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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AO–SC–20–J–0011; AMS–SC–19–0082; SC19–984–1]

Walnuts Grown in California; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes amendments to Marketing Order No. 984 (Order), which regulates the handling of walnuts grown in California. The proposed amendments are based on the record of a public hearing held via videoconference technology on April 20 and 21, 2020. The California Walnut Board (Board), which locally administers the Order, recommended proposed amendments that would add authority for the Board to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order and establish requirements to effectuate the new authority. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes as may be necessary to conform to any amendment that may result from the public hearing.

DATES: Written exceptions must be filed by September 4, 2020.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200; Fax: (202) 720–9776 or via the internet at *https://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours or can be viewed at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Andrew Hatch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Melissa.Schmaedick@usda.gov* or *Andrew.Hatch@usda.gov.*

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on February 2, 2020, and published in the February 11, 2020, issue of the **Federal Register** (85 FR 7669) and a Correction to the Notice of Hearing issued on April 9, 2020, and published in the April 10, 2020, issue of the **Federal Register** (85 FR 20202).

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 Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. *See* the Office of Management and Budget's (OMB) Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 984 regulating the handling of walnuts grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held via videoconference technology on April 20 and 21, 2020. Notice of this hearing was published in the **Federal Register** on February 11, 2020 (85 FR 7669) followed by a Correction to the Notice of Hearing issued on April 9, 2020, and published in the April 10, 2020, issue of the **Federal Register** (85 FR 20202). The notice of hearing contained one proposal submitted by the Board and one submitted by USDA.

The proposed amendments were recommended by the Board on September 13, 2019 and were submitted to USDA on September 16, 2019. After reviewing the proposals and other information submitted by the Board, USDA made a determination to schedule this matter for hearing. The Board's proposed amendments to the Order would add authority for the Board to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order and would establish requirements to effectuate the new authority.

USDA proposed to make any such changes as may be necessary to the Order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Twelve witnesses testified at the hearing. Eleven witnesses represented walnut producers and handlers in the production area, as well as the Board, and one witness was from USDA. Ten industry witnesses supported the proposed amendments, while the eleventh had reservations about the program and its underlying assumptions. The USDA witness remained neutral. Four dissenting

opinions and one comment were received by AMS after the notice of hearing was published in the **Federal Register** and are therefore considered ex parte communications. In accordance with section 900.16 of the Rules of Practice governing this proceeding (7 CFR 900.16), the ex parte communications were entered into the record but do not constitute testimony and were not considered in the drafting of this recommended decision.

The authority to provide credit for certain market promotion expenses paid by handlers against their annual assessment obligations, also referred to as ''credit-back authority,'' does not currently exist under the Order. The Board's proposed amendments would authorize credit-back authority and establish requirements to administer a credit-back program.

If implemented, the proposed amendments would allow the Board to set aside funds every year during its budget discussions to fund such a program. Under the program, certain market promotion expenses paid directly by handlers within a marketing year could be ''credited-back'' to the handler against their assessment obligation paid to the Board. The credit-back amount available to each handler would be determined by that handler's percentage of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget.

Witnesses at the hearing explained that the proposed amendments are necessary to encourage handlers to undertake market promotion activities, in addition to the Board's generic marketing efforts, to increase market demand for the industry's increasing supply of walnuts. Witnesses further explained that future increases in supply without additional increases in demand could result in weaker market returns. Therefore, proponents support the need to increase demand for walnuts to stabilize future market returns.

As an indicator of untapped growth potential, witnesses referred to a domestic walnut consumption analysis that revealed only 40 percent of U.S. households consume walnuts. Witnesses argued that the proposed credit-back authority could stimulate domestic demand through handler-led promotion and product innovation, and that doing so could stabilize future market prices.

One witness agreed that an increase in demand for walnuts was necessary to stabilize future market prices but expressed concerns with the proposed amendments.

The witness argued that handlers do not pay assessments under the Order in practice because they deduct the assessments from their payments to walnut producers; therefore, the producers actually pay the assessments.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of May 6, 2020, for the submission of corrections to the transcript, and May 22, 2020, as a deadline for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. One brief in favor of the proposed amendments was received from the Board.

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Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to amend § 984.46 to add authority to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order.

