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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS-SC-16-0062; SC16-984-2 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to increase the assessment rate established for the 2016-17 and subsequent marketing years from \$0.0379 to \$0.0465 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order and is comprised of growers and handlers of walnuts operating within the area of production.

Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be

sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, 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 document 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>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Terry.Vawter@ams.usda.gov or Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS,

USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed 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 proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 September 1, 2016, and continue until amended, suspended, or terminated.

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 proposed rule would increase the assessment rate for the 2016-17 and subsequent marketing years from \$0.0379 to \$0.0465 per kernelweight pound of assessable walnuts.

The 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. All members of the Board, but one, are growers 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 2015-16 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0379 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 June 9, 2016, and unanimously recommended 2016-17 expenditures of \$23,143,050 and an assessment rate of \$0.0465 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$22,668,980. The assessment rate of \$0.0465 is \$0.0086 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2016-17 marketing year is estimated at 553,000 tons inshell or 497,700,000 kernelweight pounds, which is the five-year average of walnut production. At the recommended higher assessment rate of \$0.0465 per kernelweight pound, the Board should collect approximately \$23,143,050 in assessment income, making income and expenses equal. The Board estimates it will begin the 2016-17 marketing year with

\$9,827,284 in their monetary reserve, which is well within the requirements of the order.

The Board noted that sales of California walnuts in the domestic market have been declining in recent years, and embarked upon an enhanced market development and promotion program that would reverse the trend. Noting that making such a commitment for a single year would likely not result in long-term gains, they voted to continue such market development and promotion programs yet another year. Thus, they are maintaining their programs at a level near that of the 2015-16 marketing year.

In addition, personnel changes will result in an overlap of duties and expenses, as some positions will be added so that experience and continuity can be maintained in spite of staff retirements. Thus, employee costs are expected to be higher this marketing year. Added to that, the implementation of the Food Safety Modernization Act (FSMA) may result in added costs to the industry, and in some cases, to the Board as well. For that reason, the Grades and Standards Committee and the Research Committee requested increased budgets.

The following table compares major budget expenditures recommended by the Board for the 2015-16 and 2016-17 marketing years:

Budget Expense Categories	2015-16	2016-17
Employee Expenses	\$ 1,846,500	\$ 2,292,000
Travel/Board Expenses/Annual Audit	\$ 191,000	\$ 206,000
Office Expenses	\$ 254,000	\$ 262,000
Controlled Purchases	\$ 10,000	\$ 10,000
Crop Acreage Survey	\$ 100,000	\$ 0
Crop Estimate	\$ 130,000	\$ 130,000
Production Research Director	\$ 94,500	\$ 175,000
Production Research	\$ 1,700,000	\$ 1,800,000
Sustainability Project	\$ 75,000	\$ 75,000
Grades and Standards Research	\$ 600,000	\$ 800,000
Domestic Market Development	\$18,478,440	\$ 18,398,040
Reserve for Contingency	\$ 32,790	\$ 59,010

The assessment rate recommended by the Board was derived by dividing anticipated assessment revenue needed by estimated shipments of California walnuts certified as merchantable. The 553,000 ton (inshell) estimate for merchantable shipments is an average of shipments during three prior years. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (553,000 tons x 2,000 pounds

per ton x 0.45), which yields 497,700,000 kernelweight pounds. At \$0.0465 per pound, the new assessment rate should generate \$23,143,050 in assessment income, which is equal to estimated expenses.

Section 984.69 of the order authorizes the Board to carry over excess funds into subsequent marketing years as a reserve, provided that funds already in the reserve do not exceed approximately two years' budgeted expenses. Current reserve funds total \$9,827,284 and are well within that requirement.

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 effective 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 2016-17 budget and those for subsequent marketing years would be reviewed, and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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 businesses 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 approximately 5,700 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the order. The Small Business Administration (SBA) defines small agricultural businesses (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 \$7,500,000.

According to USDA's National Agricultural Statistics Service's (NASS's) 2012 Census of Agriculture, approximately 86 percent of California's walnut farms were smaller than 100 acres. Further, NASS reports that the average yield for 2014 was 1.97 tons per acre, and the average price received for 2014 was \$3,230 per ton.

