

Proposed Rules

Federal Register

Vol. 63, No. 215

Friday, November 6, 1998

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. FV99-984-1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate, from \$0.0116 to \$0.0133 per kernelweight pound of merchantable walnuts certified, established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1998-99 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year begins 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 23, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632; or E-mail: moabdoCKET_clerk@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.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA,

2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901; Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

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 marketing agreement and order are 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 (Department) 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, 1998, 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 the Secretary 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 the Secretary 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 the Secretary'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 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, 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 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 1997-98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 11, 1998, and unanimously recommended 1998-99 expenditures of \$2,620,274 and an assessment rate of \$0.0133 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were \$2,391,289. The assessment rate of \$0.0133 is \$0.0017 higher than the rate currently in effect. The quantity of assessable walnuts for 1998-99 is estimated at 198,000,000 kernelweight pounds, which is 9,000,000 kernelweight pounds less than 1997-98. With the anticipated decrease in assessable walnuts and increased budget expenditures, a higher assessment rate is needed to generate sufficient revenue

to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—\$0.0116	\$2,296,800	\$2,620,274	–\$323,474
Proposed Rate—\$0.0133	2,633,400	2,620,274	+13,126

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	\$246,643	\$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. As mentioned earlier, merchantable certifications for the year are estimated at 198,000,000 kernelweight pounds which should provide \$2,663,400 in assessment income. 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 five months after the end of the year (§ 984.69.)

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1998–99 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by the Department.

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 5,000 producers of walnuts in the production area and approximately 48 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Last year, as a percentage, 33 percent of the handlers shipped over 2.4 million

kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds. Based on an average price of \$2.10 per kernelweight pound at point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of merchantable walnuts certified. The Board unanimously recommended 1998–99 expenditures of \$2,620,274 and an assessment rate of \$0.0133 per kernelweight pound of merchantable walnuts certified. The proposed assessment rate of \$0.0133 is \$0.0017 higher than the 1997–98 rate. The quantity of assessable walnuts for the 1998–99 marketing year is estimated at 198,000,000 kernelweight pounds. Thus, the \$0.0133 rate should provide \$2,633,400 in assessment income and be adequate to meet this year's 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 five months after the end of the year (§ 984.69.)

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	\$246,643	\$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The higher assessment rate is needed to provide sufficient revenue to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—\$0.0116	\$2,296,800	\$2,620,274	-\$323,474
Proposed Rate—\$0.0133	2,633,400	2,620,274	+13,126

The Board reviewed and unanimously recommended 1998–99 expenditures of \$2,620,274 which included increases in administrative and office expenses, and production research salary, and a decrease for research programs. Prior to arriving at this budget, the Board considered information and recommendations from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. After a desired expenditure level was determined, the assessment rate of \$0.0133 per kernelweight pound of assessable walnuts was determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 198,000,000 kernelweight pounds for the 1998–99 marketing year. This is approximately \$13,000 above the anticipated expenses, which the Board determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 1998–99 season could range between \$1.45 and \$1.58 per kernelweight pound of walnuts. Therefore, the assessment revenue for the 1998–99 marketing year as a percentage of total grower revenue should be less than one 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 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 September 11, 1998, 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 marketing year began on August 1, 1998, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; 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

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

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 proposed to be revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1998, an assessment rate of \$0.0133 per kernelweight pound is established for California merchantable walnuts.

Dated: October 21, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29727 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–702–PR]

Proposed Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for peanuts. A proposed program—the Peanut Promotion, Research, and Information Order (Order)—was submitted to USDA by the American Farm Bureau Federation. Under the Order, peanut producers would pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations would remit the assessments to the proposed National Peanut Board (Board). The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by January 5, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244.

Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours.

Comments may also be submitted electronically to:

malinda_e_farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the PRA, send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of