2. Whether to add a new § 984.546 to establish requirements effectuating Material Issue 1. Corresponding changes would also establish a new Subpart D with the heading ''Research and Development Requirements,'' under which § 984.546 would be listed and reserving § 984.547.

3. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include correction of non-substantive, typographical errors.

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Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Credit-Back Authority

Section 984.46, ''Research and Development,'' should be amended to add credit-back authority. This authority would authorize the Board to credit the pro rata assessment obligations of a handler with such portion of his or her direct expenditure for marketing promotion, including paid advertising, under an annual credit-back program. The credit-back amount available to each handler would be determined by that handler's percentage of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget. The credit-back budget would be set annually and would be subject to approval of the Secretary.

Credit-back would be limited such that no handler would receive credit-back for any creditable expenditures exceeding the total amount of calculated credit-back available to them for the applicable marketing year program. Further, no handler would receive credit-back in an amount that exceeds that handler's assessments paid in the applicable marketing year at the time the credit-back application is made.

The proposed amendment also stipulates that marketing promotion expenses would be credited at a rate recommended by the Board and approved by the Secretary. That rate would reflect how much per dollar of marketing promotion expenses paid by each handler would be reimbursable under the proposed credit-back program during the applicable marketing year. In addition, the proposed amendment provides that a handler need not necessarily apply for reimbursement of their total calculated credit-back available to them; credit-back could be applied to all or any portion of a handler's direct expenditures.

The proposed amendment further provides that credit could be paid directly to the handler as a reimbursement of assessments paid, and that different credit rates for different products or different marketing promotion activities could be established. Differing rates would require a recommendation by the Board, according to priorities determined by the Board and its marketing plan, and approval by the Secretary. The amendment would also allow the Board to adjust the credit-back program to provide for alternative methods of issuing credit if future advances in the industry warranted. All future proposed amendments would require approval by the Secretary.

Regarding the kind of expenditures eligible for reimbursement under the proposed authority, also referred to as ''creditable expenditures,'' the proposed amendment stipulates that such expenditures could include, but would not be limited to: Money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media, including the actual standard agency commission costs not to exceed 15 percent. According to the record, the proposed amendment specifies that creditable expenditures would be required to promote the sale of walnuts, walnut products or their uses, but not the production or farming of walnuts.

Currently, § 984.46 allows for 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 California walnuts. These activities are carried out directly by the Board, are generic in their promotion of all California walnuts, and are paid for by assessments as part of the Board's operating budget.

Witnesses explained that the current authority limits the Board to generic marketing and promotion activities for inshell and shelled walnuts. While the authority does allow the Board to conduct marketing research and development projects, the Board does not manufacture or otherwise sell walnuts. Therefore, it is incumbent upon handlers to further develop new product formulations and deliver products to the market. Because product innovation and marketing can be costly, the Board recommended credit-back authority that would incentivize handlers to support such initiatives.

If implemented, the proposal would encourage handlers to build upon the Board's generic marketing activities, providing additional visibility, awareness and sales for walnuts. Witnesses explained that the need for increased marketing, promotion and product innovation stems from the industry's growing production, increased competition in the export market and the need to stabilize fluctuating grower returns.

According to the hearing record, production has nearly doubled in the past decade from 328,000 tons in the 2007/2008 crop year to 690,000 tons estimated for the 2018/2019 crop year. Evidence suggests that the increase in production is a combination of both new plantings and higher yields per acre.

High market prices in 2013 and 2014 spurred grower investment in new plantings, resulting in a significant jump in total industry planted acreage over the 2013 to 2017 time period. As trees mature and transition from non-bearing to bearing acreage, a process that takes roughly five years, total industry production increases. The 2018–2019 crop year industry total of bearing acres is estimated at 350,000, up from 230,000 in the 2008–2009 crop year. Witnesses estimate that 15,000 more acres will come into production by the end of the 2019–2020 crop year for a new total of 365,000 bearing acres. Moreover, an additional 65,000 acres are due to come into production over the next five years. With each acre yielding roughly two tons, the Board is forecasting a 17-percent increase in production from 750,000 tons in 2020 to 875,000 tons in 2025.

Record evidence also indicated that production in Chile, China and Europe, all competitors of California walnuts in the international market, is another factor in assessing future market stabilization. While California walnuts accounted for 57 percent of world trade in 2017–2018, its production only accounted for 31 percent of the world total. Witnesses reported that while the domestic market is the largest consumer of California walnut production, exports currently account for roughly 66 percent of all industry trade. The industry's largest export markets are Germany, Turkey, the United Arab Emirates and Japan. As world production increases, witnesses expressed concern over maintaining market share and the potential downward impact on prices of increasing global supply.

Witnesses also expressed concern over the California walnut industry's reliance on the export market, stating that fluctuating global supply and demand has contributed to domestic price volatility. Citing fluctuations in grower returns over the previous eleven years, a witness correlated record low returns of $1,280 per ton and record high returns of $3,710 per ton with events impacting trade relationships and global demand.

Witnesses argued that less reliance on export markets and increasing domestic demand for California walnuts would lead to more stable grower returns. According to a recent study commissioned by the Board, only 40 percent of U.S. households purchase walnuts on a regular basis and domestic consumption has remained at roughly one-half pound of walnuts per person annually for the past twenty years. Based on this evidence, witnesses argued that increasing domestic demand would be a strategically sound approach to offsetting anticipated downward pressure of projected increases in domestic supply on domestic prices.

According to the record, strategic planning efforts for future market stabilization began in early 2019 with the formation of the Board's Marketing Order Revision Committee (MORC) and a review of section 7 U.S.C. 608c(6)(I) of the Act, which provides credit-back authority for walnuts. Further, a study of similar programs under the Federal marketing orders for almonds and dried prunes produced in California piqued the MORC's interest in developing a credit-back program for walnuts.

According to the record, MORC members concluded that adding credit-back authority for promotional activities would encourage handlers to build upon the work the Board does to grow domestic consumption. The credit-back program would allow for the handlers to promote their brands through various activities, including but not limited to, money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media. Witnesses explained that while promotional activities of the Board and handlers would be similar, handlers' ability to market their branded products would spur both marketing innovation and consumer demand in a way that the Board is not able to accomplish on its own. A full list of qualified activities is listed in proposed § 984.546 of the proposed amendatory language of this recommended decision.

The proposed amendment further specifies that all promotional activities and related creditable expenditures eligible for credit-back would be required to promote the sale of walnuts, walnut products or their uses, but not the production or farming of walnuts. According to the record, activities supporting the production or farming of walnuts would not be eligible because such activities would not contribute to increasing demand for walnuts, which is the intended purpose of the proposed credit-back program.

Witnesses stated that the anticipated cost impact on the industry, and on individual stakeholders, as a result of this proposal would be minimal given that the credit-back program would be funded by allocating a portion of the Board's existing annual promotion and marketing fund to that purpose. Therefore, witnesses argued that overall assessments would not increase as a result of this proposal. Witnesses clarified that, if the Board were to consider changing the annual assessment rate, such recommendation would be based on an overall budget analysis related to the Order's operating expenses.

One witness raised concerns over the potential lack of transparency between handlers and growers, arguing that handlers would be able to deduct marketing expenses from payments to growers and then receive credit for those expenses without disclosing or passing on any benefit to the growers. Proponents of the proposed amendment countered this statement by explaining that increased demand for California walnuts, regardless of the brand under which they are sold, would benefit all stakeholders within the industry. Educating consumers to incorporate walnuts into their diets would lead to long-term increases in demand, which would in turn provide a stable market for growing domestic production.

Without increased marketing, product innovation and market penetration, proponents argued that the anticipated supply would lead to market prices below the cost of production.

The witness also argued that producers ultimately bear the assessment burden. USDA clarifies that California walnut handlers are required under both the Act and the regulation of the Order to pay assessments. Assessments are collected on a pro rata basis, with each handler's assessment due under the Order being equal to the volume of California walnuts handled multiplied by the assessment rate in effect at that time.

Regarding the assessment burden, witnesses further explained that each handler's access to credit-back reimbursements would be limited to the pro rata assessment obligations of that handler. This means that the credit-back amount available to each handler would be determined by that handler's percent of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget. For this reason, witnesses argued that the proposed credit-back program would equitably provide all California walnut handlers with access to marketing and promotion support commensurate to the size of their operation.

According to the record, the amount each handler could receive as reimbursement per creditable expenditure would be the value of the expenditure multiplied by the reimbursement rate. Total reimbursements for any given marketing year could not exceed a handler's total available credit-back calculated for that year; reimbursement per creditable expenditure at any given time would be limited to the amount a handler had paid in pro rata assessments at the time of the reimbursement request. The credit-back program budget and the reimbursement rate for creditable expenditures would be recommended annually by the Board and would be subject to approval of the Secretary.

If implemented, this authority would also allow the Board to recommend different credit rates for different products or different marketing promotion activities. Witnesses explained that having the flexibility to recommend different rates may be helpful in encouraging different types of handler activities to supplement the Board's marketing plan and priorities in the future.

Witnesses explained that different rates for different activities would not be used immediately, and that initially one rate would be applied to a broad scope of activities. This approach would allow the industry and Board staff to become familiar with the credit-back concept. If successful, the Board would have the option of recommending differing rates for approval by the Secretary. Witnesses also noted that the proposed authority would not require that the Board offer a credit-back program annually and that the decision whether to forego the program in any given year would also be made during the annual Board budget process.

The proposed amendment would also allow the Board to recommend alternative methods to reimbursement for issuing credit in the future if warranted. Witnesses explained that, if implemented, credit-back would initially be issued as a reimbursement upon approval of handler-submitted documentation of creditable expenditures by Board staff. Reimbursement in the form of a check issued to the handler would provide a clear, traceable transaction, thereby facilitating recordkeeping and compliance during the program's implementation. The proposed rules regarding reimbursement are specifically addressed in Material Issue 2. Any changes to the reimbursement method for credit-back would require a recommendation by the Board and approval by the Secretary.

According to the record, the proposed amendment would benefit the entire industry. Given that the proposed credit-back would only offset a portion of handler activity costs, witnesses explained that the handler-paid portion would result in an overall industry increase in total marketing and promotion investment. If successful, the increased efforts would result in a growth of domestic consumer demand for walnuts and walnut products and could correlate into greater returns to both growers and handlers.

Regarding industry stakeholder awareness of the proposed amendments, representatives of the Board stated that the idea of a credit-back program was publicly discussed at a Board meeting in May 2019, before being presented and unanimously recommended by the Board as an amendment to the Order on September 13, 2019. Leading up to the Board's recommendation, the MORC held several meetings where members discussed and debated the merits of the proposed language, possible alternatives, potential benefits, potential costs to staff, and possible compliance issues.

USDA is recommending one clarifying change to the proposed language in § 984.46 paragraph (a), which would add credit-back authority. USDA has determined that the language presented in the Notice of Hearing lacked a reference to the proposed, new paragraph (b) and only included a reference to proposed, new paragraph (c). This correction was discussed at the hearing and a witness clarified that proposed, new paragraphs (b) and (c) were both necessary references in the proposed revision to § 984.46 paragraph (a), and that the omission of the reference to paragraph (b) was an oversight. USDA has revised the proposed language so that both proposed new paragraphs are referenced. This new language is included in the proposed regulatory text of this recommended decision.

For the reasons stated above, it is recommended that § 984.46 be amended to add credit-back authority under the Order.

Material Issue Number 2—Credit-Back Program Requirements

A new § 984.546 should be added to establish requirements effectuating Material Issue 1. Corresponding changes should also establish a new Subpart D with the heading ''Research and Development Requirements,'' under which § 984.546 would be listed. In addition, § 984.547 should be reserved.

If the authority recommended under Material Issue I were implemented, requirements would be needed to effectuate it. Witnesses at the hearing expressed the need to implement the proposed credit-back program as quickly as possible and requested that USDA conclude the amendment process in tandem with the beginning of the 2020–2021 marketing year, which begins September 1, 2020. By including proposed requirements alongside the proposal to add credit-back authority, witnesses aimed to expedite the full implementation of the program.

According to the record, the Board is recommending a credit-back rate of $0.70 cents for each handler dollar spent on qualified activities eligible for credit-back reimbursement up to each handler's pro-rata share of assessments paid into the allocated credit-back fund. During its annual budget process, the Board would designate a credit-back fund based on forecasted production and anticipated assessment revenue. The per handler pro-rata share of the credit-back fund would be calculated by multiplying the budgeted credit-back fund by each handler's percentage of walnuts handled of the previous marketing year's total walnuts. The Board would then communicate to handlers the availability of the credit-back fund and their pro-rata portion of that fund.

The following is a sample calculation of a handler's pro-rata portion of a hypothetical credit-back fund based on an assumed total industry production of 625 million hundred weight assessed at $0.04 per hundred weight, and where the credit-back fund is ten percent of the total Board budget for that year and the handler's share of the total industry's walnut production handled.

To calculate the total assessments collected for that year, multiply the total production by the assessment rate for a result of $25 million (625 million × $0.04 = $25 million). To calculate the credit-back budget, multiply the total Board budget by 10 percent for a result of $2.5 million. To calculate the pro rata share of the credit-back fund allocated to that handler, multiply the total credit-back fund by the handler's pro rata share for a result of $250,000.

If the reimbursement level is set at 70 percent, one can calculate the creditable expenditures the handler would have to spend on qualified activities promoting products containing 100 percent walnuts in order to receive their full amount of pro rata share by dividing the pro rata share by the reimbursement rate. Two hundred and fifty thousand dollars divided by 70 percent results in a total necessary expenditure of $357,143. At this rate, the handler would spend $357,143 on qualified activities, of which $250,000 would be reimbursed, and $107,143 would be paid for by the handler's own investment ($250,000/.70 = $357,143).

TABLE 1—EXAMPLE OF BOARD CREDIT-BACK PROGRAM BUDGET AND HANDLER PRO RATA SHARE

	Calculation	Value
Credit-Back Program Budget:		
A. Total production (cwt)		625,000,000
B. Assessment rate ($ per cwt)		$0.04
C. Board Annual Budget	C = A * B	$25,000,000
D. Share of Board budget allocated to Credit-Back program		10%
E. Credit-back program annual budget	E = C * D	$2,500,000
Handler Pro Rata Share:		
F. Handler share of acquisition		10%
G. Maximum reimbursement to a handler with 10% of annual walnut acquisitions	G = E * F	$250,000
H. Credit-Back percentage rate		70%
I. Total creditable expenditures on qualified promotional activities of *walnut-only products* for handler to get full reimbursement (100% walnuts).	I = G/H	$357,143

According to the record, the MORC discussed varying levels of reimbursement from 50 cents to 65 cents, and ultimately recommended 70 cents as a level of reimbursement. The 70-cent level was determined to attract handlers to participate and encourage use of the proposed program with the goal of spurring increased investment in walnut promotion and marketing.

Paragraph (a) of proposed § 984.546 addresses requirements regarding timeliness of the reimbursement claim and the credit-back rate. Witnesses explained that handlers would be able to apply for credit-back on the expenses of qualified activities completed within the marketing year. Handlers would provide proof of payment and documentation of qualified activities to the Board for review. Once the Board has approved the claim, the handler would receive a reimbursement for 70 percent of the creditable expenditures of the qualified activity up to the handler's pro-rata share of the credit-back fund. If a credit-back claim for expenses is made prior to the end of the marketing year, the handler must also have paid sufficient assessments into the credit-back fund to cover their reimbursement.

According to the record, a credit-back reimbursement for a creditable expenditure of $10,000 promoting a product containing 100 percent walnut content, such as walnut butter, would be calculated by multiplying the cost of the activity by the percentage of walnut content and the reimbursement rate. This calculation results in a credit-back reimbursement of $7,000 to the handler and is captured in the following table, Scenario One.

SCENARIO ONE

[100% Walnut product]

	Calculation	Value
J. Walnut product contains 100% walnuts		100%
K. Total cost of qualified activity		$10,000
L. Credit-back reimbursement rate		70%
M. Amount reimbursed (credit-back) to handler for walnut 100% product	M = K * J * L	$7,000

The proposed language also states that claims for credit-back on expenses must be made within 15 days after the end of the marketing year. Witnesses explained that 15 days would be reasonable given that most handlers have annual marketing plans that would allow them to accurately accrue and submit documentation on a timely basis. Further, witnesses explained that most handlers would be likely to submit credit-back claims directly after the conclusion of qualified activities. Therefore, handlers would most likely already have submitted claims prior to the end of the marketing year.

