



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS-SC-17-0035; SC17-984-1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that implemented a recommendation from the California Walnut Board (Board) to decrease the assessment rate established for the 2017-18 and subsequent marketing years from \$0.0465 to \$0.0400 per kernelweight pound of assessable walnuts. The Board is comprised of growers and handlers of walnuts and locally administers the Marketing Order that regulates the handling of walnuts grown in California. The Board also has a public member who has no financial interest in walnut production or handling. **DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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;

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Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or 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 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 Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant

regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Under the Order, California walnut handlers are subject to assessments, which provide funds to administer the Order.

Assessment rates issued under the Order are intended to be applicable to all assessable California walnuts for the entire marketing year and continue indefinitely until amended, suspended, or terminated. The Board's marketing year began on September 1 and ends on August 31.

In an interim rule published in the *Federal Register* on July 21, 2017, and effective July 24, 2017, (82 FR 33775), § 984.347 was amended by decreasing the assessment rate established for California walnuts for the 2017-18 and subsequent marketing years from \$0.0465 to \$0.0400 per hundredweight pound of assessable walnuts. The decrease was recommended by the Board because the 2017-18 crop is expected to be 615,000 tons, which is 62,000 tons larger than the 2016-17 crop. At that crop level, handler assessments, combined with funds from the financial reserve, should provide adequate funds to administer the program.

Final 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 action 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 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 4,700 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the Marketing Order. The Small Business Administration (SBA) defines small agricultural growers as those having annual receipts of less than \$750,000 and small agricultural service firms as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to USDA's National Agricultural Statistics Service's (NASS) 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

2015 was 2.01 tons per acre, and the average price received for 2015 was \$1,620 per ton. A 100-acre farm with an average yield of 2.01 tons per acre would, therefore, have been expected to produce about 201 tons of walnuts. At \$1,620 per ton, that farm's production would have had an approximate value of \$325,620. This is well below the SBA threshold of \$750,000; thus, it can be concluded that the majority of California's walnut growers are considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under \$7,500,000 during the 2016-17 marketing year and would, therefore, be considered small handlers according to the SBA definition.

This rule continues in effect the action that decreased the assessment rate collected from handlers for the 2017-18 and subsequent marketing years from \$0.0465 to \$0.0400 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2017-18 expenditures of \$24,140,000 and an assessment rate of \$0.0400 per kernelweight pound of assessable walnuts, which is \$0.0065 lower than the assessment rate previously in effect. The quantity of assessable walnuts for the 2017-18 marketing year is estimated to be 615,000 tons, 62,000 tons greater than the quantity estimated for the 2016-17 marketing year.

Therefore, even at the reduced assessment rate, the Board should collect approximately \$22,140,000 in assessment income, which, when combined with \$2,000,000 from its reserves, should be adequate to cover its budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on growers.

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 May 31, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously reviewed by OMB and assigned OMB No: 0581-0178 "Vegetable and Specialty Crops."

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 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.

Comments on the interim rule were required to be received on or before September 19, 2017. No comments were received.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:
<https://www.regulations.gov/docket?D=AMS-SC-17-0035>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Government Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the *Federal Register* (82 FR 33775,

July 21, 2017) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984 [AMENDED]

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

PART 984 - WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim rule amending 7 CFR Part 984, which was published at 82 FR 33775 on July 21, 2017, is adopted as a final rule, without change.

Dated: November 22, 2017

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

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