

# Proposed Rules

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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. FV95-984-1PR]

### Walnuts Grown in California; Suspension of Deadline for Relaxing Reserve Requirements

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

**ACTION:** Proposed suspension.

**SUMMARY:** This proposal would suspend the deadline by which the Walnut Marketing Board (Board) may recommend a relaxation in reserve requirements established for a marketing year under the walnut marketing order. Suspension of the deadline would allow the Board, which locally administers the order, to make such a decision based on more current supply and shipment information. This suspension would provide the walnut industry an opportunity for more orderly marketing.

**DATES:** Comments must be received by July 3, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456, FAX number (202) 720-5698. Comments should reference this docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, or FAX (209) 487-5906; or Mark Kreagg, Marketing Specialist, Marketing Order Administration

Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 720-3610, or FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), regulating the handling of walnuts grown in California. 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 the Secretary 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 requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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 rules issued thereunder, are unique in that they are brought about

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Vol. 60, No. 106

Friday, June 2, 1995

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California walnuts who are subject to regulation under the walnut marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000 and small agricultural producers have been defined as those having annual receipts of less than \$500,000. The majority of California walnut handlers and producers may be classified as small entities.

The walnut marketing order provides authority for volume control in the form of free, reserve, and export percentages. The free percentage is the percentage of certified merchantable walnuts that may be shipped freely to any market during the marketing year. The reserve percentage is the amount of certified merchantable walnuts that may be shipped to export markets, government agencies, charitable institutions, poultry or animal feed, walnut oil, or other markets noncompetitive with markets for certified merchantable free walnuts. The export percentage is the percentage of reserve walnuts that may be shipped to export markets. Certified merchantable walnuts are walnuts which have been inspected and certified by the Dried Fruit Association of California as meeting the minimum grade and size requirements specified under the order.

The marketing order also provides that handlers may meet their reserve requirements by either delivering reserve walnuts to the Board for disposition by the Board or by selling or disposing of their own walnuts, as agents of the Board, in specified reserve outlets. Any reserve walnuts the Board receives would be pooled and sold by the Board in markets specified for reserve walnuts at the highest returns available. The proceeds from the sale of these pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to handlers who delivered walnuts to the pool in proportion to each handler's contribution.

In a marketing year (August 1-July 31) that a reserve program is implemented, the Board recommends the initial percentages in September and has the option of recommending an increase in the free and export percentages and a decrease in the reserve percentage later in the marketing year. If the Department concurs with the Board's recommendation, the recommended percentages may be established or modified. Under current order requirements, the reserve percentage may be decreased and free percentage increased if the Board makes a recommendation on or before February 15. Section 984.49(b)(1) establishes a deadline of February 15 for the Board to recommend to the Secretary an increase in the free percentage and a decrease in the reserve percentage. On February 10, 1995, the Board unanimously recommended suspension of that deadline. The proposed rule would suspend the phrase "On or before February 15 of the marketing year," in section 984.49(b)(1) and would authorize the Board to recommend an increase in the free percentage and a decrease in the reserve percentage at any time during the marketing year, which ends on July 31.

In the past, many export markets were undeveloped and the domestic market provided better returns than export markets. The reserve percentage was used as a tool to keep the domestic walnut market from being oversupplied and the export percentage was used as a tool to place an orderly flow of California walnuts into the export market at prices that were competitive with foreign walnuts. Even though the free walnuts were allowed to be shipped to export markets, free walnuts were not price competitive with walnuts from other countries and consequently were not diverted to export markets. Under former marketing conditions, sufficient information relating to the domestic market was available prior to February 15 so that the Board could make an appropriate recommendation for final free and reserve percentages.

Under present marketing conditions, walnut export markets are well established and have returns equal to or higher than those received in the domestic market. As a result, the Board could recommend setting an export percentage of 0 percent which would preclude the shipment of reserve walnuts to export markets. The export market would then be supplied with only free walnuts. By setting a reserve percentage and keeping the export percentage at 0 percent, the Board could remove a quantity of walnuts in excess

of domestic and export market demands.

When large shipments of reserve walnuts were exported, the February 15 deadline for recommending a decrease in the reserve gave handlers approximately five months to export the remainder of their reserve after the final reserve percentage was known. Since exports have now become a viable market for free walnuts, the Board may need more flexibility to consider later data on free shipments to revise its estimate of trade demand. The Board may also need more flexibility to consider the July forecast of the next crop to decide if the desirable carryout should be increased to supplement a short crop.

In addition, the order requires handlers to file monthly shipment reports that are due on the fifth day of the following month. Each additional monthly report the Board receives from handlers after the February 15 deadline, gives the Board a more accurate picture of the levels of shipments of walnuts for the current marketing year. More information is also available at that time on the foreign walnut crop, the pecan supply which directly competes with walnuts, exchange rates, and foreign and domestic economic conditions. This information would allow the Board to better estimate the current and prospective domestic and export demand and supply conditions for California walnuts. Finally, later in the marketing year, the Board can better estimate the amount of the current crop of walnuts that should be carried over to the next marketing year. By allowing decisions to be made later in the season on a reserve program, the industry can better evaluate marketing conditions.

The Board estimates that sufficient information would be available by early June, but marketing conditions may cause the Board to wait longer before making a final recommendation on the free and reserve percentages. The suspension of the February 15 deadline would allow the Board more flexibility in dealing with the dynamic marketing conditions of the California walnut industry and in turn provide for more orderly marketing of walnuts.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons an opportunity to comment on this proposal. 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 suspended in part as follows:

### PART 984—WALNUTS GROWN IN CALIFORNIA

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

**Authority:** 7 U.S.C. 601–674.

#### **§ 984.49 [Suspended in part]**

2. In § 984.49(b)(1), the words "On or before February 15 of the marketing year," are suspended.

Dated: May 26, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95-13509 Filed 6-1-95; 8:45 am]

**BILLING CODE 3410-02-P**

## 7 CFR Part 1126

[DA-95-16]

### Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, has requested the continuation of the suspension. The cooperative asserts that continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

**DATES:** Comments are due no later than July 3, 1995.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

#### **FOR FURTHER INFORMATION CONTACT:**

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.