

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington apricot 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. Furthermore, 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.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2007–2008 fiscal period began on April 1, 2007, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Washington apricot harvest and shipping season is expected to begin as early as the last week of June; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is proposed to be amended as follows:

#### **PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

1. The authority citation for 7 CFR part 922 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 922.235 is revised to read as follows:

#### **§ 922.235 Assessment rate.**

On or after April 1, 2007, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7–13581 Filed 7–12–07; 8:45 am]

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#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 984**

[Docket No. AMS–FV–07–0004; AO–192–A7; FV06–984–1]

#### **Walnuts Grown in California; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 984**

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

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Order No. 984, which regulates the handling of walnuts grown in California (order), and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments were proposed by the Walnut Marketing Board (Board), which is responsible for local administration of the order. The amendments would: change the marketing year; include “pack” as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept voluntary financial contributions and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The Department of Agriculture (USDA) proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to

ascertain producer support for the order, and to make any necessary conforming changes.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** The referendum will be conducted from August 1 to 17, 2007. The representative period for the purpose of the referendum is August 1, 2006, through July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Melissa.Schmaedick@usda.gov](mailto:Melissa.Schmaedick@usda.gov).

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on April 18, 2006, and published in the April 24, 2006, issue of the **Federal Register** (71 FR 20902) and a Recommended Decision issued on March 19, 2007, and published in the March 27, 2007, issue of the **Federal Register** (72 FR 14368).

This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

#### **Preliminary Statement**

The proposed amendments are based on the record of a public hearing held on May 17 and 18, 2006, in Modesto, California. The hearing was held to consider the proposed amendment of the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Notice of this hearing was published in the **Federal Register** on April 24, 2006 (71 FR 20902). The notice of hearing contained proposals submitted by the Walnut Marketing Board (Board), which is responsible for local

administration of the order, and by the Agricultural Marketing Service (AMS).

The proposed amendments to marketing order 984 would:

1. Change the marketing year from August 1 through July 31 to September 1 through August 31. This proposal would amend § 984.7, Marketing year, and would result in conforming changes being made to § 984.36, Term of office, and § 984.48, Marketing estimates and recommendations.

2. Specify that the act of packing walnuts is considered a handling function. This proposal would amend § 984.13, to handle, as well as clarify the definition of "pack" in § 984.15 by including the term "shell" as a function of "pack."

3. (a) Amend all parts of the order that refer to cooperative seats on the Board, redistribute member seats among districts, and provide designated seats for a handler handling 35 percent or more of production, if such handler exists. This proposal would amend § 984.35, Walnut Marketing Board, and § 984.14, Handler.

3. (b) Amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). This proposal would amend § 984.37, Nominations, and § 984.40, Alternate.

4. Require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. This proposal would amend § 984.39, Qualify by acceptance.

5. Change the name of the Walnut Marketing Board to the California Walnut Board. This proposal would amend § 984.6, Board, and § 984.35, Walnut Marketing Board.

6. Add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. This proposal would add a new paragraph (d) to § 984.35, Walnut Marketing Board.

7. Add percentage requirements to Board quorum and voting requirements, add authority for the Board to vote by "any other means of communication" (including facsimile) and add authority for Board meetings to be held by telephone or by "any other means of communication", providing that all votes cast at such meetings shall be confirmed in writing. This proposal would amend § 984.45, Procedure, and would result in a conforming change in § 984.48(a), Marketing estimates and recommendations.

8. Add authority to carry over excess assessment funds. This proposal would amend § 984.69, Assessments.

9. Add authority to accept voluntary financial contributions. This proposal

would add a new § 984.70, Contributions.

10. Clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. This proposal would amend § 984.42, Expenses.

11. Add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not duplicate each other. This proposal would amend § 984.51, Inspection and certification of in-shell and shelled walnuts.

12. (a) Broaden the scope of the quality control provisions by adding authority to recommend different regulations for different market destinations. This proposal would amend § 984.50, Grade and size regulations.

12. (b) Add authority that would allow for shelled walnuts to be inspected after having been sliced, chopped, ground, or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect. This proposal would amend § 984.52, Processing of shelled walnuts.

13. Add authority for marketing promotion and paid advertising. This proposal would amend § 984.46, Research and development.

14. Replace the terms "carryover" with "inventory," and "mammoth" with "jumbo," to reflect current day industry practices. This proposal would amend § 984.21, Handler inventory, and § 984.67, Exemption, and would also result in conforming changes being made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

15. (a) Clarify to simplify the interhandler transfer provision, and add authority for the Board to recommend to USDA regulations, including necessary reports, for administrative oversight of such transfers. This proposal would amend § 984.59, Interhandler transfers.

15. (b) Clarify that the Board may require reports from handlers or packers that place California walnuts into the stream of commerce. This proposal would amend § 984.73, Reports of walnut receipts.

16. Update and simplify the language in § 984.22, Trade demand, to state "United States and its territories," rather than name "Puerto Rico" and "The Canal Zone".

17. Amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate, and exchange information with the California Walnut Commission. Any information sharing would be kept

confidential. This would add a new § 984.91, Relationship with the California Walnut Commission.

In addition, USDA proposed adding two provisions that would help assure that the operation of the program conforms to current Department policy and that USDA can make any necessary conforming changes. These provisions would:

18. Establish tenure requirements for Board members. This proposal would amend § 984.36, Term of office.

19. Require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and add more flexibility in the termination provisions. This proposal would amend § 984.89, Effective time and termination.

20. Make changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments. To the extent necessary, conforming changes have made to the amendments. These conforming changes have been identified in the above list of proposed amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 19, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 16, 2007.

Fifteen exceptions were filed during the exception period. The exceptions expressed concern over the discussion in the Recommended Decision regarding Material Issue No. 11. This proposal would add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not duplicate each other. Comments stated that, if this authority were implemented, private sector entities, in addition to USDA, should be able to offer non-traditional inspection services. Persons filing these comments claimed that the proposed amendatory language would prevent any service other than USDA from offering non-traditional inspection. The specifics of these exceptions are further discussed in the Findings and Conclusions; Discussion of Exceptions section of this document. One of the exceptions also offered a comment of general support for the proposal to implement term limits as a method to encourage participation of industry members that have not previously served on the Board.

