

Rules and Regulations

Federal Register

Vol. 72, No. 196

Thursday, October 11, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS-FV-07-0089; FV07-984-1 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2007-08 and subsequent fiscal periods from \$0.0101 to \$0.0122 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 marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, California Marketing Field Office, 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: Shereen.Marino@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 Agreement and Order No. 984, both 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 issued herein will be applicable to all assessable walnuts beginning on August 1, 2007, 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 increases the assessment rate established for the Board for the 2007-08 and subsequent fiscal periods from \$0.0101 to \$0.0122 per kernelweight pound of assessable walnuts.

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 2006-07 and subsequent fiscal periods, the Board recommended, and USDA approved, an assessment rate of \$0.0101 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 31, 2007, and unanimously recommended 2007-08 expenditures of \$3,777,120 and an assessment rate of \$0.0122 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$3,222,860. The assessment rate of \$0.0122 per kernelweight pound of assessable walnuts is \$0.0021 per pound higher than the rate currently in effect. The increased assessment rate is necessary to cover increased expenses including increased salaries, operating expenses and research for the 2007-08 marketing year. The higher assessment rate should generate sufficient income to cover anticipated 2007-08 expenses.

The following table compares major budget expenditures recommended by the Board for the 2006-07 and 2007-08 marketing years:

Budget expense categories	2006–07	2007–08
Administrative Staff/Field Salaries & Benefits	\$415,000	\$438,600
Travel/Board Expenses	75,000	86,000
Office Costs/Annual Audit	142,500	139,500
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey		85,000
Crop Estimate	100,000	100,000
Production Research	725,000	730,000
Domestic Market Development	1,750,000	2,002,000
Reserve for Contingency	10,360	191,020

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 309,600,000 kernelweight pounds which should provide \$3,777,120 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 estimate for merchantable shipments is based on historical data, which is the prior year's production of 344,000 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (344,000 tons × 2,000 pounds/ton × .45).

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 this assessment rate will be in effect 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 2007–08 budget and those for subsequent fiscal periods

will 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.

There are approximately 53 handlers of California walnuts subject to regulation under the marketing order and approximately 4,800 growers 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.

Current industry information shows that 18 of the 53 handlers (34 percent) shipped over \$6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Thirty-five of the 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 290 acres with an average yield of 1.63 tons per acre would produce approximately 473 tons. The season average of grower prices for 2005 and 2006 (published by NASS) is \$1,585 per ton. At that average price, the 473 tons produced on 290 acres would yield approximately \$750,000 in annual revenue. The 2002 Agricultural Census indicated two percent of walnut farms were between 250 and 500 acres in size. The 290 acres would produce, on average, about \$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 is likely to be 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 increases the assessment rate established for the Board and collected from handlers for the 2007–08 and subsequent marketing years from \$0.0101 per kernelweight pound of assessable walnuts to \$0.0122 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2007–08 expenditures of \$3,777,120 and an assessment rate of \$0.0122 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0122 is \$0.0021 higher than the rate currently in effect. The quantity of assessable walnuts for the 2007–08 marketing year is estimated at 344,000 tons. Thus, the \$0.0122 rate should provide \$3,777,120 in assessment income and be adequate to meet this 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 2006–07 and 2007–08 fiscal years:

Budget expense categories	2006–07	2007–08
Administrative Staff/Field Salaries & Benefits	\$415,000	\$438,600
Travel/Board Expenses	75,000	86,000
Office Costs/Annual Audit	142,500	139,500

Budget expense categories	2006–07	2007–08
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey		85,000
Crop Estimate	100,000	100,000
Production Research	725,000	730,000
Domestic Market Development	1,750,000	2,002,000
Reserve for Contingency	10,360	191,020

The Board reviewed and unanimously recommended 2007–08 expenditures of \$3,777,120. 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 309,600,000 kernelweight pounds which should provide \$3,777,120 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.

According to NASS, the season average grower prices for years 2005 and 2006 were \$1,570 and \$1,600 per ton respectively. These prices provide a reasonable price range within which the 2007–08 season average price is likely to fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of between \$0.785 and \$0.80. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2007–08 price range estimate of \$1.74 and \$1.78 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0122 (per kernelweight pound) is divided into the low and high estimates of the price range. The estimated assessment revenue for the 2007–08 marketing year as a percentage of total grower revenue would likely range between 0.701 and 0.685 percent.

This action increases 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 are 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 31, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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.

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.

As noted in the final regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 17, 2007 (72 FR 46183). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending September 4, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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

available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2007–08 marketing year began on August 1, 2007, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; and handlers are already receiving 2007–08 crop walnuts from growers. The Board needs to have sufficient funds to meet its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

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 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, 2007, an assessment rate of \$0.0122 per kernelweight pound is established for California merchantable walnuts.

Dated: October 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–5041 Filed 10–9–07; 11:20 am]

BILLING CODE 3410–02–P