Paragraphs (b) and (c) of proposed § 984.546 address requirements regarding the importance of assessment payments and handler eligibility for reimbursement under the proposed credit-back program.

Proposed § 984.546(b), ''Assessment payments,'' states that handlers are responsible for assessment payments under § 984.69 of the Order and that a handler must be current on all assessment payments prior to receiving credit-back for creditable expenditures. Witnesses explained that because the credit-back program would be funded by assessments, a handler must be current with his or her assessment

obligation prior to receiving a reimbursement.

To that end, proposed § 984.546(c), ''Handler eligibility for reimbursement,'' states that credit-back for qualified activities would only be issued to the handler who performed such activities. Witnesses explained that this requirement would prevent third parties or affiliates who might be partnered with a handler for a specific promotional activity from being eligible to claim or receive credit-back reimbursement.

If implemented, the credit-back program would run on an annual basis. As previously explained, the Board would recommend funding for the program as part of its annual marketing year budget process. The Board's activities, including the administration of the Order, are paid for by assessments paid by handlers during the applicable marketing year. For this reason, proposed § 984.546(d), ''Applicability to marketing year,'' states that credit-back would only be granted for creditable expenditures for qualified activities that are conducted and completed during the marketing year for which credit-back is requested. Witnesses explained that if a handler's activities extended beyond one marketing year, that handler could request reimbursement only for those creditable expenditures applicable to the marketing year in which they were completed.

Proposed § 984.546(e), ''Qualified activities,'' details requirements applicable to creditable expenditures resulting from qualified activities in paragraphs (e)(1) through (4). According to the record, the credit given for creditable expenditures resulting from qualified activities would be commensurate with accepted professional practices and rates for the type of activity conducted. Witnesses explained that this requirement would be necessary to ensure that reimbursements are not unfairly above or below standard market rates. In the case of claims for credit-back for activities not covered by specific and established criteria, the Board would review the expenses claimed against rates for similar activities to ensure consistency in reimbursement practices.

Regarding the kinds of activities that would be considered qualified for credit-back reimbursement, witnesses stated that the clear and evident purpose of each qualified activity should be to promote the sale, consumption or use of California walnuts, both inshell and shelled, and their products. Witnesses were careful to explain that qualified activities should focus on increasing demand. For this reason, no credit would be given for any activity that targets the farming or grower trade.

Similarly, credit-back would not be allowed for travel expenses, or for any promotional activities that result in price discounting. Travel expenses are considered normal business activities that do not directly promote the sale or consumption of California walnuts. Witnesses explained that price discounting, or offering a price below market levels for promotional purposes, would also be excluded from reimbursement eligibility because the practice does not directly promote the sale or consumption of California walnuts at market prices.

Regarding activities qualified for credit-back, proposed §§ 984.546(e)(5)(i) and (ii) put forward the following list: Paid media directed to end-users, trade or industrial users, and paid advertising space or time, including, but not limited to, newspapers, magazines, radio, television, online, transit, and outdoor media (including standard agency commission costs not to exceed 15 percent of gross expense); market promotion, marketing research (except pre-testing and test-marketing of paid advertising), and trade and consumer product public relations (not including advertising or public relations agency fees); in-store demonstrations, production of promotional materials, sales and marketing presentation kits, etc. (excluding couponing); and trade show booth rentals, services, and promotional materials.

According to the record, expenses for pre-testing and test-marketing of paid advertising, public relations agency fees and couponing would not be considered creditable expenditures as they also are considered a normal cost of business and do not directly meet the criteria of promoting sales or consumption.

Proposed § 984.546(e)(5) addresses promotional activities involving joint activities, handler-owned distribution of products, and promotional activities conducted under a State or Federal trade program.

For qualified credit-back activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, witnesses stated that the amount allowed for credit-back would reflect that portion of the activity represented by walnuts. Witnesses explained that when walnuts are marketed with other non-walnut items (other nuts, dried fruits, etc.) eligible credit-back would be limited to the walnut percentage of that product. Creditable expenditures to support walnuts used as an ingredient in such a manufactured food product would receive credit-back based on the proportionate share of walnuts included in the product.