### Small Business Considerations

Pursuant to the 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 business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$6,500,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact on growers and handlers of the proposed amendments, and in particular the impact on small businesses. The record evidence shows that the proposed amendments are designed to enhance industry efficiencies and streamline administrative operations of the marketing order. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the California walnut industry.

### Walnut Industry Background and Overview

According to the record, the California walnut industry currently has 44 handlers and approximately 5000 producers. The crop is produced in a region that spans approximately 400 miles in California's Central Valley.

Fifteen grower witnesses and 7 handler witnesses testified at the hearing. Using the SBA definition (\$750,000 in gross annual walnut sales), 7 of the grower witnesses identified themselves as large business entities and 6 as small business entities. All 7 handler witnesses identified themselves as being large business entities according to the SBA definition. Some of the handler witnesses were also growers. According to witnesses, 37 out of an industry total of 44 handlers would qualify as small business entities under the SBA definition. Also, under the order amendments contained herein, it is estimated that five packers would

be considered handlers, the majority of whom would be considered small entities.

Based on information presented at the hearing, calculations describing an average California walnut producer provide the following: Dividing 219,000 bearing acres in 2005 by 5,000 producers indicates an average of 44 bearing acres per producer. Dividing the two-year average crop value for 2003 and 2004 (\$414,950,000) by 5,000 producers yields an average walnut revenue per producer estimate of about \$83,000. According to the hearing record, more than 70 percent of California walnut producers would be classified as small producers according to the SBA definition.

According to a study presented at the hearing, entitled "Cost to Produce Walnuts in California" (prepared by Dr. Karen Klonsky, Department of Agriculture and Resource Economics, University of California Davis, 2006), typical average costs for a walnut orchard in the Sacramento Valley are \$2,460 per acre in full production. The costs are broken down as follows: (a) Land and trees, \$678 (28 percent), (b) cultural costs, \$667 (27 percent), (c) harvest, \$538 (22 percent), (d) equipment and buildings, \$302 (12%), and (e) cash overhead, \$275 (11 percent).

At an average grower price in recent years of \$0.62 per pound, a grower would need a yield of 2 tons per acre to break even, according to the study. The breakeven price at the State average yield of 1.5 tons per acre is about \$0.70 per pound, which is above the actual price received in most recent years, but equal to the 2004 average price received by growers.

Individual grower costs can vary considerably due to such variables as horticultural practices and varieties grown, and also due to orchard location and year of acquisition, and water availability and cost.

Although a majority of producers are considered small business entities, record evidence also indicates that producer revenue has increased over time. The National Agricultural Statistical Service (NASS) crop value estimate for 2004, \$451.75 million, was 38 percent higher than in 1995, and was the sixth successive yearly increase. Average revenue per acre in 2004 reached a record \$2,082.

Record evidence also indicates that acreage and production are trending upward. Production did not exceed 300,000 tons until 2001, but has exceeded that level for 4 out of the last 5 years. Witnesses stated that the five-year average production for 1996–2000

was 244,000 tons, compared to the five-year average production (2001–2005), which was 318,600 inshell tons.

According to the hearing record, a number of factors have contributed to increased production in recent years. New acres have been planted at a rate of three to five thousand acres per year, some of which are new varieties with higher yields. Witnesses explained that older varieties may yield 1,500 to 3,000 pounds per acre, due to both planting patterns and the typical yield of the variety. New varieties, such as the Chandler, will yield up to 6,000 pounds per acre. Newer plantings have led to a reduction in the cyclical peaks and valleys associated with the alternate-bearing characteristic of tree nuts. This, in turn, has facilitated better inventory management and has made the walnut industry a more reliable ingredient supplier to the food-processing industry.

According to the hearing record, the growing season commences in March of each year with harvest occurring between September and November, depending upon the variety. Inshell California walnuts are a seasonal item with 95 percent of the volume shipped between the months of September and December. This represents roughly 25 percent of the industry's production. Inshell walnuts are marketed primarily as a winter holiday food. According to the hearing record, the purchase of significant quantities of inshell walnuts occurs due to the tradition in many markets of displaying them with other inshell nuts as part of winter holiday decor.

Shelled walnuts are marketed on a year-round basis, and represent about 75 percent of utilization. Large handler infrastructure investments have contributed substantially to the growth of the year-round shelled business, as well as the inshell business.

Over the past ten years sophisticated laser-sorting equipment and new varieties such as the Chandler have contributed to improved quality. Higher customer expectations have accompanied the improvements in technology and quality, with more demand for high-quality, high-specification California walnuts. Marketing success in Japan is cited as a prime example of this trend.

According to the hearing record, shelled walnuts are utilized in a variety of ways, with commercial baking believed to be the single largest utilization category. Retail consumption of walnuts packaged for use in the home has increased dramatically over the past several years. Shelled walnuts may be sold in packages ranging from 2.75

ounce retail packages to large bulk containers of 25 pounds or more for industrial users, wholesalers, and distributors. The last 12 years have seen substantial increases in snack food uses of walnuts, in addition to expansion of ingredient use beyond baking and confectionery items to include usage with salads, rice, and pasta.

A high degree of mechanization in the harvest has reduced the deleterious impact on nut quality from rain and other weather conditions. Once harvested, walnuts are taken to holding stations where a fibrous husk is removed, and the walnuts are then dried to approximately eight percent moisture. They are delivered to handlers for further processing, which includes cleaning, sorting, and shelling.

According to the hearing record, California walnuts rank eighth in exports over all the commodities grown in the state. The top three inshell export markets are Spain, Italy, and Germany. Five-year average export value (2000/01–2004/05) is approximately \$52 million, representing 63 percent of total export value for that five-year period. The key export markets for shelled-walnut utilization are: Japan, Germany, Spain, Israel, Korea, and Canada. Five-year average export value for those six countries is \$91.8 million, which is about 76 percent of the total value of shelled walnut exports.

California walnuts compete with walnuts grown in China, Turkey, France, Italy, Chile, North Korea, India, Vietnam, Argentina, Brazil, and many areas within the former Soviet Union including Kazakhstan, Ukraine, Hungary, and Moldova. Within the European Union the major competition comes from France and Eastern Europe. In the Pacific Rim, major competitors include China and India.