A 100-acre farm with an average yield of 1.97 tons per acre would therefore have been expected to produce about 197 tons of walnuts during 2014-15 marketing year. At \$3,230 per ton, that farm's production would have had an approximate value of \$636,310. Since Census of Agriculture information indicates that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$636,310 in 2014-15, which is well below the SBA threshold of \$750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the Board, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under \$7,500,000 during

the 2014-15 marketing year, and would, therefore, be considered small businesses according to the SBA definition.

This proposed rule would increase the assessment rate and collected from handlers for the 2016-17 and subsequent marketing years from \$0.0379 to \$0.0465 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2016-17 expenditures of \$23,143,050 and an assessment rate of \$0.0465 per kernelweight pound of assessable walnuts. The proposed assessment rate of \$0.0465 is \$0.0086 higher than the 2015-16 rate. The quantity of assessable walnuts for the 2016-17 marketing year is estimated at 553,000 tons inshell weight, or 497,700,000 kernelweight pounds. Thus, the \$0.0465 rate should provide \$23,143,050 in assessment income.

The increased assessment rate is due to continuing domestic marketing and promotion programs, as well as to increased personnel and committee expenses. The Board believes that California walnut sales can be improved in the domestic market through continued promotional activities. In addition, the Grades and Standards and Research Committees have asked for additional funds in case the implementation of FSMA requires new methods or processes for growing, harvesting, and shipping walnuts.

The major expenses for the 2016-17 marketing year include: \$2,292,000 for employee expenses; \$206,000 for travel, board expenses, and annual audit expenses; \$262,000 for office expenses; \$10,000 for controlled purchases; \$0 for the crop acreage survey; \$130,000 for the crop estimate; \$175,000 for the salary of the Production Research Director; \$1,800,000 for production research; \$75,000 for sustainability; \$800,000 for grades and standards research; \$18,398,040 for domestic market development projects; and \$59,010 for the contingency reserve.

By comparison, the major expenses for the 2015-16 marketing year include: \$1,846,500 for employee expenses; \$191,000 for travel, board expenses, and annual audit expenses; \$254,000 for office expenses; \$10,000 for controlled purchases; \$100,000 for the crop acreage survey; \$130,000 for the crop estimate; \$94,500 for the salary of the Production Research Director; \$1,700,000 for production research; \$75,000 for sustainability; \$600,000 for grades and standards research; \$18,478,440 for domestic market development projects; and \$32,790 for the contingency reserve.

The Board reviewed and unanimously recommended 2016-17 expenditures of \$23,143,050. Prior to arriving at this budget, the Board considered a recommendation from the

Budget and Personnel Committee (committee), which also reviewed the proposed budget. The committee debated the relative value of the increased assessment rate, given the focus on domestic promotion programs. They also considered information from various other committees, who deliberated and formulated their own budgets of expenses and made their recommendations to the committee. Those committees include the Market Development, Production Research, and Grades and Standards Committees.

The Budget and Personnel Committee considered alternative expenditure levels, such as reducing the proposed budgets recommended by the other committees, and changing the funding for domestic marketing projects, as well as not increasing the assessment rate. The committee ultimately decided that the proposed expenditures and assessment rate were reasonable and necessary to assist in improving domestic sales, maintaining staff continuity, and preparing for potential FSMA mandates. Thus, the committee unanimously agreed to recommend the proposed budget to the Board.

The assessment rate of \$0.0465 per kernelweight pound of assessable walnuts was derived by dividing anticipated assessment revenue needed by expected shipments of California walnuts certified as merchantable. Merchantable

shipments for the year are estimated at 497,700,000 pounds. It was determined that \$23,143,050 in assessment income was needed, and assessment income would equal expenses of \$23,143,050.

Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses.

According to NASS, the season average grower prices for the years 2013 and 2014 were \$3,710 and \$3,230 per ton, respectively. These prices provide a range within which the 2016-17 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of \$1.62 to \$1.86. Dividing these inshell per pound prices by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2016-17 price range estimate of \$3.60 to \$4.13 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0465 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2016-17 marketing year as a percentage of total grower revenue will thus likely range between 1.13 and 1.29 percent.

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. 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 encouraged to participate in Board deliberations on all issues. Like all Board meetings, the June 9, 2016, meeting was a public meeting and all entities, both large and small, were free 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.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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 the 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 action.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2016-17 marketing year begins on September 1, 2016, and the marketing order

requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; and (2) 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

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

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 September 1, 2016, an assessment rate of \$0.0465 per kernelweight pound is established for California merchantable walnuts.

Dated: September 12, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service

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