



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS-SC-16-0053; SC16-984-1 FR]

**Walnuts Grown in California; Order Amending Marketing Order
984**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 984, which regulates the handling of walnuts grown in California. The amendment, which was proposed by the California Walnut Board (Board), was approved by growers in the referendum. This action authorizes the Board to borrow from a commercial lending institution to fund operations and marketing/research expenses for the program.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Julie Santoboni, Rulemaking Branch Chief, 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:

Geronimo.Quinones@ams.usda.gov or

Julie.Santoboni@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 action, pursuant to 5 U.S.C. 553, finalizes an amendment to a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California. Part 984 hereinafter (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, which is responsible for the local administration of the Order, is comprised of walnut growers and handlers operating within the production area. The applicable rules of practice and procedure governing the formulation of Marketing Agreements and Orders (7 CFR

part 900) authorize amendment of the Order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. 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 OMB's 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. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering walnuts grown in California.

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. A 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.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR Part 900 (73 FR 49307). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed

amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

The Agricultural Marketing Service (AMS) considered the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the Order as proposed by the Board could appropriately be accomplished through informal rulemaking.

The proposed amendment was unanimously recommended by the Board following deliberations at a public meeting held on February 19, 2016.

A proposed rule soliciting comments on the amendment was issued on September 12, 2016, and published in the *Federal Register* on September 16, 2016 (81 FR 63721). Two comments were received, both in support of the amendment. A proposed rule and referendum order was issued on May 19, 2017, and published in the *Federal Register* on May 26, 2017 (82 FR 24255). This document also directed that a referendum among walnut growers be conducted August 7, 2017 through August 18, 2017 to determine whether they favored the proposal. To become effective, the amendment had to be approved by either two-thirds of the growers voting in the

referendum or by those representing at least two-thirds of the volume of walnuts produced by those voting in the referendum. The amendment was favored by 61 percent of the growers voting and by 68 percent of the volume represented, the second of which exceeds the two-thirds volume requirement.

The amendment in this final rule authorizes the Board to borrow from a commercial lending institution during times of cash shortages to help ensure continuity of operations.

Final 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 action 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 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 Order. The Small Business Administration (SBA) defines small agricultural growers as those having annual receipts of less than \$750,000 and defines small agricultural service firms 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's) 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 2014 was 1.97 tons per acre, and the average price received for 2014 was \$3,230 per ton. A 100-acre farm with an average yield of 1.97 tons per acre would therefore have been expected to produce about 197 tons of walnuts during 2014-15 marketing year. At \$3,230 per ton, that farm's production would have had an approximate value of \$636,310. Since Census of Agriculture information indicates that the majority of California's walnut farms

are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$636,310 in 2014-15, which is below the SBA threshold of \$750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition. According to information supplied by the Board, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under \$7,500,000 during the 2014-15 marketing year and would, therefore, be considered small handlers according to the SBA definition.

The Board's proposed amendment authorizing the Board to borrow from commercial lending institutions was unanimously recommended at a public meeting on February 19, 2016. This amendment will help to ensure continuity in operations.

The Board reviewed and identified the most costly portion of its domestic advertising program. That portion of the program operates during the first six months of the Board's marketing year and costs must be paid by mid-year. Since assessment revenues are collected throughout the marketing year, not enough is on hand when these large payments are due. In the past, the Board has used reserve

funds to help pay for marketing and advertising expenses. However, due to the increased size of the advertising program, the Board cannot rely on reserve funds to cover the costs. Based on this fact, the Board believes the program could become unsustainable in the long term.

While this action could result in a temporary increase in handler assessment costs, these increases would be small and uniform on all handlers and proportional to the size of their businesses. These costs are expected to be offset by the benefits derived from a sustained marketing and advertising program. Additionally, these costs would help to ensure that the Board has sufficient funds to meet its financial obligations. Such stability is expected to allow the Board to conduct a program that would benefit all entities, regardless of size. California walnut growers should see an improved business environment and a more sustainable business model because of the improved business efficiency.

Alternatives were considered to this proposal, including making no change at this time. However, the Board believes it would be beneficial to have the means and funds necessary to effectively administer the program.

Paperwork Reduction Act

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 as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This amendment will 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

The Board's meeting was widely publicized throughout the California walnut production area. All interested persons were invited to attend and participate in Board deliberations on all issues. The February 19, 2016, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

A proposed rule concerning this action was published in the *Federal Register* on September 16, 2016 (81 FR 63721). Copies of the proposed rule were mailed or sent via facsimile to all Board members and walnut growers. Finally, the rule was made available through the Internet by USDA and the Office of the *Federal Register*. A 60-day comment period ending November 15, 2016, was provided to allow interested persons to respond to the proposal. Two comments were received, both in support of the amendment. No changes were made to the proposed amendments as a result of the comments received.

A proposed rule and referendum order was then issued on May 19, 2017, and published in the *Federal Register* on May 26, 2017 (82 FR 24255). This document directed that a referendum among walnut growers be conducted during the period of August 7, 2017 through August 18, 2017 to

determine whether they favored the proposed amendment to the Order. To become effective, the amendment had to be approved by at least two-thirds of the growers voting, or two-thirds of the volume of walnuts represented by voters in the referendum. The amendment was favored by 61 percent of the growers voting and by 68 percent of the volume represented, the latter of which exceeds the two-thirds volume requirement.

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/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

**Order Amending the Order Regulating the Handling of
Walnuts Grown in California**

(a) Findings and Determinations Upon the Basis of the Rulemaking Record.

The findings are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous

findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby further amended, regulates the handling of walnuts grown in California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area

as are necessary to give due recognition to the differences in the production and marketing of walnuts produced or packed in the production area; and

5. All handling of walnuts produced in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations. It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of walnuts covered under the Order) who during the period September 1, 2015, through August 31, 2016, handled not less than 50 percent of the volume of such walnuts covered by said Order, as hereby amended, have not signed an amended marketing agreement; and

2. The issuance of this amendatory Order, amending the aforesaid Order, is favored or approved by producers representing at least two-thirds of the volume of walnuts produced by those voting in a referendum on the question of approval and who, during the period of September 1, 2015, through August 31, 2016, have been engaged within the production area in the production of such walnuts.

3. The issuance of this amendatory Order advances the interests of growers of walnuts in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of walnuts grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby amended as follows:

The provisions of the proposed Marketing Order amending the Order contained in the proposed rule issued by the Associate Administrator on September 12, 2016, and published in the *Federal Register* on September 16, 2016 (81 FR 63721), shall be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, 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 part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Amend 984.69 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 984.69 Assessments.

* * * * *

(d) *Advanced assessments and commercial loans.* To provide funds for the administration of the provisions of this part during the part of a fiscal period when neither sufficient operating reserve funds nor

sufficient revenue from assessments on the current season's certifications are available, the Board may accept payment of assessments in advance or may borrow money from a commercial lending institution for such purposes.

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Dated: May 8, 2018

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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