### Material Issues

The amendments included in this decision would: Change the marketing year; include “pack” as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept contributions, and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to designate more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The USDA proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any changes to the order as may be necessary to conform with any amendment that may result from the hearing.

All of the proposals are intended to streamline and improve the administration, operation, and functioning of the program. Many of the proposed amendments would update the language of the order, thus better representing and conforming to current practices in the industry. The proposed amendments are not expected to result in any significant cost increases for growers or handlers. More efficient administration of program activities may result in cost savings for the Board. A description of the proposed amendments and their anticipated

economic impact on large and small entities is outlined below.

### Designation of More Than One Inspection Service

Proposal 11 would amend the order to add authority for the Board to designate more than one inspection service, as long as the functions performed by each service are separate and do not conflict with each other.

To ensure that walnuts are properly graded and meet marketing order minimum standards, the Board currently arranges for inspection of walnuts prior to shipping for all walnut handlers. The marketing order currently authorizes contracting with one agency, the California based Dried Fruit and Nut Association (DFA).

DFA inspects all walnuts that leave California to certify that they meet marketing order minimum standards. Operating as an out-going inspection service, samples of packed walnuts are examined and certified by licensed DFA inspectors at the end of the handling and packing process.

The following data representing current inspection costs, summarizing actual inspection cost data for 2004–05 for the entire industry (44 handlers), was presented at the hearing by Board representatives. According to the record, the 2004–05 cost to serve the 44 handlers was \$1.857 million, which is an average cost of just over \$42,000 per handler.

Since inspection costs depend largely on volume handled, the four largest handlers account for \$1.282 million, or 69% of total inspection expenditure in the 2004–05 crop year. The 37 smaller handlers account for \$412,172 in expenditure, about 22 percent of the total, averaging about \$11,000 per handler.

ANNUAL WALNUT INSPECTION COSTS USING DFA, 2004–05 CROP YEAR

	DFA cost	No. handlers	Average per handler
Largest Handlers .....	\$1,282,362	4	\$320,591
Additional Large Handlers .....	162,487	3	54,162
Other Handlers .....	412,172	37	11,140
All Handlers .....	1,857,021	44	42,205

Source: Walnut Marketing Board

The Federal-State Inspection Service (FSIS) has developed effective, less costly alternative inspection programs.

The Partners in Quality Program, or PIQ, is a documented quality assurance system. Under this program, individual handlers must demonstrate and document their ability to handle and pack product that meets all relevant

quality requirements. Effectiveness of the program is verified through periodic, unannounced audits of each handler's system by USDA-approved auditors.

Under the Customer-Assisted Inspection Program, or CAIP, USDA inspectors oversee the in-line sampling and inspection process performed by

trained company staff. USDA oversight ranges from periodic visits throughout the day to a continuous on-site presence.

DFA does not offer inspection services that operate similarly to the PIQ and CAIP programs.

Cost savings would occur by reducing the prevalence of double inspections

under the current system. Currently, one inspection is undertaken to meet minimum USDA quality requirements specified in the marketing order. A second inspection is often necessary to meet the considerably higher standards of specific customers. Moving to a PIQ or CAIP program would greatly reduce inspection costs, because meeting higher standards under PIQ or CAIP would also ensure that an inspected lot met minimum marketing order standards.

Witnesses at the hearing testified that the California walnut industry should allow handlers to take advantage of USDA's alternative inspection programs such as the CAIP and the PIQ. Handlers who do not wish to use the alternative inspection services offered by USDA would continue to use the services of the DFA for traditional inspection

services, such as end-line and lot inspections.

The proposal also specifies that "each service shall be separate so as to not conflict with each other," meaning that each inspection service would offer distinct and different services (i.e. PIQ vs. lot inspections) so that the integrity of both programs can be maintained.

Witnesses speaking in favor of this proposal explained the importance of a handler's ability to take advantage of inspection services that would most economically fit the size and functions of his or her operation. Currently, all walnut product is inspected by DFA. While this inspection service has worked well for the industry for many years, the DFA inspection service does not accommodate inspection procedures that support larger handler economies of scale. Witnesses stated that USDA programs, such as PIQ and CAIP, are designed to fit larger scale handling

operations, and therefore offer cost saving advantages that the DFA service does not. This proposal, if implemented, would allow handlers to use the alternative inspection programs offered by USDA.

Several witnesses indicated that lowering costs to handlers would benefit growers because they expect that the cost reduction would be reflected in increased payments to growers.

Financial impact calculations provided by the Board (shown in the table below) indicate that introducing the option of using PIQ or CAIP programs could result in savings of \$1.09 million, an average per handler savings of \$156,067 for the industry's seven largest handlers. Due to the high volumes handled, most of the savings accrue to the four largest handlers, estimated at \$1.05 million, or an average per handler of \$263,169.

#### WALNUT INSPECTION COST COMPARISON: DFA VS. USDA FOR TOP 7 HANDLERS

	DFA	USDA PIQ/CAIP	Cost savings	
			Total	Per handler
Largest 4 handlers .....	\$1,282,362	\$229,688	\$1,052,674	\$263,169
Additional 3 large handlers .....	162,487	122,692	39,795	13,265
Largest 7 handlers .....	1,444,849	352,380	1,092,469	156,067

Source: Walnut Marketing Board.

Data from NASS indicate that the two-year average value of the 2003 and 2004 crops was about \$415 million. The current DFA inspection cost (\$1.857 million) represents a very small proportion of crop value, about 0.4 percent. If the largest 7 handlers used USDA for inspection at a cost of \$352,380 and the remaining 37 handlers continue to work with DFA at an estimated cost of \$412,172, then the combined cost of \$764,552 would represent 0.2 percent of the recent-year crop value.

Witnesses emphasized the cost effectiveness of having an additional inspection agency. If implemented, this proposal would facilitate the streamlining of handler operations to utilize the inspection service best suited to their operations.

