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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS-FV-08-0054; FV08-984-1 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 California Walnut Board (Board) for the 2008–09 marketing year from \$0.0122 to \$0.0158 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 2008–09 marketing year began on September 1, 2008, and ends on August 31, 2009. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* October 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Engeler, Senior Marketing Specialist, 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: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov), or [Kurt.Kimmel@usda.gov](mailto: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](mailto:Jay.Guerber@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 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 established herein will be applicable to all assessable walnuts beginning on September 1, 2008, 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 2008–09 and subsequent marketing years from \$0.0122 to \$0.0158 per kernelweight pound of assessable walnuts. The 2008–09 marketing year begins on September 1, 2008, and ends on August 31, 2009.

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 2007–08 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0122 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 28, 2008, and unanimously recommended 2008–09 expenditures of \$4,594,300 and an assessment rate of \$0.0158 per kernelweight pound of assessable walnuts. In comparison, 2007–08 budgeted expenditures were \$3,777,120. The assessment rate of \$0.0158 per kernelweight pound of assessable walnuts is \$0.0036 per pound higher than the 2007–08 assessment rate. The increased assessment rate is necessary to cover increased expenses in the areas of domestic market promotion, production research activities, and Board operating expenses. The higher assessment rate should generate sufficient income to cover anticipated 2008–09 expenses.

The following table compares major budget expenditures recommended by the Board for the 2007–08 and 2008–09 marketing years:

Budget expense categories	2007–08	2008–09
Employee Expenses .....	\$438,600	\$410,500
Travel/Board Expenses .....	86,000	100,000
Office Costs/Annual Audit .....	139,500	142,500
Program Expenses Including Research		
Controlled Purchases .....	5,000	5,000
Crop Acreage Survey .....	85,000	
Crop Estimate .....	100,000	110,000
Production Research* .....	730,000	835,000
Domestic Market Development .....	2,002,000	2,935,000
Reserve for Contingency .....	191,020	56,300

\*Includes Research Director's compensation and a contingency for production research issues.

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 290,773,800 kernelweight pounds which should provide \$4,594,300 in assessment income and 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 year's budgeted expenses. If not retained in a financial reserve, 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 of the order.

The estimate for merchantable shipments is based on historical data, which is the prior year's production of 323,082 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of 0.45 (323,082 tons × 2,000 pounds per ton × 0.45).

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 2008–09 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 (5 U.S.C. 601–612) (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 currently 58 handlers of California walnuts subject to regulation under the marketing order and approximately 4,000 producers 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.

Industry information for the most recent complete season indicates that 18 of 53 handlers (34 percent) shipped over \$6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Thirty-five of 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 287 acres with an average yield of 1.63 tons per acre would produce approximately 468 tons. The season average of grower prices for 2005 and 2006 published by NASS is \$1,600 per ton. At that average price, the 468 tons produced on 287 acres would yield slightly less than \$750,000 in annual revenue. The 2002 Agricultural Census indicated two percent of walnut farms were between 250 and 500 acres in size. The 287 acres would produce, on average, slightly less than the small business threshold level of \$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 was likely 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 2008–09 and subsequent marketing years from \$0.0122 per kernelweight pound of assessable walnuts to \$0.0158 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2008–09 expenditures of \$4,594,300 and an assessment rate of \$0.0158 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0158 is \$0.0036 higher than the 2007–08 assessment rate. The quantity of assessable walnuts for the 2008–09 marketing year is estimated at 323,082 tons, or 290,773,800 kernelweight pounds. Thus, the \$0.0158 rate should provide \$4,594,300 in assessment income and be adequate to meet the 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 2007–08 and 2008–09 fiscal years:

Budget expense categories	2007–08	2008–09
Employee Expenses .....	\$438,600	\$410,500
Travel/Board Expenses .....	86,000	100,000
Office Costs/Annual Audit .....	139,500	142,500
Program Expenses Including Research:		
Controlled Purchases .....	5,000	5,000
Crop Acreage Survey .....	85,000	.....
Crop Estimate .....	100,000	110,000
Production Research* .....	730,000	835,000
Domestic Market Development .....	2,002,000	2,935,000
Reserve for Contingency .....	191,020	56,300

\* Includes Research Director's compensation and contingency for production research issues.

