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Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.  
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS-FV-09-0036; FV09-984-4 PR]

Walnuts Grown in California; Changes to the Quality Regulations for Shelled Walnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

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SUMMARY: This rule invites comments on revisions to the quality regulations for shelled walnuts under the Federal marketing order for California walnuts (order). The order regulates the handling of walnuts grown in California and is administered locally by the California Walnut Board (Board). This rule would require inspection and certification of shelled walnut products after manufacturing instead of before manufacturing. It would also establish a process to specify that manufactured products smaller than eight sixty-fourths of an inch in diameter are derived from walnut pieces that have been inspected and certified to U.S. Commercial grade standards. These changes would result in more efficient and cost-effective handler operations, and would certify the final size and grade of all manufactured walnut pieces.

DATES: Comments must be received by July 6, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number

and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ``order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the ``Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the quality regulations for shelled walnuts to require inspection and certification after chopping or dicing them into smaller pieces (manufacturing) instead of before manufacturing, and to establish a process for specifying that manufactured products smaller than eight sixty-fourths of an inch in diameter are derived from walnut pieces that have been inspected and certified to U.S. Commercial grade standards. This would result in more efficient and cost-effective handler operations and would certify the final size and grade of all manufactured walnut pieces. This proposal was unanimously recommended by the Board at a meeting on September 12, 2008.

Section 984.50(d) of the order provides authority for the Board to recommend to the Secretary additional grade, size, or other quality regulations for California walnuts. Section 984.52 of the order provides that handlers shall not change the form of shelled walnuts unless such walnuts have been certified as merchantable or meet quality regulations established under Sec. 984.50(d).

Currently, all shelled walnuts are inspected and certified before manufacturing by the American Council for Food Safety & Quality (also known as DFA of California and hereinafter referred to as ``DFA'') to

ensure the walnuts meet marketing order requirements for U.S. Commercial grade. Following inspection, walnut pieces may be further manufactured by chopping them into smaller pieces, or ``end products.'' Pieces smaller than eight sixty-fourths of an inch that are accumulated during the manufacturing process are considered a byproduct of this process and are called ``meal.'' Walnut meal is sold into the market for industrial use, such as in commercial bakery products.

Upon passing inspection, an inspection certificate is issued for the

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lot of shelled walnuts, and the certificate number follows the walnuts from that lot through the entire manufacturing process. The original inspection certificate number is noted on the certificates that accompany both the end products and the meal derived from the original lot of shelled walnuts. Providing information about the original lot of walnuts from which the end products and meal were derived assures customers that those products were derived from walnuts that meet quality standards under the order.

The inspection certificate specifies the size of the shelled walnut pieces before manufacturing. The size may be stated as ``large pieces'' or ``halves and pieces,'' and that information is also noted on the certificates that accompany the end products and the meal, although it does not accurately describe the size of the manufactured end product pieces or meal. If a customer requires certification of the size of a finished end product, the handler must obtain a second inspection for that product, which may add expense to the process.

Currently, meal may be co-mingled into one output bin as it is accumulated from the manufacturing of several different lots of shelled walnuts. When this occurs, the certificate number from each original lot of shelled walnuts is transferred to the meal certificate. As a result, the certificate for one output bin of meal may include multiple certificate numbers.

Transferring the inspection certificate number from an original lot of shelled walnuts to various manufactured end products and meal is cumbersome and creates a potential for errors under the current system. Currently, all of a certified lot of shelled walnuts must be manufactured at one time to ensure the certificate number of that lot is properly transferred to the resulting end products and meal. If, at a future date, the end products from the original manufacturing run are remanufactured in order to be cut to a smaller size, the certificate numbers must be transferred from the first manufactured product to the second manufactured product. This additional process of transferring certificate numbers to and from multiple end products is cumbersome and further increases the potential for error.