Since potential savings are correlated with economies of scale, record evidence indicates that PIQ and CAIP programs would be most beneficial for large handlers. It is unlikely that the smaller handlers would initially opt for these programs. Smaller handlers that expand their operations in the future may realize benefits from switching to PIQ or CAIP. Witnesses stated that no change in inspection costs is expected

for handlers remaining with traditional DFA inspection services. Therefore, no financial disadvantages are expected to result from this proposed amendment. If implemented, this proposal may result in an overall decrease in costs of inspection to the industry.

#### Inspection of Sliced, Chopped or Ground Shelled Walnuts

Proposal 12b would add authority for shelled walnuts to be inspected after having been sliced, chopped, or ground or in any manner changed from being shelled walnuts, if regulations for such walnuts are in effect.

New walnut product forms are regularly requested by both domestic and foreign customers. In the last 20 years, the industry has become much more capable of producing at a considerably higher level quality and of developing more specific types of products that meet the differing needs of individual customers. To capitalize on this growing capability, a number of witnesses expressed the view that an important tool for increasing sales is the ability to establish standards for these walnut products.

The order currently requires shelled product to be certified as merchantable, that is, meeting the minimum USDA

requirements prior to further processing. When handlers are processing for end users that require further processing, this certification represents a costly extra step. After the initial shelled walnut certification, the handlers employ their own quality control procedures to meet the higher customer specifications. This proposal would allow a single inspection at the end of the process that would serve both purposes. If implemented, this proposal would allow the Board to recommend modifications to allow certification of product after it has been modified or chopped, leading to cost savings in the handling process.

Witnesses contended that current standards focus on visually observed characteristics that are significant for consumer acceptance, but often do not adequately address specific quality concerns important to various export markets, including Europe. Such concerns include, for example, moisture content or aflatoxin tolerances. If implemented, this proposal would allow the Board to review scientific data and develop inspection procedures for recommendation and approval by USDA to assure customers that walnuts meet their specified criteria.

Any new quality standards recommended by the Board would be subject to thorough review prior to seeking approval from USDA. Witnesses supported this amendment as it would give the Board authority to pursue quality regulations in addition to existing grade standards, both of which are important to industry customers.

Witnesses emphasized that this proposal would grant authority to the Board to recommend quality standards that could exceed current standards or to develop new standards for product characteristics not currently covered. Witnesses also stated that no specific modifications are currently requested, just flexibility to create them in the future.

While this proposed amendment may result in some cost increases associated with administration and oversight of new quality regulations, it is also expected that some handlers may benefit from lower inspection costs if the inspection requirements for specific markets were modified. Any costs associated with the implementation of this proposal are expected to be outweighed by the overall benefits accrued to the industry.

#### **Marketing Promotion and Paid Advertising.**

Proposal 13 would amend the order by adding authority for marketing promotion and paid advertising.

Current promotional activities for California walnuts are undertaken by the California Walnut Commission (CWC). Witnesses stated that the CWCs activities have led to considerable success in increasing demand for the industry's product.

Witnesses explained that with price inelastic demand for walnuts, recent increases in production could have driven down prices and total grower revenue. The CWC's successful promotional activities have helped mitigate that potential impact, keeping average grower prices and grower revenue steady or increasing for several years.

According to the hearing record, adding authority for paid advertising and promotion under the order would benefit the industry by allowing the Board to engage in activities that are currently supported by the Commission. Small businesses would be the greatest beneficiaries of an expanded generic advertising program, because they have the least financial resources to devote to selling their products, according to a witness.

While an increase in advertising and promotional activities may result in increased Board expenditures, witnesses

were confident that the positive results of the Board's promotional activities on consumer demand for California walnuts would more than outweigh any increases in costs to the industry.

#### **Impact of Remaining Amendment Proposals**

Remaining amendment proposals are largely administrative in nature and would impose no new significant regulatory burdens on California walnut growers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

#### *Marketing Year*

Proposal 1 would amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31. Under the current definition of the order, the California walnut marketing year begins August 1 and continues through July 31.

Witnesses explained that, over time, new varieties of walnuts have been introduced, and the areas in which walnuts are cultivated have shifted. The newer varieties mature later than the varieties grown at the time of the program's inception. At the same time, cultivation has slowly moved into areas that previously were not suited for walnut production. With differences in climate, soil, and water, witnesses explained that these new production areas have slightly later growing cycles. The proposed change in the marketing year would better reflect current crop cycles.

Proposed conforming changes would ensure that Board member terms of office and marketing estimates calculated by the Board would conform to the modified marketing year. This amendment is not expected to result in any increases in costs to growers or handlers.

#### *Definition of Pack*

Proposal 2 would amend the order by specifying that the act of packing walnuts is considered a handling function. In addition, the term "pack" would be amended to include shelling, and would be modified so that packing is applicable to both inshell and shelled walnuts.

According to the hearing record, the order currently defines "to handle" as to "sell, consign, transport, or ship, or in any other way, to put walnuts into the current of commerce". The definition does not include the specific act of packing. "To pack", as currently defined in the order means, "to bleach, clean, grade or otherwise prepare inshell walnuts for market". Pack is not

currently applicable to shelled walnuts. Witnesses stated that the proposed amendments to the definitions of "handle" and "pack" would more accurately reflect current industry operations.

This amendment is not expected to result in any increases in costs to growers. If implemented, this proposal may result in some packing entities previously not considered to be handlers under the order to be redefined as handlers. According to witnesses, there are roughly five packer entities that would qualify as handlers under the new definition. While some increases in administration costs on the part of handlers could arise as a result of reporting requirements, record evidence indicates that the benefit of more accurate industry information would merit that expense.

#### *Restructuring of the Board*

Proposal 3(a) seeks to amend all parts of the order that refer to cooperative seats on the Board, to redistribute member seats among districts, and to provide designated seats for a major handler, if such handler existed. A major handler would have to handle 35 percent or more of the crop.

According to the hearing record, the recent transition of the industry's largest cooperative from a cooperative entity to a publicly held company was the impetus for this proposal. Witnesses expressed the need to modify the Board structure to provide for representation that accurately reflects the current industry. Witnesses advocated that the Board structure should maintain the current number of Board members and alternates, and that the allocation of member seats between grower and handler positions should remain the same (meaning 4 handler member seats, five grower member seats and one public member).