The Board reviewed and unanimously recommended 2008–09 expenditures of \$4,594,300. 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 290,773,800 kernelweight pounds which should provide \$4,594,300 in assessment income and 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 year's budgeted expenses. If not retained in a financial reserve, 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 of the order.

According to NASS, the season average grower price for years 2006 and 2007 were \$1,630 and \$2,320 per ton, respectively. These prices provide a range within which the 2008–09 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of \$0.815 to \$1.16. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2008–09 price range estimate of \$1.81 to \$2.58 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0158 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 marketing year as a percentage of total grower revenue would thus likely range between 0.612 and 0.873 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 28, 2008, meeting was a public meeting and all entities, both large and small, were provided the opportunity 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 initial 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 July 25, 2008 (73 FR 43378).

Copies of the proposed rule were also mailed or sent via facsimile to 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 August 11, 2008, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposed rule. The comment was submitted by the Executive Director of the Board. The commenter points out that the proposed rule would establish the 2008–09 marketing year as a 13-month period from August 1, 2008, through August 31, 2009, and the assessment rate increase would be effective as of August 1, 2008. The commenter further states that the order was recently amended to change the marketing year from August through July to September through August. Accordingly, when the Board formulated its 2007–08 budget in May 2007, it established a 13-month period beginning on August 1, 2007, and ending on August 31, 2008, as its marketing year to accommodate the order amendment. Expenditures were planned and budgeted accordingly. The Board subsequently recommended its 2008–09 marketing year budget in May 2008 to cover a 12-month period beginning September 1, 2008, and ending August 31, 2009. The Board also intended for the assessment rate to be effective with the new marketing year beginning September 1, 2008.

The commenter also noted that one section of the proposed rule incorrectly references total budgeted expenses of \$4,954,300. The correct amount, as referenced correctly in another section of rule should be \$4,594,300. The commenter also states that Budget Expense Category tables in the proposed rule are incorrect because it omits a \$30,000 item for production research contingencies and should need \$835,000 instead of \$805,000. Finally, the commenter indicated that the statement at the asterisk, which explains that the Research Director's compensation is included in the Production Research budget, should be modified to state that production research contingencies are also included in that budget.

As a result of this comment, modifications to the proposed rule are being made in this final rule. In order

to ensure consistency and continuity in the Board's financial planning and operations, and to recognize the recent order amendment revising the marketing year, the assessment rate change and the 2008–09 marketing year will become effective September 1, 2008. Additional modification is made to correct the erroneous references to the total expenditures. Finally, the rule is further modified to change the Budget Expense Category tables to include the amount budgeted for production research contingencies and the statement at the asterisk to indicate the production research contingencies are part of the Production Research budget. Although the tables were not necessarily intended to capture all the Board's expenses, the modifications may provide more clarity.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 is 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 2008–09 marketing year began on September 1, 2008, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and 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. Also, a 15-day comment period was provided for in the proposed rule and no comments in opposition to the rule 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 September 1, 2008, an assessment rate of \$0.0158 per kernelweight pound is established for California merchantable walnuts.

Dated: September 29, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–23390 Filed 10–2–08; 8:45 am]

**BILLING CODE 3410–02–P**

#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 204

[Regulation D; Docket No. R–1297]

#### Reserve Requirements of Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2009. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2009 at \$10.3 million, up from \$9.3 million in 2008. This amount is known as the reserve requirement exemption amount. The Regulation D amendment also sets the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2009 at \$44.4 million, up from \$43.9 million in 2008. This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.

**DATES:** *Effective date:* November 3, 2008.

*Compliance dates:* For depository institutions that report deposit data weekly, the new low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, December 2, 2008, and the corresponding fourteen-day reserve maintenance period that begins Thursday, January 1, 2009. For depository institutions that report deposit data quarterly, the new low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 16, 2008, and the corresponding seven-day reserve maintenance period that begins Thursday, January 15, 2009. For all depository institutions, these new values of the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to determine the frequency at which a depository institution submits deposit reports effective in either June or September 2009.

#### FOR FURTHER INFORMATION CONTACT:

Sophia Allison, Senior Counsel (202/452–3565), Legal Division, or Margaret Gillis DeBoer, Senior Financial Analyst (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy.

Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

#### 1. Reserve Requirements

Pursuant to section 19(b) of the Federal Reserve Act (Act), transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve