cover a

12-month period from September 1 through August 31.

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 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 at a public meeting. Thus, all directly affected persons have

an opportunity to participate and provide input.

For the 2007–08 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0122 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 28, 2008, and unanimously recommended 2008–09 expenditures of \$4,594,300 and an assessment rate of \$0.0158 per kernelweight pound of assessable

walnuts. In comparison, 2007–08 budgeted expenditures were \$3,777,120. The assessment rate of \$0.0158 per kernelweight pound of assessable walnuts is \$0.0036 per pound higher than the rate currently in effect. The increased assessment rate is necessary to cover increased expenses in the areas of domestic market promotion, production research activities, and Board operating expenses. The higher assessment rate should generate sufficient income to cover anticipated 2008–09 expenses.

The following table compares major budget expenditures recommended by the Board for the 2007–08 and 2008–09 marketing years:

| Budget expense categories | 2007–08 | 2008–09 |
|----------------------------------------------------------------|-----------|-----------|
| Employee Expenses | \$438,600 | \$410,500 |
| Travel/Board Expenses | 86,000 | 100,000 |
| Office Costs/Annual Audit | 139,500 | 142,500 |
| Program Expenses Including Research Controlled Purchases | 5,000 | 5,000 |
| Crop Acreage Survey | 85,000 | |
| Crop Estimate | 100,000 | 110,000 |
| Production Research * | 730,000 | 805,000 |
| Domestic Market Development | 2,002,000 | 2,935,000 |
| Reserve for Contingency | 191,020 | 56,300 |

* 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 290,773,800 kernelweight pounds which should provide \$4,594,300 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 the prior year's production of 323,082 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (323,082 tons × 2,000 pounds per ton × .45).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Board would 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 would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2008–09 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 initial 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 approximately 4,000 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

Industry information for the most recent complete season indicates that 18 of 53 handlers (34 percent) shipped over \$6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Thirty-five of 53 walnut handlers (66 percent) shipped under \$6,500,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than \$750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the two-year average yield per acre for 2005 and 2006 is approximately 1.63 tons. A grower with 287 acres with an average yield of

1.63 tons per acre would produce approximately 468 tons. The season average of grower prices for 2005 and 2006 published by NASS is \$1,600 per ton. At that average price, the 468 tons produced on 287 acres would yield slightly less than \$750,000 in annual revenue. The 2002 Agricultural Census indicated two percent of walnut farms were between 250 and 500 acres in size. The 287 acres would produce, on average, slightly less than the small business threshold level of \$750,000 in annual revenue from walnuts, and is near the lower end of the 250 to 500 acreage range category of the 2002 census. Thus, it can be concluded that

the number of large walnut farms in 2006 was likely around two percent. 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 would increase the assessment rate established for the Board and collected from handlers for the 2008–09 and subsequent marketing years from \$0.0122 per kernelweight pound of assessable walnuts to \$0.0158 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2008–09 expenditures of \$4,594,300 and an assessment rate of

\$0.0158 per kernelweight pound of assessable walnuts. The proposed assessment rate of \$0.0158 is \$0.0036 higher than the rate currently in effect. The quantity of assessable walnuts for the 2008–09 marketing year is estimated at 323,082 tons. Thus, the \$0.0158 rate should provide \$4,594,300 in assessment income and be adequate to meet the 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 2007–08 and 2008–09 fiscal years:

| Budget expense categories | 2007–08 | 2008–09 |
|----------------------------------------------------------------|-----------|-----------|
| Employee Expenses | \$438,600 | \$410,500 |
| Travel/Board Expenses | 86,000 | 100,000 |
| Office Costs/Annual Audit | 139,500 | 142,500 |
| Program Expenses Including Research Controlled Purchases | 5,000 | 5,000 |
| Crop Acreage Survey | 85,000 | |
| Crop Estimate | 100,000 | 110,000 |
| Production Research * | 730,000 | 805,000 |
| Domestic Market Development | 2,002,000 | 2,935,000 |
| Reserve for Contingency | 191,020 | 56,300 |

* Includes Research Director's compensation.