Witnesses also recommended modifying the allocation of Board representation according to two possible scenarios. The two scenarios include: (1) Membership allocation that acknowledges the existence of a handler handling 35 percent or more of production and, (2) membership allocation in the absence of such handler. According to record evidence, these proposed amendments would not result in any increases in costs.

#### *Nominations*

Proposal 3(b) would amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). Current nomination procedures allow for all cooperative seat nominees to be selected

by the cooperative and forwarded to the Secretary for approval and appointment. The cooperative nominee selection process is independent of the Board. All non-cooperative seat nominees are selected through a ballot nomination process overseen by the Board staff, and forwarded to the Secretary for approval and appointment.

According to the hearing record, the revised nomination procedures would allow a handler who handles 35 percent or more of the crop to nominate persons to fill its designated seats (as described in 3(a)) and to forward them to the Secretary for approval and appointment. Nomination of persons to fill all other seats would be conducted by the Board staff.

In the event a handler handling 35 percent or more of the crop does not exist, all Board nominees would be selected through a ballot nomination process conducted by the Board staff.

While some increases in administration costs could arise as a result of an increased number of ballots to be mailed by the Board if a major handler does not exist, record evidence indicates that the expense would be minor and would not directly burden growers or handlers.

#### *Qualify by Acceptance*

Proposal 4 would require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. Currently, the acceptance procedure for persons nominated and selected to serve on the Board involves a two-step process. If this amendment were implemented, the two steps could be combined into one, thus resulting in less paperwork, a shorter acceptance procedure and improved efficiency in the acceptance process. This amendment is not expected to result in any increases in costs to growers or handlers.

#### *California Walnut Board*

Proposal 5 would change the name of the Walnut Marketing Board to the California Walnut Board. Witnesses stated that the proposed name of "California Walnut Board" would more accurately represent the Board's responsibilities. This amendment is not expected to result in any significant increases in costs to growers or handlers.

#### *Authority To Reestablish Districts and Board Structure*

Proposal 6 would add authority to reestablish districts, to reapportion members among districts, and to revise groups eligible for representation on the Board. The intent of this proposal is to

provide the Board with a tool to more efficiently respond to the changing character of the California walnut industry. In recommending any such changes, the following would be considered: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) the equitable relationship between Board apportionment and districts; (4) changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more handlers handling 35 percent or more of the crop; and (5) other relevant factors. This amendment is not expected to result in any increases in costs to growers or handlers.

#### *Voting Procedures*

Proposal 7 would amend Board quorum and voting requirements to add percentage requirements, add authority for the Board to vote by "any other means of communication" (including facsimile) and add authority for Board meetings to be held by telephone or by "any other means of communication".

Witnesses stated that references to the meeting quorum requirements should be amended to include a percentage equivalent of the current six-out-of-10-member minimum, or sixty percent. In addition, witnesses supported modifying the order language regarding voting requirements to state that a sixty-percent super-majority vote of the members present at a meeting should be required of all Board decisions, except where otherwise specifically provided. The order currently states that a majority vote is needed, with no percentage equivalent specified.

According to the record, the order currently requires that all Board meetings be held at a physical location. Witnesses stated that the order should be amended to allow for some meetings to be held using "other means of communication", such as telephone or videoconferencing. Witnesses stated that use of new communication technology would result in timesavings while still allowing the Board to conduct its business. Witnesses stated that it is the intent of the Board that voting procedures for all types of non-traditional meetings can be recommended and adopted as appropriate for each type of technology used.

Amendments proposed under this material issue are not expected to result in any significant changes in costs to growers or handlers.

#### *Carryover of Excess Assessment Funds*

Proposal 8 would amend the order to add authority to carry over excess assessment funds. According to the hearing record, the order currently states that any assessment funds held in excess of the marketing year's expenses must be refunded to handlers. Refunds are returned to handlers in accordance with the amount of that handler's pro rata share of the actual expenses of the Board.

This proposed amendment would allow the Board, with the approval of the Secretary, to establish an operating monetary reserve. This would allow the Board to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately two years' expenses. If reserve funds do exceed that amount, the assessment rate could be reduced so as to cause reserves to diminish to a level below the two-year threshold.

According to the record, reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses, or to cover deficits incurred during any fiscal period when assessment income is less than expenses. Additionally, reserve funds could be used to defray expenses incurred during any period when any or all of the provisions of the order are suspended, or to meet any other such costs recommended by the Board and approved by the Secretary. This proposal is not expected to result in any significant increases in costs to growers or handlers.

#### *Contributions*

Proposal 9 would amend the order by adding authority to accept contributions. If implemented, this proposed amendment would grant authority to the Board to accept voluntary contributions. Contributions could only be used to pay for research and development activities, and would be free from any encumbrances by the donor. According to the hearing record, the Board would retain oversight of the application of such contributions.

Witnesses supported this proposal by stating that it would provide the Board and the industry with valuable resources to enhance research and development activities. It is not expected that this proposal would result in any additional costs to growers or handlers.

#### *Reimbursement of Expenses*

Proposal 10 would amend the order to clarify that members and alternate

members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. According to the hearing record, this proposed amendment would not have any impact on the current expense reimbursement activities of the Board. Rather, it would clarify and update order language to more clearly state that while Board members and alternates serve without compensation, expenses incurred while performing the duties of a Board member that have been authorized by the Board will be reimbursed. It is not expected that this proposal would result in any additional costs to growers or handlers.

#### *Quality Regulations*

Proposal 12a would broaden the scope of the quality control provisions by adding authority to recommend different regulations for different market destinations. Witnesses emphasized the usefulness in terms of market development of being able to establish different regulations for individual markets and/or regions. Witnesses stated that allowing the Board to make such recommendations would help the walnut industry adapt to changing international market conditions.

#### *Updating Order Terminology*

Proposal 14 would amend the order by replacing the terms "carryover" with "inventory," and "mammoth" with "jumbo," to reflect current day industry procedures. This proposal would also result in conforming changes being made to the "Marketing estimates and recommendations" and "Reports of handler carryover" sections of the order.

