

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Doc. No. AMS–SC–24–0039]

#### Walnuts Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rulemaking would implement a recommendation from the California Walnut Board (Board) to increase the assessment rate established for the 2024–2025 and subsequent marketing years from \$0.011 to \$0.0125 per inshell pound of California walnuts. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 16, 2024.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rulemaking. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: [MarketingOrderComment@usda.gov](mailto:MarketingOrderComment@usda.gov) or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rulemaking will be included in the record, will be made available to the public, and can be viewed at: <https://www.regulations.gov>. 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:** Joshua R. Wilde, Marketing Specialist,

or Barry Broadbent, Chief, Northwest Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: [Joshua.R.Wilde@usda.gov](mailto:Joshua.R.Wilde@usda.gov) or [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rulemaking 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 comprises growers and handlers of California walnuts operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Orders 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rulemaking has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rulemaking 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 would be applicable to all assessable California walnuts for the 2024–2025 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 proposed rulemaking would increase the assessment rate for California walnuts handled under the Order from \$0.011 per inshell pound, the rate that was established for the 2023–2024 and subsequent marketing years, to \$0.0125 per inshell pound for the 2024–2025 and subsequent marketing years.

Sections 984.68 and 984.69 authorize the Board, with the approval of AMS, to formulate an annual budget of expenses

and collect assessments from handlers to administer the program. The members of the Board are familiar with the Board's needs and with the costs of goods and services in their local area and are 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 2023–2024 and subsequent marketing years, the Board recommended, and AMS approved, an assessment rate of \$0.011 per inshell pound of California walnuts within the production area. That rate continues in effect from marketing year to marketing year until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other information available to AMS.

The Board met on May 15, 2024, and unanimously recommended 2024–2025 marketing year expenditures of \$19,886,800 and an assessment rate of \$0.0125 per inshell pound of California walnuts for the 2024–2025 marketing year. In comparison, last year's budgeted expenditures were \$16,811,250. The proposed assessment rate of \$0.0125 per inshell pound is \$0.0015 higher than the rate currently in effect. The Board recommended increasing the assessment rate to better align assessment revenue with budgeted expenses, due in part to a smaller estimated crop. The Board projects handler receipts of 730,000 tons (equivalent to 1.46 billion pounds) of assessable California walnuts for the 2024–2025 marketing year, down from the approximately 820,000 tons (1.64 billion pounds) handled during the 2023–2024 marketing year.

The major expenditures recommended by the Board for the 2024–2025 marketing year include \$13,330,200 for domestic marketing, \$2,838,600 for employee expenses, \$2,425,000 for production and post-harvest research, \$435,000 for office expenses, \$473,000 for travel and other operating expenses, and \$385,000 for crop and acreage reporting. For comparison, budgeted expenses for these items during the 2023–2024 marketing year were \$10,588,750, \$2,472,500, \$2,425,000, \$350,000, \$390,000, and \$585,000, respectively.

The Board derived the recommended assessment rate by considering anticipated expenses, the estimated volume of assessable walnuts, and the amount of funds available in the authorized reserve. The expected 730,000 tons (1.46 billion pounds) of

California walnuts from the 2024–2025 marketing year crop would generate \$18,250,000 in assessment revenue at the proposed assessment rate (1.46 billion pounds multiplied by the \$0.0125 assessment rate). The remaining \$1,636,800 needed to cover budgeted expenditures would come from an approved administrative services agreement with the California Walnut Commission, which shares staff and office expenses with the Board. The income generated from assessments, along with non-assessment revenue, should be sufficient to meet the Board's estimated program expenditures of \$19,886,800. Funds available in the financial reserve (currently about \$14,665,274) would be kept within the maximum permitted by the Order (approximately two years' budgeted expenses as authorized in § 984.69).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Board or other available information. Although this assessment rate would 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 AMS. Board meetings are open to the public and interested persons may express their views at these meetings. AMS 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 2024–2025 marketing year budget, and those for subsequent marketing years, will be reviewed and, as appropriate, approved by AMS.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rulemaking 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 68 handlers subject to regulation under the Order and approximately 4,500 growers of California walnuts in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of less than \$34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of walnuts as those having annual receipts of less than \$3,750,000 (NAICS code 111335, Tree Nut Farming) (13 CFR 121.201).