The Board's Grades and Standards Committee formed a work group in May 2008 to investigate alternatives to the current inspection and certification process of manufactured shelled walnuts. The work group recommended changing the existing process to allow handlers to manufacture shelled walnuts into smaller end products without prior inspection. Instead, handlers would be required to have all end products inspected. The manufactured pieces equal to or larger than eight sixty-fourths of an inch in diameter would be inspected and certified to existing U.S. Commercial grade requirements specified in the United States Standards for Shelled Walnuts (*Juglans regia*). Each end product that passes inspection would be issued an inspection certificate, which would include the actual size of the end product.

The U.S. Commercial grade requirements do not include standards for walnut meal. Therefore, the meal accumulated during the manufacturing process would not be inspected. Meal collected from multiple manufacturing runs would no longer be co-mingled in one output bin but would remain segregated.

A document also referred to as a ``meal certificate'' would be

issued for the walnut meal accumulated during each manufacturing run. Because the meal most closely resembles the color, freshness, and other characteristics of the smallest end product produced during manufacturing, the meal could be affiliated with that end product. If the end product passes inspection and is certified, the certificate number assigned to that end product would be referenced on the meal certificate. If that end product fails inspection, the meal created during the same manufacturing process would be rejected and disposed of pursuant to the requirements of Sec. 984.64. However, the end product that failed inspection could be reconditioned, re-sampled, and presented again for inspection and certification.

These changes would improve the manufacturing process by eliminating the need for multiple inspections for the same product, and would improve handler efficiencies by eliminating duplicative inventory tracking. Consumers would be better served since each finished end product would be certified to U.S. Commercial grade requirements, and accurate size information for each end product would be provided on the individual inspection certificates. Handlers could continue to assure customers that walnut meal is derived from walnuts that have been inspected and certified. Accordingly, a new Sec. 984.450(c) containing these regulations is proposed to be added to the order's administrative rules and regulations.

This rule would also revise the first sentence in Sec. 984.450(a) regarding the minimum kernel content requirements of inshell walnuts for reserve disposition credit. The sentence incorrectly references requirements for inshell walnuts pursuant to Sec. 984.59(a). The correct reference is Sec. 984.50(a). The sentence would be revised accordingly.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008-09. The average yield for the 2008-09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008-09 crop at \$1,210 per ton, which is lower than the previous five-year average of \$1,598 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.96 tons per acre would have been expected to produce about 196 tons of walnuts during 2008-09. At \$1,210 per ton, that farm's production would have had an approximate value of \$237,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could

be concluded that the majority of the growers had receipts of less than \$237,000 in 2008-09. This is well below the SBA threshold of \$750,000; thus, the majority of California's walnut growers

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would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately one-half of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2008-09 marketing year and would therefore be considered small handlers according to the SBA definition. The firm that currently inspects and certifies shelled walnuts before manufacturing would likely be considered a large agricultural business firm.

This rule would amend Sec. 984.450 of the order's administrative rules and regulations by adding a new paragraph (c) that would require inspection and certification of shelled walnuts after manufacturing instead of before manufacturing, and would establish a process for specifying that walnut meal is derived from manufactured walnut pieces that have been inspected and certified to U.S. Commercial grade standards. This would result in more efficient and cost-effective handler operations, and would certify the final size and grade of all manufactured walnut pieces. Authority for these changes are provided in Sec. Sec. 984.50(d) and 984.52 of the order.

Regarding the impact of the proposed action on affected entities, this rule should not impose any additional costs. It should reduce costs to handlers by streamlining and improving the production process. Handlers would no longer need to track lots of shelled walnuts through the manufacturing process in order to tie those original lots to the manufactured end products and meal. Handlers would be able to more easily manage inventory and production since they would no longer be required to manufacture an entire lot of shelled walnuts at one time in order to transfer the certificate number of the original lot to each end product and the meal. Since handlers would no longer be required to transfer certificate numbers from an entire lot of shelled walnuts to multiple manufactured end products, a portion of a lot could be held for manufacturing or remanufacturing at a later date.