Handler carryover, defines the amount of California walnuts (both merchantable as well as the estimated quantity of merchantable walnuts to be produced from shelling stock and unsorted material), wherever located, held by California walnut handlers at any given time.

Witnesses explained that the current term "carryover" is misleading in that the term implies the amount of inventory held by handlers from one marketing year to the next. Witnesses stated that the term "inventory" would more accurately convey the intent of this definition, and would also reflect current day calculations of walnut availability.

Section 984.67, Exemptions, of the order provides for situations under which California walnuts may be exempted from complying with order regulations. One exemption is applicable to lots of merchantable inshell walnuts that are mammoth size

or larger, as defined by the United States Standards for Walnuts in the Shell.

Witnesses stated that given the new varieties currently being produced in the industry, the term "mammoth" no longer applies. According to record evidence, the current production's equivalent to "mammoth" size is "jumbo" size, as defined by the United States Standards for Walnuts in the Shell. Thus, witnesses stated that the order language should be updated to reflect the industry's current terminology and size of walnuts being produced. This proposal is not expected to result in any increases in costs to growers or handlers.

#### *Interhandler Transfers*

Proposal 15(a) would amend the order to clarify the term "transfer" and to add authority for the Board to recommend methods and procedures, including necessary reports, for administrative oversight of such transfers.

Witnesses stated that it would be beneficial to simplify current order language so that all interhandler transfers were considered a "sale of inshell and shelled walnuts within the area of production by one handler to another." Witnesses explained that the proposed language restated the current application of this provision in walnut transactions in simpler terms. This proposal is not expected to result in any increases in costs to growers or handlers.

#### *Reporting Requirements*

Proposal 15(b) would amend the order to clarify that the Board may require reports from handlers and packers to include interhandler transfers or any other activity that involves placing California walnuts into the stream of commerce.

According to the hearing record, current authority provided in this section only applies to the reporting of handler walnut receipts from growers. Witnesses stated that this authority should be broadened to include interhandler transfers, or receipts from any other entity as recommended by the Board and approved by the Secretary. This proposal is not expected to result in any increases in costs to growers or handlers.

#### *Trade Demand*

Proposal 16 would update and simplify the language in § 984.22, Trade demand, to state "United States and its territories," rather than name "Puerto Rico" and "The Canal Zone". Witnesses explained that the reference to "Puerto Rico" and "The Canal Zone" in the order is outdated and should be updated

to reference "United States and its territories".

According to record evidence, this amendment would not impact trade demand calculations under the order since the purpose of the reference is to accurately identify the amount of shelled or inshell walnuts demanded by the United States, including its territories. Thus, while the terminology identifying the geographic regions included in the calculation would change, the intent of the original language would remain unchanged. This proposal is not expected to result in any increases in costs to growers or handlers.

#### *Relationship With California Walnut Commission*

Proposal 17 would amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission (CWC). Any information sharing would be kept confidential.

Recorded evidence indicates the CWC and the Federal marketing order program are currently administered out of the same office location and employ the same staff. Thus, this proposal, if implemented, would formalize the relationship that currently exists between the two entities. Witnesses stated that collaboration between the two programs leads to reduced administrative costs, as much of the information collected by each entity can be shared. This amendment is not expected to result in any increases in costs to growers or handlers.

In addition, USDA proposed adding two provisions that would help assure that the operation of the program conforms to current Department policy.

Proposal 18 would establish tenure requirements for Board members. Currently, the term of office of each member and alternate member of the Board is 2 years. There are no provisions related to term limits in the marketing order.

The recorded evidence suggests that term limits for Board members could increase industry participation on the Board, provide for more diverse membership, provide the Board with new perspectives and ideas, and increase the number of individuals in the industry with Board experience. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 19 would require that continuance referenda be conducted on a periodic basis to ascertain industry

support for the order and add more flexibility in the termination provisions.

Currently, there is no requirement in the order that continuance referenda be conducted on a periodic basis. The USDA believes that growers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the program. Experience has shown that programs need significant industry support to operate effectively. This amendment is not expected to result in any increases in costs to growers or handlers.

The proposals put forth at the hearing would streamline program organization, but are not expected to result in a significant change in industry production, handling or distribution activities. In discussing the impacts of the proposed amendments on growers and handlers, recorded evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing Board duties and responsibilities. There would be no significant cost impact on either small or large growers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The recorded evidence is that the amendments are designed to increase efficiency in the functioning of the order.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of marketing order 984 to benefit of the California walnut industry.

#### **Paperwork Reduction Act**

Current information collection requirements for Part 984 are approved by OMB under OMB No. 0581-0178, Vegetable and Specialty Crops. Any changes in those requirements as a result of this proceeding would be submitted to OMB for approval. Witnesses stated that existing forms could be adequately modified to serve the needs of the Board. While conforming changes to the forms would need to be made (such as changing the name of the Board), the functionality of the forms would remain the same.

As with other similar 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 Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The 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.

#### **Civil Justice Reform**

The amendments to Marketing Order No. 984 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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.

#### **Findings and Conclusions; Discussion of Exceptions**

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the March 27, 2007, issue of the **Federal Register** (72 FR 14368) are hereby approved and adopted subject to the following additions and modifications:

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 11 of the Recommended Decision concerning whether or not to add authority to designate more than one inspection service are amended by adding the

following six paragraphs to read as follows:

Exceptions to the Recommended Decision stated that if the authority to designate more than one inspection service were implemented, private sector entities, in addition to USDA, should be able to offer non-traditional inspection services, such as the PIQ and the CAIP. Exceptions further stated that the current proposed language (meaning, "each service shall be separate so as to not duplicate each other") would prevent any private sector company from offering those services.

The proposed amendment, if implemented, would not prevent any private sector company from offering traditional or non-traditional inspection services, as long as the services were recommended by the Board and approved by USDA.

The Agricultural Marketing Service is responsible for ensuring that all handlers regulated under a marketing order program are in compliance with any regulations that are in effect. Under the marketing order for California walnuts, the Board is responsible for locally administering the program, which includes monitoring industry's compliance with order requirements, and reporting any violations to USDA for enforcement measures.

