



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 984**

[Doc. No. AMS-SC-17-0031; SC17-984-1 IR]

**Walnuts Grown in California; Decreased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule implements 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. 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 will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective July 24, 2017. Comments received by

[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER] will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this 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 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: [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov) or [Terry.Vawter@ams.usda.gov](mailto:Terry.Vawter@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 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 12866, 13563, and 13175. 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 the Office of Management and Budget's (OMB) 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).

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 will be applicable to all assessable walnuts beginning on September 1, 2017, 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 will 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 established for the Board for the 2017-18 and subsequent marketing years from \$0.0465 to \$0.0400 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. All members of the Board, except the public member, 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 2016-17 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0465 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, 2017, and unanimously recommended 2017-18 expenditures of \$24,140,000 and a decreased assessment rate of \$0.0400 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$23,143,050. The assessment rate of \$0.0400 is \$0.0065 per pound lower than the rate currently in effect. The quantity of assessable walnuts for the 2017-18 marketing year is estimated at a three-year average of 615,000 tons (inshell) or 553,500,000 kernelweight pounds, which is 62,000 tons more than the 553,000 tons assessed during the 2016-17 marketing year. At the recommended lower assessment rate of \$0.0400 per kernelweight pound, the Board should collect approximately \$22,140,000 in assessment income, which, when augmented with funds from the Board's monetary reserve, would be adequate to cover its 2017-18 budgeted expenses of \$24,140,000.

The following table compares major budget expenditures recommended by the Board for the 2016-17 and 2017-18 marketing years:

<b>Budget Expense Categories</b>	<b>2016-17</b>	<b>2017-18</b>
Employee Expenses	\$2,292,000	\$1,787,000
Travel/Board Expenses/Annual Audit	\$ 206,000	\$ 192,000
Office Expenses	\$ 262,000	\$ 265,000

Program Expenses, Including Research		
Controlled Purchases	\$ 10,000	\$ 10,000
Crop Acreage Survey	\$ 0	\$ 103,000
Crop Estimate	\$ 130,000	\$ 146,000
Production Research Director	\$ 175,000	\$ 98,000
Production Research	\$ 1,800,000	\$ 2,000,000
Sustainability Project	\$ 75,000	\$ 0
Grades and Standards Research	\$ 800,000	\$ 825,000
Domestic Market Development	\$18,398,040	\$19,447,830
Reserve for Contingency	\$ 59,010	\$ 47,170

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected volumes of California walnuts certified as merchantable. The 615,000-ton (inshell) estimate for merchantable walnut receipts is an average of the three prior years' shipments.

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. The reserve is estimated to be \$14,909,800 at the end of the marketing year, well within the authorized reserve amount.

The Board met on May 31, 2017, and unanimously approved using a three prior years' average walnut production volume

to formulate the 2017-18 crop estimate. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (615,000 tons x 2,000 pounds per ton x 0.45), which yields 553,500,000 kernelweight pounds. At \$0.0400 per pound, the new assessment rate should generate \$22,140,000 in assessment income. The assessment income, plus \$2,000,000 from the Board's reserve, will be adequate to cover its budgeted expenses.

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 is 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 are encouraged to 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 2017-18 budget and those for subsequent marketing years will 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 action 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 marketing order. Small agricultural growers are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$750,000, and small agricultural service firms are defined 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 may 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 decreases the assessment rate established for the Board and 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 currently 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.

The following table compares major budget expenditures recommended by the Board for the 2016-17 and 2017-18 marketing years:

<b>Budget Expense Categories</b>	<b>2016-17</b>	<b>2017-18</b>
Employee Expenses	\$2,292,000	\$1,787,000
Travel/Board Expenses/Annual Audit	\$ 206,000	\$ 192,000
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Sustainability Project	\$ 75,000	\$ 0

Grades and Standards Research	\$ 800,000	\$ 825,000
Domestic Market Development	\$18,398,040	\$19,447,830
Reserve for Contingency	\$ 59,010	\$ 47,170

The Board reviewed and unanimously recommended 2017-18 expenditures of \$24,140,000. Prior to arriving at this budget, the Board considered alternative expenditure and assessment levels, as well as a recommendation from the Budget and Personnel Committee (Committee). The Committee considered the estimated income and expenses, given the requests from other committees, such as the Production Research, Market Development, and Grades and Standards Committees. The other committees each deliberated, formulated their own budgets of expenses, and made their recommendations to the Committee. The Committee also considered the recommendations and various assessment rates and expenses, then made a recommendation to the Board. The Board ultimately determined that the recommended levels were reasonable and necessary to properly administer the order.

The assessment rate of \$0.0400 per kernelweight pound of assessable walnuts was derived by dividing anticipated expenses of \$24,140,000 by expected 2017-18 volumes of California walnuts certified as merchantable. Merchantable walnuts certified for the year are estimated at 553,500,000

kernelweight pounds, which should provide \$22,140,000 in assessment income. Assessment income, coupled with \$2,000,000 from the Board's reserve funds, should 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. The anticipated reserve should be \$14,909,800, which is well within the order's requirement.

According to NASS, the season average grower price for 2015 was \$1,620 per ton. Dividing this average grower price by 2,000 pounds per ton provides an inshell price per pound of \$0.81. Dividing this inshell price per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a potential 2017-18 price of about \$1.80 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0400 per kernelweight pound is divided by the price. The estimated assessment revenue for the 2017-18 marketing year, stated as a percentage of total grower revenue, would be approximately 2 percent.

This action 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 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 their views on this issue. Finally, interested persons are invited to submit comments on this interim 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 information collection requirements have been previously reviewed by 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 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.

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 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/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 Board's recommendation, and other information, it is 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 is also found and determined upon good cause that it is impracticable and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause

exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) the action decreases the assessment rate for merchantable walnuts; (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; and (3) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**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 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, 2017, an assessment rate of \$0.0400 per kernelweight pound is established for California merchantable walnuts.

Dated: July 17, 2017

Bruce Summers  
Acting Administrator  
Agricultural Marketing Service

BILLING CODE 3410-02 P

[FR Doc. 2017-15304 Filed: 7/20/2017 8:45 am; Publication Date: 7/21/2017]