The Board reviewed and unanimously recommended 2008–09 expenditures of \$4,954,300. 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 290,773,800 kernelweight pounds which should provide \$4,954,300 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 price for 2006 was \$1,630 per ton. Although no official NASS data is available regarding the 2007 average grower price, industry information indicates that it could be higher than the 2006 average grower price. Dividing the 2006 price of \$1,630

by 2,000 pounds per ton provides an inshell equivalent price per pound of \$0.815. Dividing this inshell price per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2006 average equivalent grower price of \$1.81 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate for 2006, the assessment rate of \$0.0122 (per kernelweight pound) is divided by the estimated average grower price. This results in estimated assessment revenue for the 2006 marketing year as a percentage of total grower revenue of .674 percent. As previously mentioned, NASS data for 2007 is not yet available. However, applying the same calculations above utilizing 2006 price levels and the proposed assessment rate would result in estimated assessment revenue as a percentage of total grower revenue of 0.873 percent for the 2008 season. Because 2007 average grower prices are expected to be higher than 2006 levels, and could continue at the higher level into the 2008 season, it is expected that 2008 assessment revenue as a percentage of grower revenue will be less than the 0.873 percent expressed above. In any event, it is estimated that assessment revenue will be well below one percent of estimated grower revenue in 2008.

This action would increase 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 producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California 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 May 28, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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 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 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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2008–09 marketing year will begin on August 1, 2008, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) 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.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be 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 August 1, 2008, an assessment rate of \$0.0158 per kernelweight pound is established for California merchantable walnuts.

Dated: July 22, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–17088 Filed 7–24–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–26; NRC–2005–0017]

James Salsman; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–20–26) submitted by James Salsman (petitioner). The petitioner requested that NRC amend its regulations to modify exposure and environmental limits for heavy metal radionuclides, in particular uranium. NRC is denying the petition because current NRC regulations provide adequate protection of public health and safety. The petitioner has not presented sufficient peer-reviewed data, pertinent to the types and levels of exposures associated with the concentration values used in NRC's regulations, to provide a sufficient reason for NRC to initiate a revision of its regulations. Thus, the NRC has decided not to expend limited resources on initiating a rulemaking at this time.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC–2008–0017].

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, Office of Federal and

State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6185, e-mail frank.cardile@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. The Petition

On June 15, 2005 (70 FR 34699), NRC published a notice of receipt of a petition for rulemaking filed by James Salsman. The petitioner requested that NRC revise its regulations in 10 CFR part 20 that specify limits for ingestion and inhalation occupational values, effluent concentrations, and releases to sewers, for heavy metal radionuclides, with nonradiological chemical toxicity hazards exceeding that of their radiological hazards so that those limits properly reflect the hazards associated with danger to organs, reproductive toxicity, and all other known nonradiological aspects of heavy metal toxicity. Specifically, the petition focused on uranium toxicity. The petitioner also requested that the classification for uranium trioxide within Class W, given in the Class column of the table for Uranium-230 in Appendix B to 10 CFR part 20, be amended to Class D. In addition, the petitioner requested that monomeric (monomolecular) uranium trioxide gas, as produced by the oxidation of U_3O_8 at temperatures above 1000° Celsius, be assigned its own unique solubility class if necessary, when its solubility characteristics become known.

In providing support for the petition, the petitioner states that NRC's regulations were designed to address only the radiological hazard of uranium, and not heavy metal toxicity which is known to be about six orders of magnitude worse. The petitioner believes that current regulations allow intake of more soluble compounds than insoluble compounds and that, in practice, the soluble compounds are more toxic than the insoluble compounds. The petitioner states that this should indicate that long half-life uranium isotope standards need to be revised.

The petitioner states that the current NRC regulations allow an annual inhalation of more than two grams of uranium. The petitioner also states that because "...the LD50/30 [lethal dose to 50 percent of a population in 30 days] of uranyl nitrate (which has considerably less uranyl ion per unit of mass than uranium trioxide) is 2.1 mg/kg in rabbits, 12.6 mg/kg in dogs, 48 mg/kg in rats, and 51 mg/kg in guinea pigs and albino mice," two grams of UO_3 seems very likely to comprise a fatal dose for a 200 pound human (Gmelin