



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS-SC-20-0053; SC20-984-1 PR]

Walnuts Grown in California; Changes to Reporting Requirements.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to change the reporting requirements prescribed under the Federal marketing order regulating the handling of walnuts grown in California. This action would require California walnut handlers to report purchase commitments (walnuts sold but not yet shipped) with domestic and foreign buyers on a monthly basis. This action should provide more accurate information about supply and demand to industry, which would also enhance marketing efforts.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence

Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <https://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <https://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. 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: Pushpinder Kumar, Marketing Specialist, or Terry Vawter, Regional Director, Marketing Order and Agreement Division, California Marketing Field Office, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5903, Fax: (559) 487-5906; or E-mail: Pushpinder.Kumar@usda.gov or Terry.Vawter@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@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule 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 is comprised of growers and handlers of walnuts operating within California, and a public member.

The Department of Agriculture (USDA) is issuing this proposed 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 proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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.

This proposed rule would revise reporting requirements under the Order by authorizing the Board to collect reports from handlers about monthly purchase commitments with domestic and foreign buyers. The Board believes that the collection of this information will enable the industry to have more accurate and timely data regarding the industry's

monthly supply and demand. Such information is expected to enhance overall marketing efforts.

The Marketing Order Revision Committee (MORC) met to discuss the proposal in a public meeting via teleconference on April 2, 2020. The MORC recommended the change in reporting requirements to enable the industry to have more complete information on purchase commitments. The Board unanimously recommended this action at a public meeting held on May 7, 2020, where stakeholders were encouraged to express their views and provide input.

Section 984.71 authorizes the Board to require handlers to report inventory of inshell and shelled walnuts as specified by the Board.

Section 984.72 authorizes the Board to require that handlers who handle merchantable walnuts, inshell or shelled, at any time during the marketing year shall submit reports showing the quantity handled and other pertinent information, as specified by the Board.

Section 984.73 authorizes the Board, with the approval of the Secretary, to require handlers to report walnut receipts from growers, handlers or others in a form and on designated times.

Section 984.76 authorizes the Board, with the approval of the Secretary, to request handlers to furnish other

reports and information as needed to enable the Board to perform its duties under the Order.

Sections 984.471, 984.472, and 984.473 provide the rules and regulations related to reports of inventory, merchantable walnuts shipped, and walnuts received from growers, respectively.

Currently, reports of shipments and receipts are filed by handlers on CWB Form No. 6 no later than the 5th day of month following such shipments or receipts. This report also includes the quantity shipped to domestic and foreign buyers for shelled and inshell walnuts, including information about the quantity of walnuts exported by country of destination. Under this proposed rule, handlers would report purchase commitments of walnuts, not yet shipped, made with domestic and foreign buyers. The proposed change and information about each handler's shipments and receipts, is expected to provide more timely information about supply and demand for walnuts, and enhance marketing and promotion efforts.

The Board proposes to add a new paragraph (c) to section 984.472, which would require handlers to submit reports on the purchase commitments with buyers that are not yet shipped. The title of Section 984.472 would also

be amended to read "Reports of merchantable walnuts shipped, received, and committed."

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 action 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 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 90 handlers subject to regulation under the Order and approximately 4,400 walnut growers in the production area. The Small Business Administration (SBA) defines small agricultural service firms as those having annual receipts of less than \$30,000,000, and small agricultural producers as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

According to the California Walnut Board, there are approximately 4,400 producers and 90 handlers in the production area. The Board also reported that approximately 82 percent of California's walnut handlers shipped merchantable walnuts valued under \$30 million during the 2018-2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), show that 86 percent of California farms growing walnuts had walnut sales of less than \$1 million. In an alternative computation using NASS data, the 3-year average crop value (2016/17 to 2018/19) was \$1.24 billion. Average bearing acres over that same 3-year period were 333,000. Dividing crop value by acres yields a revenue per acre estimate of \$3,733. Using these numbers, it would take approximately 268 acres ($\$1,000,000 / \$3,733$) to yield \$1 million in annual walnut sales. The 2017 Agricultural Census data show that 80 percent of walnut farms in 2017 were below 260 acres. By either measure, the NASS data demonstrate that well over three-fourths of California walnut farms would be considered small businesses according to the SBA definition.

This proposed rule would revise the title of section 984.472 and add a new paragraph (c) to include the requirement for handlers to report monthly purchase commitments made with domestic and foreign buyers. This action is expected to positively impact the industry by providing more accurate and timely information regarding the industry's monthly supply and demand. Such information is expected to enhance overall marketing efforts.

During the MORC meeting on April 2, 2020, alternatives were discussed including not collecting information about purchase commitments. However, the industry believes that information about walnut supply and demand would prove critical in supporting overall marketing efforts. Timely and accurate information gives the handlers and the Board valuable data, permitting them to focus on their sales efforts. At the May 7, 2020 meeting, the Board discussed the MORC's recommendation and its reasoning. There was agreement about the value of having the commitment information, along with information on shipments and receipts.

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 the Office of Management and Budget (OMB) under OMB No. 0581-0178,

Vegetable and Specialty Crops. This proposed rule would require changes to the Board's existing CWB Form No. 6 by changing the title and adding the provision to collect information on purchase commitments with domestic and foreign buyers. The revised form has been submitted to OMB for approval.

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 proposed 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 meetings were widely publicized throughout the walnut industry and all interested persons were invited to attend the meetings and encouraged to participate in the deliberations on all issues. The MORC's meeting on April 2, 2020, and the Board's meeting on May 7, 2020, were public meetings held via teleconference 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 rule, including the regulatory and informational impacts of this action on small businesses.

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.

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

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and 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. Amend § 984.472 by revising the heading and adding paragraph (c) to read as follows:

§984.472 Reports of merchantable walnuts received, shipped, and committed.

* * * * *

(c) Reports of merchantable walnuts on which handlers have made purchase commitments with buyers during the month, but which have not yet been shipped, shall be submitted to the Board on CWB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were committed. Such reports shall show the quantity of walnuts committed in either inshell or shelled pounds. If the handler made no commitments during any month, he/she shall mark "None" in the "Purchase Commitments" section of CWB Form 6.

Bruce Summers, Administrator,
Agricultural Marketing Service.

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