Proposed Rules

Federal Register
Vol. 70, No. 213
Friday, November 4, 2005

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

[Docket No. FV05–984–2 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Walnut Marketing Board (Board) for the 2005–06 and subsequent fiscal periods from $0.0094 to $0.0096 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 14, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket 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.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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. 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 proposed herein would be applicable to all assessable walnuts beginning on August 1, 2005, 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 would increase the assessment rate established for the Board for the 2005–06 and subsequent fiscal periods from $0.0094 to $0.0096 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 2004–05 and subsequent fiscal periods, the Board recommended, and USDA approved, an assessment rate of $0.0094 per kernelweight 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 September 9, 2005, and unanimously recommended 2005–06 expenditures of $2,937,600 and an assessment rate of $0.0096 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,749,500. The assessment rate of $0.0096 per kernelweight pound of assessable walnuts is $0.0002 per pound higher than the rate currently in effect. The increased assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 340,000 tons (306,000,000 kernelweight pounds merchantable), and the budget is about 6.4 percent more than last year's budget. The crop is smaller than expected due to sunburn caused by warmer than

normal temperatures during the growing season. The higher assessment rate should generate sufficient income to cover anticipated 2005–06 expenses.

The following table compares major budget expenditures recommended by the Board for the 2004–05 and 2005–06 marketing years:

Budget expense categories	2004–05	2005–06
Administrative Staff/Field Salaries & Benefits	$332,000	$360,000
Travel/Board Expenses	69,000	80,000
Office Costs/Annual Audit	124,000	132,500
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey		85,000
Crop Estimate	94,000	95,000
Production Research Director	76,500	75,000
Production Research	548,500	500,000
Domestic Market Development	1,393,500	1,550,000
Reserve for Contingency	107,000	55,100

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 306,000,000 kernelweight pounds which should provide $2,937,600 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 proposed assessment rate would 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 would be in effect for an indefinite period, the Board would 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 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 2005–06 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 initial 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California walnuts subject to regulation under the marketing order and approximately 5,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $6,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Current industry information shows that 15 of the 50 handlers (30 percent) shipped over $6,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Thirty-five of the 50 walnut handlers (70 percent) shipped under $6,000,000 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 average yield per acre for 2002–04 is 1.457 tons. A grower with 420 acres would produce approximately 612 tons. The average of grower prices for 2002–04 (published by NASS) is $1,227 per ton. At that average price, the 612 tons produced on 420 acres would yield approximately $750,000 in annual revenue. The 2002 Agricultural Census indicated 56 percent of walnut farms were 500 acres or larger, which is close to the 420 acres required to produce $750,000 in revenue. Thus, it can be concluded that the number of large walnut farms in 2005 is still likely to be under one 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 would increase the assessment rate established for the Board and collected from handlers for the 2005–06 and subsequent marketing years from $0.0094 per kernelweight pound of assessable walnuts to $0.0096 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2005–06 expenditures of $2,937,600 and an assessment rate of $0.0096 per kernelweight pound of assessable walnuts. The proposed assessment rate of $0.0096 is $0.0002 higher than the rate currently in effect. The quantity of assessable walnuts for the 2005–06 marketing year is estimated at 340,000 tons. Thus, the $0.0096 rate should provide $2,937,600 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures and based on an estimated crop of 340,000 tons for the year (306,000,000 kernelweight pounds estimated merchantable).

The following table compares major budget expenditures recommended by the Board for the 2004–05 and 2005–06 fiscal years:

Budget expense categories	2004–05	2005–06
Administrative Staff/Field Salaries & Benefits	$332,000	$360,000
Travel/Board Expenses	69,000	80,000
Office Costs/Annual Audit	124,000	132,500
Program Expenses Including Research Controlled Purchases	5,000	5,000
Crop Acreage Survey	.....	85,000
Crop Estimate	94,000	95,000
Production Research Director	76,500	75,000
Production Research	548,500	500,000
Domestic Market Development	1,393,500	1,550,000
Reserve for Contingency	107,000	55,100

The Board reviewed and unanimously recommended 2005–06 expenditures of $2,937,600, which included an increase in audit expenses. 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 306,000,000 kernelweight pounds which should provide $2,937,600 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 2003 and 2004 were $1,160 and $1,350 per ton respectively. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of between $.58 and $.68. Adjusting by a few cents above and below those prices ($0.55 to $0.70 per inshell pound) provides a reasonable price range within which the 2005–06 season average price is likely to fall. Dividing these inshell prices per pound by the 0.45 conversion factor designated in the order yields a 2005–06 price range estimate of $1.22 and $1.56 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0096 (per kernelweight pound) is divided into the low and high estimates of the price range. The estimated assessment revenue for the 2005–06 marketing year as a percentage of total grower revenue would likely range between .8 and .6 percent.

This action would increase 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 would be 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 September 9, 2005, 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 information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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/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.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2005–06 marketing year began on August 1, 2005, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis and; (3) 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.

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 proposed to be 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, 2005, an assessment rate of $0.0096 per kernelweight pound is established for California merchantable walnuts.

Dated: October 31, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–22047 Filed 11–3–05; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AH68

Implementation of a Dose Standard After 10,000 Years; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On September 8, 2005 (70 FR 53313), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would