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Agricultural Marketing Service

7 CFR Part 984

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

Walnuts Grown in California; Changes to Reporting Requirements.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements prescribed under the Federal marketing order regulating the handling of walnuts grown in California. This action requires California walnut handlers to report purchase commitments (walnuts sold but not yet shipped) with domestic and foreign buyers, monthly. This change provides more accurate information about supply and demand to the industry, which also enhances marketing efforts.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Regional Director, Marketing Order and Agreement Division, California Marketing Field Office, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5905, Fax: (559) 487-5906; or E-mail: 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 final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final 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 California Walnut Board (hereinafter referred to as 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 final 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 final 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final 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 final rule revises 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 enables the industry to have more

accurate and timely data regarding the industry's monthly supply and demand, and enhances 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 on a form and at 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 requirements 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. Pursuant to this final rule, handlers would report purchase commitments of walnuts, not yet shipped, made with domestic and foreign buyers. The change and information about each handler's shipments and receipts are expected to provide more timely information about supply and demand for walnuts, and enhance marketing and promotion efforts.

Section 984.472 is amended to add new paragraph (c), which requires handlers to submit reports on the purchase commitments with buyers that are not yet shipped. The title of Section 984.472 is also amended to read "Reports of merchantable walnuts shipped, received, and committed."

Final 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 final 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 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 Census of Agriculture, 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 Census of Agriculture 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 final rule revises the title of section 984.472 and adds a new paragraph (c) to include the requirement for handlers to report monthly purchase commitments made with domestic and foreign buyers. This action provides more accurate and timely information regarding the industry's monthly supply and demand, and enhances 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 is 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 final rule requires 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 final 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 encouraged to express their views on this issue.

A proposed rule concerning this action was published in the Federal Register on August 25, 2020, (85 FR 52278). Copies of the proposal were provided by the Board to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 24, 2020, was provided to allow interested persons to respond to the proposal. Ten comments were received.

Seven of the comments favored adding the requirement for handlers to report purchase commitments, two of the commenters did not favor the change, and one commenter neither favored nor opposed the change.

Those favoring the change did so for similar reasons: the value in having accurate information about monthly inventories; the value in collecting the data and the importance of the data in relationship to the Board's marketing efforts; and the ability of the information to

provide market trend data and an overall better picture of the market.

The two commenters who opposed the change did so because they were concerned about the reporting burden imposed on walnut handlers. One commenter also noted such commitment data could be impacted by cancelled orders or order adjustments. The other commented that the value of the information might not be offset by the increased reporting burden on walnut handlers.

The commenter who did not take a position for or against the changes to the Order discussed the potential for such reported information to be skewed by backorders, and urged AMS to consider an additional inventory category with a shipping time limit.

As to the two commenters who did not favor the change, it should be noted that some walnut handlers are also members of the Board, and this change to the reporting requirements was discussed in two separate public meetings a month apart. The vote on the change by the MORC on April 2, 2019, and by the full Board on May 7, 2019, were unanimous. There were no opposing votes, and no handlers commented on the rule during the comment period. The handlers serving on the MORC and the Board did not feel that the additional information required by the change represented a significant burden to the reporting requirements. AMS believes that benefits of this change to

the marketing of walnuts outweigh the concerns of the minimal increase in the reporting burden. Also, AMS finds the claim of commitment data being impacted by cancelled orders or order adjustments to be highly speculative, with no firm evidence presented to substantiate the assertion. Thus, there are no changes made to the final rule.

In addition, the comment about changes to the data created by potential backorders may not materialize, since handlers are free to make interhandler transfers of walnuts to meet their purchase commitments; and the nature of agricultural commodities, in general, is not conducive to the development of backorders. In agriculture, a crop is produced and harvested, and more is not coming until about a year later.

Accordingly, no changes will be made to the rule as proposed.

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.

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 will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, Walnuts.

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. Amend § 984.472 by revising the section 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 No. 6.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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