While the USDA supports and encourages cost-saving measures, it is important that the program maintains its integrity and that any quality or size regulations in effect are not compromised. Furthermore, it is important that inspection of product is conducted with uniformity and consistency. For this reason, it is important that the language stating that "each service shall be separate so as to not duplicate each other" be maintained.

Finally, the proposed order language would provide authority for the Board to recommend the use of alternative inspection methods and services as they are developed and accredited. The proposed authority is intended to allow industry to benefit from cost-saving advances in technology while also ensuring uniform application of inspection methodology and standards industry wide.

Based upon the exception filed, the findings and conclusions in material issue number 18 of the Recommended Decision concerning whether or not to establish a limit on the number of consecutive terms a person may serve as a member of the Board are amended by adding the following paragraph to read as follows:

One of the exceptions filed offered a comment of general support for the proposal to implement term limits as a method to encourage participation of industry members that have not previously served on the Board.

### Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the recorded evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

### Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Walnuts Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered,* That this entire decision be published in the **Federal Register**.

### Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of walnuts grown in California is approved or favored by growers, as defined under the terms of the order, who during a representative period were engaged in the production of walnuts in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2006, through July 31, 2007.

The agents of the Secretary to conduct such referendum are hereby designated to be Shereen Marino and Kurt Kimmel, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (559) 487-5901.

### List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

Dated: July 9, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

### Order Amending the Order Regulating the Handling of Walnuts Grown in California<sup>1</sup>

#### *Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and 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.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Agreement and Order No. 984 (7 CFR part 984), regulating the handling of walnuts grown in California. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of walnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area that 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 marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, 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 grown in the production area; and

(5) All handling of walnuts grown in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

### 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 proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on March 19, 2007, and published in the **Federal Register** on March 27, 2007, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

### 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. Revise § 984.6 to read as follows:

#### **§ 984.6 Board.**

*Board* means the California Walnut Board established pursuant to § 934.35.

3. Revise § 984.7 to read as follows:

#### **§ 984.7 Marketing year.**

*Marketing year* means the twelve months from September 1 to the following August 31, both inclusive, or any other such period deemed appropriate and recommended by the Board for approval by the Secretary.

4. Revise § 984.13 to read as follows:

#### **§ 984.13 To handle.**

*To handle* means to pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: The term "to handle" shall not include sales and deliveries within the area of production by growers to handlers, or between handlers.

5. Revise § 984.14 to read as follows:

**§ 984.14 Handler.**

*Handler* means any person who handles inshell or shelled walnuts.

6. Revise § 984.15 to read as follows:

**§ 984.15 Pack.**

*Pack* means to bleach, clean, grade, shell or otherwise prepare walnuts for market as inshell or shelled walnuts.

7. Revise § 984.21 to read as follows:

**§ 984.21 Handler inventory.**

*Handler inventory* as of any date means 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.

8. Revise § 984.22 to read as follows:

**§ 984.22 Trade demand.**

(a) *Inshell*. The quantity of merchantable inshell walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

(b) *Shelled*. The quantity of merchantable shelled walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

9. Revise § 984.35 to read as follows:

**§ 984.35 California Walnut Board.**

(a) A California Walnut Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

- (1) Two handler members from District 1;
- (2) Two handler members from District 2;
- (3) Two grower members from District 1;
- (4) Two grower members from District 2;
- (5) One grower member nominated at-large from the production area; and,
- (6) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member

and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(b) In the event that one handler handles 35% or more of the crop the membership of the Board shall be as follows:

(1) Two handler members to represent the handler that handles 35% or more of the crop;

(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1*. District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2*. District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board as specified in paragraphs (a) and (b) of this section: *Provided, That* any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

- (1) Shifts in acreage within districts and within the production area during recent years;
- (2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between Board apportionment and districts;

(4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;

(5) Other relevant factors.

10. Revise § 984.36 to read as follows:

**§ 984.36 Term of office.**

The term of office of Board members, and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified. Board members may serve up to three consecutive, two-year terms of office. In no event shall any member serve more than six consecutive years on the Board. For purposes of determining when a Board member has served three consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. The limitation on tenure shall not apply to alternates.

11. Revise § 984.37 to read as follows:

**§ 984.37 Nominations.**

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchards in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the kernel weight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler

member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) A calculation to determine whether or not a handler who handles 35 percent or more of the crop shall be made prior to nominations. For the first nominations held upon implementation of this language, the 35 percent threshold shall be calculated using an average of crop handled for the year in which nominations are made and one year's handling prior. For all future nominations, the 35 percent handling calculation shall be based in the average of the two years prior to the year in which nominations are made. In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(3) Nominations on behalf of all other grower members (Groups (b)(4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b)(4), (5) and (6) of § 984.35), regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any such year, the Secretary may select such member without nomination.

(g) The Board may recommend, subject to the approval of the Secretary, a change to these nomination procedures should the Board determine that a revision is necessary.

12. Revise § 984.38 to read as follows:

#### **§ 984.38 Eligibility.**

No person shall be selected or continue to serve as a member or alternate to represent one of the groups specified in § 984.35(a)(1) through (6) or § 984.38(b)(1) through (6), unless he or she is engaged in the business he or she is to represent, or represents, either in his or her own behalf or as an officer or employee if the business unit engaged in such business. Also, each member or alternate member representing growers

in District 1 or District 2 shall be a grower, or officer or employee of the group he or she is to represent.

13. Revise § 984.39 to read as follows:

#### **§ 984.39 Qualify by acceptance.**

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

14. Revise § 984.40 to read as follows:

#### **§ 984.40 Alternate.**

(a) An alternate for a member of the Board shall act in the place and stead of such member in his or her absence or in the event of his or her death, removal, resignation, or disqualification, until a successor for his or her unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his or her alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his disability or a vacancy, his or her alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting, such temporary substitute may act in the place of such member.

15. Revise § 984.42 to read as follows:

#### **§ 984.42 Expenses.**

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

16. Amend § 984.45 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

#### **§ 984.45 Procedure.**

\* \* \* \* \*

(b) All decisions of the Board, except where otherwise specifically provided (see § 984.35(d)), shall be by a sixty-percent (60%) super-majority vote of the members present. A quorum of six members, or the equivalent of sixty percent (60%) of the Board, shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram, or by any other means of communication, upon due notice to all members. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be

cast when voting is by any of these methods, and any other procedures necessary to carry out the objectives of this paragraph.

