



## **Agricultural Marketing Service**

### **7 CFR Part 984**

**[Doc. No. AMS-SC-24-0076]**

### **Walnuts Grown in California; Changes to Administrative Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the California Walnut Board (Board) to make changes to the administrative requirements prescribed under the Federal marketing order for walnuts grown in California (Order). This proposed rule would provide a schedule for required handler assessment payments, establish interest and late payment charges on overdue assessments owed, and modify the existing reporting requirements for handler acquisitions of walnuts.

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

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by email: [MarketingOrderComment@usda.gov](mailto:MarketingOrderComment@usda.gov) or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. 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:** Jeffery Rymer, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (559) 487-5905; or email: JefferyM.Rymer@usda.gov or Abigail.Maharaj@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-8085; or email: Antoinette.Carter@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes to amend 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 California walnuts operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This action 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 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the 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 proposed rule would provide a defined payment schedule for required handler assessment payments. Additionally, the proposal would establish interest and late payment charges on overdue handler assessments owed under the Order. Lastly, the proposed action would modify the reporting requirements for walnut acquisitions. These proposed changes were unanimously approved, in two separate votes, with eight in favor and none opposed, during Board meetings held on August 8, and November 6, 2024.

Section 984.69(a) of the Order provides that each handler shall pay the Board, on

demand, his or her pro rata share of the Boards authorized expenses. Currently, each handler's assessment obligation is invoiced throughout the marketing year based upon the quantity of walnuts the handler has acquired and reported to the Board by January 15 of each year on the Order's CWB Form #1. However, the schedule of when assessments are invoiced, and payments are due, is not yet specified in the Order's regulations.

Further, § 984.69(c) of the Order provides the authority to establish late payment charges and interest charges on assessments that are not paid within the time period specified by the Board. While such late payment penalties are authorized under the Order, specific late payment charges and interest rate charges on past due assessments have not yet been established in the Order's regulations.

Additionally, § 984.73 of the Order provides the authority to require handlers to submit reports of their walnut receipts. Under that authority, § 984.473, "Report of walnut receipts," was established to require handlers to report walnut acquisitions, on or before January 15 of each marketing year, on forms supplied by the Board. Currently, under that section of the Order, handlers are only required to submit one report each marketing year, with no provision providing instruction for reporting walnuts that may be acquired after January 15.

This proposed rule would modify the Order's current administrative requirements to enhance the efficient collection of assessments from handlers, strengthening the Board's oversight of the program operations and administration of the Order. The Board believes that the changes and additions proposed herein would serve to augment the Order's administrative requirements and incentivize compliance.

Specifically, this proposed rule would add a new § 984.348, "Payment of assessments," to the Order's requirements to establish the payment schedule for handler assessments. Each handler would pay assessments, based on the quantity of walnut receipts reported by the handler pursuant to § 984.473, in three equal installments

invoiced by the Board, on January 31, April 30, and July 31 of each marketing year. This specific payment schedule, as proposed, is based on industry practice. Based on Board discussions, establishing this proposed schedule in the Order itself would help to stabilize and smooth revenue streams. Such stability would help the Board's operability by reducing uncertainty about when assessments are due and provide handlers with clear expectations and timeframe. This proposed schedule is not clear in the Order or provided for in its administrative regulations.

In addition, through the authority provided by § 984.69(c) of the Order, this proposed rule would also establish late payment penalties and interest charges for handler assessment payments under a new § 984.349, "Late payment and interest charges." This, in conjunction with the establishment of the payment schedule, would help the Board address the issue of handler confusion with late payment submissions. A late payment charge of ten percent (10%) would be imposed on any assessment payment that has not been received within sixty (60) days of the invoice date on the handler's assessment statement. Further, assessment payments not received within sixty (60) days after the invoice date would also be subject to an ongoing one and one-half percent (1.5%) per month interest charge, accruing monthly until the total balance due, including any late payment charge, is paid. The inclusion of a late payment penalty and interest charges provision as proposed would establish a clear calculation for the Board to apply to a handler's account when in arrears. This proposal would also provide an incentive for handlers to comply with the proposed payment installment schedule.

Finally, this proposed action would modify the reporting requirements in § 984.473, "Report of walnut receipts" which requires handlers to report walnut acquisitions on or before January 15 of each marketing year on forms supplied by the Board. This proposed rule would add provisions for reporting walnuts that are acquired after the January 15 reporting deadline. Although the occurrence of walnuts arriving to

handlers after January 15 is not common, when it does occur, it creates confusion concerning how the reporting requirements and assessment collections are applied to those late arriving walnuts. As such, the Board proposed a simple solution: each handler acquiring walnuts from growers after submission of his or her initial report of walnut receipts would also be required to file a revised report of walnut receipts by the 15th of the month following such receipt. Handlers must pay assessments on such receipts upon demand, as requested by the Board, following receipt of the revised report.