According to the record, an example of the above would be a snack bar with multiple ingredients, including 30 percent of each walnuts, almonds and cashews and an additional 10 percent of non-nut ingredients. If the total cost to the handler for this activity was $10,000, the handler could claim the percentage of the activity related to walnuts, or 30 percent, which would equal $3,000 ($10,000 × .3 = $3,000). At a reimbursement rate of 70 percent, the handler would receive $2,100 in credit-back ($3,000 × .7 = $2,100). This calculation is replicated in the table below, Scenario Two.

SCENARIO TWO

[30% Walnut product]

	Calculation	Value
N. Walnut product contains 30% walnuts		30%
O. Total cost of qualified activity		$10,000
P. Credit-back reimbursement rate		70%
Q. Total creditable expenditure on *partial walnut products* for handler to get partial reimbursement (for 30% walnuts).	Q = O * N	$3,000
R. Amount reimbursed (credited-back) to handler for partial walnut product	R = Q * P	$2,100

In addition, the handler's name or brand may be included on the product packaging, but the words ''California Walnuts'' must always be included on the product packaging. Witnesses stated that the inclusion of ''California Walnuts'' on packaging was important given that the intent of the credit-back program was to promote the consumption of all California walnuts, not just those under a singular brand. Witnesses further clarified that omission of this wording would disqualify an otherwise creditable expenditure from being reimbursable.

For products owned or distributed by the handler, witnesses stated that the walnut product being promoted must list the ownership or distributorship on the package and display the handler's name and the handler's brand. Similarly, the words ''California Walnuts'' must always be included on the primary face label.

Based on record evidence, USDA is recommending a clarifying change to the proposed regulatory text in § 984.546(e)(5)(iii). Current wording of this proposed paragraph does not adequately state that in all promotional activities, regardless of whether a handler is operating independently or in conjunction with a manufacturer, or whether promoting a product that is solely walnut content or walnuts are a partial ingredient, the words ''California Walnuts'' must be included in the labeling in order for that activity to qualify as a creditable expenditure. USDA is recommending this change in conformance with witness testimony clarifying the intent of the proposed language. The revised language is included in the proposed regulatory text of this recommended decision.

Regarding handler promotional activities pursuant to a contract with the Foreign Agricultural Service (FAS), USDA, and/or the California Department of Food and Agriculture (CDFA), proposed § 984.546(e)(5)(iv) states that these activities would not be eligible for credit-back unless the Board is administering the foreign marketing program, and the handler certifies that he or she would not be reimbursed by either FAS or CDFA for the amount claimed for credit-back. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA would not be eligible for credit-back.

Witnesses explained that FAS and CDFA offer various promotional programs to which handlers can apply. If a handler were to receive support from one of those programs and apply for credit-back reimbursement as well, that handler would effectively be receiving two forms of support for the same activity. Witnesses reiterated that the intent of the credit-back program is to encourage handler-led promotion and marketing activities to increase demand for walnuts by offsetting a portion of those costs with a partial reimbursement of their assessment paid. Collecting double payments from two sources for the same activity defeats the purpose of extending promotional funds to increase the overall level of marketing activity within the industry.

Handlers would provide proof of payment and documentation of qualified activities to the Board for review. Once the Board has approved the claim, the handler would receive a reimbursement for 70 percent of the expense of the qualified activity up to the handler's pro-rata share of the credit-back fund. If a credit-back claim for expenses is made prior to the end of the marketing year, the handler must also have paid sufficient assessments into the credit-back fund to cover their reimbursement. The Board's proposal also states that claims for credit-back on expenses must be made within 15 days after the end of the marketing year.

According to the record, proposed § 984.546(e)(6), ''Credit-back Reimbursement claims,'' to obtain credit-back for creditable expenditures, a handler's claim would need to include a description of the activity and when and where it was conducted and an actual sample, picture or other physical evidence of the qualified activity. In addition, copies of all invoices from suppliers or agencies, and all canceled checks or other proof of payment issued by the handler in payment of these invoices, must also be submitted to the Board for review.

