



Agricultural Marketing Service

7 CFR Part 984

[Doc. No. **AMS-SC-20-0075; SC20-984-2 FR**]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Walnut Board (Board) to decrease the assessment rate established for the 2020-21 and subsequent marketing years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management and Program Analyst, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Biancam.Bertrand@usda.gov or Gary Olson, Acting Regional Director; Telephone: (503) 326-2055, or Email: GaryD.Olson@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, or Email:

Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984, (referred to as "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 Board locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. In accordance with Executive Order 13175, AMS has not identified any tribal implications as a result of this rule. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This 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 be applicable to all assessable walnuts for the 2020-21 marketing year, 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 rule decreases the assessment rate from \$0.0400 per kernelweight pound assessable walnuts, the rate that was established for the 2017-18 and subsequent marketing years, to \$0.0250 per kernelweight pound of assessable walnuts handled for the 2020-21 and subsequent marketing years.

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. The members are familiar with the Board's needs and with the costs of goods and services in their local area and are thus able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2017-18 and subsequent marketing periods, the Board recommended, and USDA approved, an assessment rate of \$0.0400 per kernelweight pound of assessable walnuts handled. That assessment rate continued until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

On September 11, 2020, the Board unanimously recommended 2020-21 expenditures of \$17,990,000 and an assessment rate of \$0.0250 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$25,760,000. The assessment rate of \$0.0250 is \$0.0150 lower than the rate currently in effect. The Board recommended decreasing the assessment rate to reduce the assessment burden on handlers. Funds from assessments and from the Board's reserve will be sufficient to cover proposed expenses, while maintaining the Board's

reserve within the requirements of the Order at no more than two years' budgeted expenses.

The major expenditures recommended by the Board for the 2020-21 marketing year include \$1,930,000 for employee expenses, \$283,000 for office expenses, \$1,600,000 for production research, \$825,000 for grades and standards activities, and \$13,112,000 for domestic market development. Budgeted expenses for these items in 2019-20 were \$1,896,000, \$293,000, \$2,000,000, \$825,000, and \$20,700,000, respectively.

The Board derived the recommended assessment rate by considering anticipated expenses; estimated certification ("certification" means having the walnuts inspected) of 650,000 tons (inshell), based on a three-year average; and the amount of funds available in the authorized reserve.

Pursuant to § 984.51(b) of the Order, the estimated production is converted to a merchantable kernelweight basis using a factor of 0.45 (650,000 tons x 2,000 pounds per ton x 0.45), which yields 585,000,000 kernelweight pounds. At \$0.0250 per pound, the assessment rate will generate \$14,625,000 in assessment income and, along with funds from the reserve, will meet estimated expenses of \$17,990,000.

Funds in the reserve (currently \$20,133,075) will be kept within the maximum permitted in § 984.69 of the Order of approximately two marketing years' budgeted expenses.

The reserve at the end of the 2020-21 marketing year is anticipated to be \$13,258,075.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although the assessment rate will be 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 would be undertaken as necessary. The Board's 2020-21 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

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 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 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 90 handlers subject to regulation under the Order and approximately 4,400 walnut growers in the production area. The Small Business Administration (SBA) defines small agricultural service firms as those having annual receipts of less than \$30,000,000, and small agricultural producers as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

The Board reported that approximately 82 percent of California's walnut handlers shipped merchantable walnuts valued under \$30 million during the 2018-2019 marketing year and would, therefore, be considered small handlers according to the SBA definition.

Data from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), show that 86 percent of California farms growing walnuts had walnut sales of less than \$1 million.

An alternative computation includes more recent NASS data, starting with a three-year average value of utilized

production of \$1.263 billion for the most recent seasons for which data is available (2017/18 through 2019/20). Dividing that figure by the number of walnut growers (4,400) yields an average annual crop value per grower of approximately \$287,045. This figure is well below the SBA small agricultural producer threshold of \$1,000,000 in annual sales. Assuming a normal distribution, this provides evidence that a large majority of walnut growers can be considered small agricultural producers according to the SBA definition.

This rule decreases the assessment rate collected from handlers for the 2020-21 and subsequent marketing years from \$0.0400 to \$0.0250 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2020-21 expenditures of \$17,990,000 and an assessment rate of \$0.0250 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0250 is \$0.0150 lower than the rate currently in effect. The quantity of assessable walnuts for the 2020-21 marketing year is estimated at 650,000 tons (inshell), which is equivalent to 585,000,000 kernelweight pounds. Thus, the \$0.0250 rate should provide \$14,625,000 in assessment income. The Board anticipates that the income derived from handler assessments, along with funds from the Board's authorized reserve, will be adequate to cover budgeted expenses for the 2020-2021 marketing year.

The major expenditures recommended by the Board for the 2020-21 marketing year include \$1,930,000 for employee expenses, \$283,000 for office expenses, \$1,600,000 for production research, \$825,000 for grades and standards activities, and \$13,112,000 for domestic market development. Budgeted expenses for these items in 2019-20 were \$1,896,000, \$293,000, \$2,000,000, \$825,000, and \$20,700,000, respectively.

The Board unanimously recommended decreasing the assessment rate to reduce the assessment burden on handlers, and recommended utilizing funds from the authorized reserve to help cover the portion of the Board expenses.

Prior to arriving at this budget and assessment rate, the Board considered information from various sources, such as the Board's Executive Committee. The Board discussed alternative expenditure levels, based upon the relative value of various activities to the California walnut industry. The Board recommended the assessment rate of \$0.0250 to provide \$14,625,000 in assessment income based on the estimation. The Board determined that assessment revenue, along with funds from the authorized reserve will be adequate to cover budgeted expenses for the 2020-21 marketing year.

Based upon information from the National Agricultural Statistics Service (NASS), the grower price reported for

walnuts in 2019 was \$1,970 per ton (\$0.99 per pound) of walnuts. In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate (\$0.0250 per kernelweight pound) times the estimated production (585,000,000 kernelweight pounds), which equals the assessment revenue of \$14,625,000. The grower revenue is calculated by multiplying the grower price of \$1,970 per ton (\$0.99 per kernelweight pound) times the estimated production (585,000,000 kernelweight pounds), which equals the grower revenue of \$579,150,000. The final step, dividing the assessment revenue by the grower revenue, indicates that, for the 2020-21 marketing year, the estimated assessment revenue as a percentage of total grower revenue would be about 2.5 percent.

This rule decreases 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 also reduce the burden on growers.

The Board's meeting was widely publicized throughout the California walnut industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 11, 2020, meeting was a public meeting and all

entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection 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 OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any 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 final rule.

A proposed rule concerning this action was published in the **Federal Register** on March 5, 2021 (86 FR 12837). The Board notified all California walnut handlers of the proposed assessment rate decrease. The proposed rule was made available through the internet by USDA and the Office of the **Federal Register**. A 30-day comment period ending April 5, 2021, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://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.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other information available, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984 - WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 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, 2020, an assessment rate of \$0.0250 per kernelweight pound is established for California merchantable walnuts.

Erin Morris, Associate Administrator,
Agricultural Marketing Service.

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