The proposed changes collectively aim to reinforce the integrity of the walnut marketing order, promote compliance, and reduce reliance on legal remedies for collection. By fostering transparency, timely reporting, and punctual payments, these measures are expected to facilitate the orderly marketing of California walnuts and enhance the continued effectiveness of the program for the benefit of industry stakeholders.

### **Initial 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 proposed 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 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 the 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 68 handlers subject to regulation under the Order and approximately 4,500 growers of California walnuts in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of less than \$34,000,000 (North

American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers of walnuts as those having annual receipts of less than \$3,750,000 (NAICS code 111335, Tree Nut Farming) (13 CFR 121.201).

Data from USDA's National Agricultural Statistics Service (NASS), indicate a three-year average value of utilized inshell walnut production of \$737.1 million for the most recent seasons for which data is available (2022 through 2024 crop years). Dividing that figure by the number of walnut growers (4,500) yields an average annual crop value per grower of approximately \$163,787. This figure is well below the SBA small agricultural producer threshold of \$3,750,000 in annual sales. Assuming a normal distribution, this provides evidence that a large majority of walnut growers would likely be considered small agricultural producers according to the SBA definition.

Additionally, data from NASS's 2022 Agricultural Census show that 96 percent of California farms growing walnuts at the time had walnut sales of less than \$1 million.

Further, based on information from the Board, approximately 78 percent of California's walnut handlers shipped assessable walnuts valued under \$34 million during the 2023-2024 marketing year and would, therefore, be considered small handlers according to the SBA definition. Considering the above-mentioned information, it is reasonable to conclude that a substantial majority of both walnut growers and handlers would be considered small business entities according to current SBA definitions.

This proposed rule would provide a defined payment schedule for required handler assessment payments, establish interest and late payment charges on overdue handler assessments, and modify the reporting requirements for walnut acquisitions. These changes were recommended by the Board to enhance the efficiency of the Board's administrative function. Authority for this proposed action is provided in §§ 984.69 and 984.73 of the Order.

The Board discussed alternatives to the recommendations contained in this rule,

including different options for the reporting of walnut acquisitions, the timing of assessment payment installments, various late payment penalty rates, and the appropriate interest rate charged on unpaid assessments. The Board also considered making no changes and maintaining the Order's status quo. However, the Board recognized the financial and administrative inefficiencies inherent in the existing administrative provisions and believed that taking no action would have been imprudent. Further, the Board determined that the late penalty charge and the interest rate as proposed herein would serve to incentivize compliance with the Order's provisions without being excessive and difficult.

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. This proposed rule would require changes to the Board's existing CWB Form #1. Further, this proposed action may result in additional report submissions from some handlers. However, the changes proposed are minor and the currently approved burden for the form would only be minimally increased by the proposed changes. The revised form has been submitted to OMB for approval.

This proposed rule may impose some additional reporting or recordkeeping requirements on either small or large California walnut handlers. However, the Board anticipates that the requirement to submit supplemental acquisition reports for walnuts that are acquired after the submission of the handler's initial CWB Form #1 report would only impact a small percentage of the total number of 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.

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.

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

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 Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, AMS has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

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

#### **List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 984 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. Add § 984.348 to subpart B to read as follows:

#### **§ 984.348 Payment of assessments**

(a) Each handler shall pay assessments on walnut receipts reported by the handler pursuant to § 984.473(a) in three installments, invoiced by the Board, on January 31,

April 30, and July 31 of each marketing year.

(b) Each handler shall pay assessments on walnut receipts reported by the handler pursuant to § 984.473(b), as requested by the Board, on demand.

3. Add § 984.349 to subpart B to read as follows:

**§ 984.349 Late payment and interest charges**

(a) The Board shall impose a late payment charge of ten percent (10%) on any handler whose assessment payment has not been received within sixty (60) days of the invoice date shown on the handler's assessment statement.

(b) Payments not received more than sixty (60) days after the invoice date shown on the handler's assessment statement shall be subject to a one and one-half percent (1.5%) interest charge per month. Interest shall be applied to the total outstanding assessment balance, including any late payment charge, at the end of each subsequent thirty (30) day period until final payment is made.

4. Revise § 984.473 to read as follows:

**§ 984.473 Report of walnut receipts.**

(a) Each handler shall file a report of his or her walnut receipts from growers on or before January 15 of each marketing year on forms supplied by the Board.

(b) Each handler acquiring walnuts from growers after submission of their initial report of walnut receipts pursuant to paragraph (a) of this section shall file a revised report of walnut receipts by the 15th of the month following such receipt on forms supplied by the Board.

**Erin Morris,**  
*Administrator,*  
*Agricultural Marketing Service.*