The potential for errors would be reduced under the proposed system because fewer certificate numbers would be transferred. Each end product would have its own certificate number, and the certificate number of the smallest end product would be referenced on the meal certificate for the meal that was accumulated during the same manufacturing process.

Handler costs would also be reduced when customers require manufactured product to be certified to U.S. Commercial grade requirements since this would be automatically provided under the proposed regulations. Under the current system, if a customer requires this type of certification after manufacturing, handlers may pay additional fees if an inspector makes a special trip to perform a second inspection. If a DFA inspector is already onsite at a handler's facility, there is no additional charge for a second inspection. DFA charges \$28.00 per hour with a four-hour minimum charge for a special visit to the handler's site, for a minimum total charge of \$112 per visit.

While discussing this proposed change, the Board considered lab testing the meal as an alternative to transferring the inspection certificate number of the smallest manufactured end product to the meal. There is no U.S. Commercial grade standard for meal, so it is not currently possible to inspect and certify it as meeting a standard. Quality standards for meal would need to be developed in order to pursue this alternative. In addition, lab testing the meal could increase handler costs. This alternative would also cause a delay in shipping in order to allow time for lab testing, and this could adversely impact marketing efforts. As a result, lab testing of meal

was not considered a viable alternative.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

In addition, the Board's meeting on September 12, 2008, when this action was considered, was widely publicized throughout the walnut industry. This issue was also deliberated at a Grades and Standards Committee meeting on May 20, 2008; a Board meeting on May 28, 2008; and a Grades and Standards Committee work group meeting on September 2, 2008. Like all Board meetings, these meetings were public meetings, and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because the proposed changes would improve handler and program operations and, as such, should be available as soon as possible during the marketing year, if adopted. All written comments timely received will be considered before a final determination is made on this matter.

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

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

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

#### PART 984--WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

#### Sec. 984.450 [Amended]

2. Section 984.450 is amended by revising the first sentence in paragraph (a) and adding a new paragraph (c) to read as follows:

#### Sec. 984.450 Grade and size regulations.

(a) Minimum kernel content requirements for inshell walnuts for reserve disposition credit. For purposes of Sec. Sec. 984.54 and 984.56, no lot of inshell walnuts may be held, exported, or disposed of

for use by governmental agencies or charitable institutions unless it meets the minimum requirements for merchantable inshell walnuts effective pursuant to Sec. 984.50(a). \* \* \*

\* \* \* \* \*

(c) Inspection and certification of shelled walnuts that are manufactured into products. For purposes of Sec. Sec. 984.50(d) and 984.52(c), shelled walnuts may be cut or diced without prior inspection and certification: Provided, That the end product, except for walnut meal, is inspected and

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certified. For purposes of this section, end product shall be defined as walnut pieces equal to or larger than eight sixty-fourths of an inch in diameter. Walnut meal shall be defined as walnut pieces smaller than eight sixty-fourths of an inch in diameter.

(1) End product. End product must be sized, inspected and certified, and the size must be noted on the inspection certificate. The end product quality must be equal to or better than the minimum requirements of U.S. Commercial grade as defined in the United States Standards for Shelled Walnuts (*Juglans regia*).

(2) Walnut meal. Walnut meal that is accumulated during the cutting or dicing of shelled walnuts to create end product must be presented with the smallest end product from that manufacturing run that is inspected and certified. If the end product meets the applicable U.S. Commercial grade requirements, the walnut meal accumulated during the manufacture of that end product shall be identified and referenced on a separate meal certificate as ``meal derived from walnut pieces that meet U.S. Commercial grade requirements.'' The certificate number of the smallest end product will be referenced on the meal certificate.

(3) Failed lots. If the end product fails to meet applicable U.S. Commercial grade requirements, the end product may be reconditioned, re-sampled, inspected again, and certified. However, the walnut meal accumulated during the manufacture of that end product shall be rejected and disposed of pursuant to the requirements of Sec. 984.64.

Dated: June 11, 2010.

Rayne Pegg,  
Administrator, Agricultural Marketing Service.  
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