(d) The Board may provide for meetings by telephone, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided, That* if any assembled meeting is held, all votes shall be cast in person.

17. Revise § 984.46 to read as follows:

**§ 984.46 Research and development.**

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69 and § 984.70.

18. Amend § 984.48 by revising paragraphs (a) introductory text, (a)(2), (4), and (5) to read as follows:

**§ 984.48 Marketing estimates and recommendations.**

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following, and where applicable, on a kernel weight basis:

\* \* \* \* \*

(2) The Board's estimate of the handler inventory on September 1 of inshell and shelled walnuts;

\* \* \* \* \*

(4) The Board's estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade inventory, imports, prices, competing nut supplies, and other factors;

(5) The Board's recommendation for desirable handler inventory of inshell and shelled walnuts on August 31 of each marketing year;

\* \* \* \* \*

19. Amend § 984.50 by revising the heading and paragraph (d) to read as follows:

**§ 984.50 Grade, quality and size regulations.**

\* \* \* \* \*

(d) Additional grade, size or other quality regulation. The Board may recommend to the Secretary additional grade, size or other quality regulations,

and may also recommend different regulations for different market destinations. If the Secretary finds on the basis of such recommendation or other information that such additional regulations would tend to effectuate the declared policy of the Act, he or she shall establish such regulations.

\* \* \* \* \*

20. Revise § 984.51 by revising paragraph (a) to read as follows:

**§ 984.51 Inspection and certification of inshell and shelled walnuts.**

(a) Before or upon handling of any walnuts for use as free or reserve 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 service 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. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts (*Juglans regia*). The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

\* \* \* \* \*

21. Amend § 984.52 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

**§ 984.52 Processing of shelled walnuts.**

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or unless such walnuts meet quality regulations established under § 984.50(d) if such regulations are in effect.

\* \* \* \* \*

(c) The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected prior to being placed into the current of commerce.

22. Revise § 984.59 to read as follows:

**§ 984.59 Interhandler transfers.**

For the purposes of this part, transfer means the sale of inshell and shelled walnuts within the area of production by one handler to another. The Board, with the approval of the Secretary, may establish methods and procedures, including necessary reports, for such transfers.

23. Amend § 984.67 by revising paragraph (a) to read as follows:

**§ 984.67 Exemptions.**

(a) Exemption from volume regulation. Reserve percentages shall not apply to lots of merchantable inshell walnuts which are of jumbo size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the Board may, with the approval of the Secretary, prescribe.

\* \* \* \* \*

24. Amend § 984.69 by revising paragraph (c) to read as follows:

**§ 984.69 Assessments.**

\* \* \* \* \*

(c) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (c)(2) or (c)(3) of this section, it shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: *Provided, That* each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: *Provided, That* funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

\* \* \* \* \*

25. Add a new § 984.70 to read as follows:

**§ 984.70 Contributions.**

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 984.46, Research and development. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

26. Revise § 984.71 to read as follows:

**§ 984.71 Reports of handler inventory.**

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his or her inventory of inshell and shelled walnuts.

27. Revise § 984.73 to read as follows:

**§ 984.73 Reports of walnut receipts.**

Each handler shall file such reports of his or her walnut receipts from growers, handlers, or others in such form and at such times as may be requested by the Board with the approval of the Secretary.

28. Amend § 984.89 by redesignating paragraph (b)(4) as (b)(5) and adding a new paragraph (b)(4) to read as follows:

**§ 984.89 Effective time and termination.**

\* \* \* \* \*

(b) \* \* \*

(4) Within six years of the effective date of this amendment the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds ( $\frac{2}{3}$ ) majority of voting producers, or a two thirds ( $\frac{2}{3}$ ) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of walnuts in the production area. Such termination shall be announced on or before the end of the production year.

\* \* \* \* \*

29. Add a new § 984.91 to read as follows:

**§ 984.91 Relationship with the California Walnut Commission.**

In conducting Board activities and other objectives under this part, the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission, whose activities complement those of the Board. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

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**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Part 1767**

RIN 0572-AC08

**Accounting Requirements for RUS Electric Program Borrowers**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service, an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as Rural Development, proposes to amend its regulation on accounting policies and procedures for Rural Development Electric Programs borrowers as set forth in 7 CFR Part 1767, Accounting Requirements for Rural Development Electric Program Borrowers. This proposed rule seeks to reconcile Part 1767 with the Uniform System of Accounts as set forth by the Federal Energy Regulatory Commission (FERC); to adopt FERC accounting guidance for Regional Transmission Organizations, Asset Retirement Obligations with modifications, Other Comprehensive Income, and Derivatives and Hedging Instruments; to amend accounting interpretations for Special Equipment Accounting, Storm Damage, Rural Economic Development Loan and Grant Program and Consolidated Financial Statements; to set forth accounting interpretations that establish uniform reporting procedures for Accounting for Cushion of Credit Accounts and Renewable Energy Credits, and to codify guidance on records retention currently published in Bulletin 180-2. This proposed rule also seeks to correct a number of administrative errors currently existing within this part.

**DATES:** Written comments must be received by Rural Development or carry

a postmark or equivalent no later than September 11, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS-07-Electric-0002 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Agency Web Site:* <http://www.usda.gov/rus/index2/Comments.htm>. Follow the instructions for submitting comments.

- *E-mail:* [RUSComments@usda.gov](mailto:RUSComments@usda.gov).

Include in the subject line of the message "Accounting Requirements for Electric Borrowers."

- *Mail:* Addressed to Michele Brooks, Acting Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250-1522.

- *Hand Delivery/Courier:* Addressed to Michele Brooks, Acting Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, DC 20250-1522.

**Instructions:** All submissions received must include the agency name and the subject heading "Accounting Requirements for Electric Borrowers". All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to <http://www.usda.gov/rus/index2/Comments.htm>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diana C. Alger, Chief, Technical Accounting and Auditing Staff, Program Accounting Services Division, Rural Development, Ag Box 1523, Room 2221, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720-5227.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule is exempted from the Office of Management and Budget