



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS-SC-19-0088; SC19-984-2 PR]

**Walnuts Grown in California; Stays of Reserve Obligation
and its Requirements**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Walnut Board (Board) to stay the reserve obligation and its requirements currently prescribed under the Federal marketing order for walnuts grown in California. The proposed rule would also make conforming changes to remove references to the reserve obligation and its requirements.

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: <http://www.regulations.gov>.

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: <http://www.regulations.gov>. All comments submitted in response to this rule 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: Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, 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 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 proposed rule 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 stay the regulations related to reserve walnuts under the Order. Section 984.89(b)(2) states that the Secretary of Agriculture (Secretary) "may terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act." The current authority to establish a reserve obligation has not been used by the Board since the 1987-88

marketing year, when the Board began working toward increasing demand rather than controlling supply.

Section 984.21 defines "handler inventory" as "all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account."

Sections 984.23 and 984.26 define "free" and "reserve" walnuts, respectively; and § 984.33 defines "hold," the action that requires handlers to maintain possession of the kernelweight of walnuts necessary to meet his or her reserve obligation.

The reserve obligation requirements in §§ 984.48 and 984.49 include provisions that require the Board recommend to the Secretary free, reserve, and export percentages of walnuts at the start of each marketing year (September 1). A recommendation for changes to the percentages must be made to the Secretary on or before February 15 of each marketing year, if such changes are prudent. The export percentages are reviewed by the Board's Export Committee, which is comprised of Board members who are industry experts in exporting walnuts.

Sections 984.49, 984.50, 984.51, 984.54, 984.56, 984.64, 984.66, 984.67, and 984.69 include establishing a free, reserve, and export percentage obligation;

establishing minimum kernel content for any lot of walnuts acceptable for disposition for credit against a handler's reserve obligation; mandating inspection of walnuts; establishing the reserve obligation; instructions regarding the disposition of reserve and substandard walnuts; a requirement that the Board assist handlers in meeting their reserve obligation; various exemptions from the reserve obligation; and authorizing the Board to use funds derived from assessments to defray expenses related to reserve walnut pool expenses, respectively.

Sections 984.450, 984.456, and 984.464 establish requirements relative to grade and size, inspection, and disposition of reserve walnuts, respectively.

This proposed suspension is expected to streamline Board operations by eliminating the need for the Export Committee and removing the need for the Board to consider free, reserve, and export percentages at its meetings at the start of each marketing year.

The reserve obligation and its requirements would be suspended but remain part of the Order until the Board makes a recommendation to reinstate or terminate them. This proposed rule would also remove related references to the reserved obligation and its requirements. The

Secretary would review any such recommendation by the Board.

This proposed rule would stay §§ 984.23, 984.26, 984.33, 984.49, 984.54, 984.56, 984.66, and 984.456 in their entirety.

This proposed rule would amend §§ 984.21, 984.48, 984.50, 984.51, 984.64, 984.69, 984.450, 984.451, and 984.464 to remove references to the reserve obligation and its requirements.

This proposed stay requires no changes to any existing Board forms.

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 5,000 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).

Based upon information from the National Agricultural Statistics Service (NASS), the price reported for July 2019 was \$7,060 per ton (\$3.53 per pound) of walnuts. Data from NASS indicate that the average walnut production is 1.93 tons per acre. Given that volume and price, a grower would have to farm at least 74 acres to receive \$1,000,000, not accounting for input costs. NASS data on farm size indicate that only approximately 42 percent of walnut growers farm more than 74 acres. Thus, most walnut growers may be considered small entities.

Given data from the Board regarding walnut receipts by handlers, including walnut acquisitions and the \$7,060 per ton price, only 38 percent of handlers would have annual receipts of \$30,000,000. Thus, most walnut handlers may be considered small entities.

This proposed stay is expected to positively impact the Board, including members of the Export Committee, by staying regulations that have not been used in decades. No longer having to gather data, discuss the information, and then make recommendations to the Secretary regarding a reserve obligation would allow the Board's meeting early in the marketing year to run more efficiently.

This proposed rule would stay the reserve obligation and its requirements under the Order for the 2019-20 marketing year and beyond, until the Board recommends to the Secretary that the requirements be reinstated or terminated. The proposed rule would also remove related references to the reserve obligation and its requirements in the Order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements are approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178 Vegetable and Specialty Crops. No changes to those requirements are necessary as a result of this action.

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.

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

The Board held a strategic planning session on February 12-13, 2019, and thoroughly discussed this action. The Marketing Order Review Committee (MORC) of the Board met on August 14, 2019, to further discuss the reserve obligation and its requirements and made a recommendation for the change at the Board's September 13, 2019 meeting. The strategic planning sessions, the MORC meeting, and the Board meeting on September 13, 2019, were public meetings widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations.

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: <http://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.

This proposed rule invites comments on staying the reserve authority under the Order. Any comments received will be considered prior to the finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this proposed rule, as hereinafter set forth, would tend to effectuate the declared policy of the Act.

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.

§ 984.21 [Amended]

2. Revise § 984.21 to read as follows:

Handler inventory as of any date means all walnuts, inshell or shelled, wherever located, then held by a handler or for his or her account.

§ 984.23 [Stayed]

3. Section 984.23 is stayed indefinitely.

§ 984.26 [Stayed]

4. Section § 984.26 is stayed indefinitely.

§ 984.33 [Stayed]

5. Section § 984.33 is stayed indefinitely.

§ 984.48 [Amended]

6. In § 984.48, paragraphs (a) (6) and (7) are stayed indefinitely.

§ 984.49 [Stayed]

7. Section § 984.49 is stayed indefinitely.

§ 984.50 [Amended]

12. In § 984.50, paragraph (e) is stayed indefinitely.

13. In § 984.51, revise paragraphs (a) and (c) to read as follows:

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then-

applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; Provided, That if more than one inspection service is designated, the functions performed by each services shall be separate, and shall not duplicate each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts, the grade and size of such walnuts as set forth in the United States Standards for Walnuts (*Juglans regia*) in the Shell. The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

* * * * *

(c) Upon inspection, walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be altered or removed except at directed by the Board. The assessment requirements in § 984.69 shall be incurred at the time of certification.

§ 984.54 [Stayed]

14. Section 984.54 is stayed indefinitely.

§ 984.56 [Stayed]

15. Section 984.56 is stayed indefinitely.

16. Revise § 984.64 to read as follows:

§ 984.64 Disposition of substandard walnuts.

Substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of:

- (a) His production and holdings of substandard walnuts and;
- (b) The disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

§ 984.66 [Stayed]

17. Section 984.66 is stayed indefinitely.

18. Amend § 984.67 by:

- a. Stay paragraph (a) indefinitely, and;
- b. Revise paragraph (b)(1) to read as follows:

§ 984.67 Exemptions.

* * * * *

(b) ***

(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions:

* * * * *

§ 984.69 [Amended]

19. In § 984.69 paragraph (b) is stayed indefinitely.

§ 984.450 [Amended]

20. In § 984.450 paragraphs (a) and (b) are stayed indefinitely.

§ 984.451 [Amended]

21. In § 984.451 paragraph (c) is stayed indefinitely.

§ 984.456 [Stayed]

22. Section 984.456 is stayed indefinitely.

§ 984.464 [Amended]

23. In § 984.464 paragraph (a) is stayed indefinitely.

Dated: January 9, 2020

Bruce Summers,

Administrator

Agricultural Marketing Service

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