Data from USDA's National Agricultural Statistics Service (NASS), indicate a three-year average value of utilized walnut production of \$828.2 million for the most recent seasons for which data is available (2020–2021 through 2022–2023 marketing years). Dividing that figure by the number of walnut growers (4,500) yields an average annual crop value per grower of approximately \$184,000. This figure is well below the SBA small agricultural producer threshold of \$3,750,000 in annual sales. Assuming a normal distribution, this provides evidence that a large majority of walnut growers would likely be considered small agricultural producers according to the SBA definition. Additionally, data from NASS's 2017 Agricultural Census show that 86 percent of California farms growing walnuts at the time had walnut sales of less than \$1 million.

Based on information from the Board, approximately 78 percent of California's walnut handlers shipped assessable walnuts valued under \$34 million during the 2023–2024 marketing year and would, therefore, be considered small handlers according to the SBA definition. Considering the abovementioned, it is reasonable to conclude that a substantial majority of both walnut growers and handlers would be considered small business entities according to current SBA definitions.

This proposal would increase the assessment rate collected from handlers for the 2024–2025 and subsequent marketing years from \$0.011 to \$0.0125 per inshell pound of California walnuts. The Board unanimously recommended 2024–2025 marketing year expenditures of \$19,886,800 and an assessment rate of \$0.0125 per inshell pound of California walnuts. The proposed assessment rate of \$0.0125 is \$0.0015 higher than the rate currently in effect. The Board expects the industry to handle 730,000 tons (1.46 billion pounds) of California walnuts during the 2024–2025

marketing year. Thus, the \$0.0125 per inshell pound assessment rate should provide \$18,250,000 in assessment income (1.4 billion pounds multiplied by \$0.0125). The Board also expects to receive \$1,636,800 from an administrative services agreement with the California Walnut Commission. Income derived from these sources should be adequate to meet budgeted expenditures for the 2024–2025 marketing year.

The major expenditures recommended by the Board for the 2024–2025 marketing year include \$13,330,200 for domestic marketing, \$2,838,600 for employee expenses, \$2,425,000 for production and post-harvest research, \$435,000 for office expenses, \$473,000 for travel and other operating expenses, and \$385,000 for crop and acreage reporting. For comparison, budgeted expenses for these items during the 2023–2024 marketing year were \$10,588,750, \$2,472,500, \$2,425,000, \$350,000, \$390,000, and \$585,000, respectively.

The Board recommended increasing the assessment rate to meet necessary expenses, due in part to a smaller estimated crop for the 2024–2025 marketing year. The Board estimates shipments for the 2024–2025 marketing year to be approximately 730,000 tons (equivalent to 1.46 billion pounds). Given the Board's estimate for 2024–2025 marketing year walnut shipments, the current assessment rate of \$0.011 would generate \$16,060,000 in assessment income (1.46 billion pounds multiplied by \$0.011 assessment rate), which would not cover budgeted expenses. By increasing the assessment rate to \$0.0125, assessment income would be \$18,250,000 (1.46 billion pounds multiplied by \$0.0125 assessment rate). This amount should provide sufficient funds to meet anticipated 2024–2025 marketing year expenses without needing to draw from the Board's financial reserve.

Prior to arriving at this budget and assessment rate recommendation, the Board considered information from various sources, such as the Board's Executive Committee, and discussed various alternatives, including maintaining the current assessment rate of \$0.011 per inshell pound of assessable walnuts and increasing the assessment rate by a different amount. However, the Board determined that the recommended assessment rate would be necessary to effectively achieve the Board's goals of covering budgeted expenses for the 2024–2025 marketing year and maintaining adequate funds in its financial reserve. Consequently,

these alternative assessment rates were rejected.

Based upon information from the National Agricultural Statistics Service (NASS), the average grower price reported for walnuts over the past three crop years (2020–2023) was approximately \$1,093 per ton (\$0.547 per pound). In order to determine the estimated assessment revenue as a percentage of the total grower revenue, we calculate the assessment rate (\$0.0125 per inshell pound) divided by the grower price (\$0.547 per pound) and multiply that number by 100. Therefore, estimated assessment revenue as a percentage of total grower revenue for the 2024–2025 marketing year would be about 2.3 percent ( $0.0125/0.547 * 100 = 2.29$ ).

This proposed action would increase 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, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Board's meetings are widely publicized throughout the California walnut industry and all interested persons are invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the May 15, 2024, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rulemaking, 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 OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rulemaking. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rulemaking would 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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rulemaking.

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 recommendations submitted by the Committee and other available information, AMS has determined that this proposed rulemaking is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rulemaking. All written comments timely received will be considered before a final determination is made on this rulemaking.

#### List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 984 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, 2024, an assessment rate of \$0.0125 per inshell pound is established for California walnuts.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2024–18287 Filed 8–15–24; 8:45 am]

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