If the claim is validated, the Board would issue a check to the recipient handler within 30 days of its receipt. If a claim is not sufficiently documented or does not reflect qualified credit-back activities, the Board would deny it. An appeal process would afford a handler with a denied claim the opportunity to appeal the denial.

Witnesses stated that the proposed credit-back program requirements were designed with an appeals process as a mechanism to address any unforeseen issues that may arise. If implemented, Board staff, Board members and walnut handlers will require time to adjust to a new business process. Proposed § 984.546(f), ''Appeals,'' outlines this process and states that the appeal process would begin with the Executive Committee's (Committee) review of the Board staff's decision. To trigger this review, the affected handler would need to submit a written request that includes permission to share the specific information relating to the claim in question with the Committee. Appeals could be personally presented by the affected handler or presented by Board staff. If the Board staff presents the appeal, the identity of the affected handler would be kept confidential.

The proposed paragraph further provides that if the affected handler disagrees with the decision of the Committee, the handler could request that the Board review the Committee's decision. If the handler disagrees with the decision of the Board, the handler, through the Board, could request that the Secretary review the Board's decision.

Finally, witnesses explained that the proposed regulations would provide for a mechanism to make future adjustments to the program's operation if needed. While the MORC and the Board attempted to capture all pertinent operational details, implementation, if approved, could bring to light necessary adjustments for more efficient and effective operation. If any such adjustments were necessary, the Board could make recommendations through the notice and comment process for ultimate approval by the Secretary.

In its recommendation, the Board stated that the proposed changes have the broadest possible support from the industry. The proposed amendments were presented and discussed at several meetings involving California walnut handlers and growers.

For the reasons stated above, it is recommended that a new § 984.546, including the clarifying change recommended by USDA to § 984.546(e)(5)(iii) discussed above, should be added to establish requirements effectuating Material Issue 1. Corresponding changes should also establish a new Subpart D with the heading ''Research and Development Requirements,'' under which § 984.546 would be listed. In addition, § 984.547 should be reserved.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions 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.

During the hearing held on April 20 and 21, 2020, interested parties were invited to present evidence on the probable regulatory impact on small businesses of the proposed amendment to the Order. The evidence presented at the hearing shows that the proposed amendment would not have a significant negative economic impact on a substantial number of small agricultural producers or handlers.

Eight grower and handler witnesses testified at the hearing. All eight witnesses were growers and five were also handlers. Four testified that they were small walnut growers according to the Small Business Administration (SBA) definition and four were large. Of the five who were handlers, one was small, and four were large.

All five who were both handlers and growers expressed support for the proposed amendment. Of the three remaining grower witnesses, two stated their support. One grower reported that he had concerns but did not specifically oppose the amendment. Therefore, in their role as growers, 7 out of 8 witnesses supported the amendment, and stated that they expected to see significant benefits from the additional promotion expenditure that would be authorized by the amendment and would not incur additional costs. The benefits and impacts of the proposed amendment are explained in the following three sections: (a) Walnut Industry Background and Overview, (b) Domestic Market Demand for Walnuts, and (c) Estimated Economic Impact of the Proposed Credit-Back Program.

Walnut Industry Background and Overview

According to the hearing record there are approximately 4,400 producers and 92 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

A small handler as defined by the SBA (13 CFR 121.201) is one that grosses less than $30,000,000 annually. A small grower is one that grosses less than $1,000,000 annually.

Record evidence showed that approximately 82 percent of California's walnut handlers (75 out of 92) shipped merchantable walnuts valued under $30 million during the 2018–2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), showed that 86 percent of California farms growing walnuts had walnut sales of less than $1 million.

In an alternative computation using NASS data from the hearing record, the 3-year average crop value (2016–2017 to 2018–2019) was $1.24 billion. Average bearing acres over that same 3-year period were 333,000. Dividing crop value by acres yields a revenue per acre estimate of $3,733. Using these numbers, it would take approximately 268 acres ($1,000,000/$3,733) to yield $1 million in annual walnut sales. The 2017 Agricultural Census data show that 80 percent of walnut farms in 2017 were below 260 acres. Therefore, well over three-fourths of California walnut farms would be considered small businesses according to the SBA definition.

Walnuts bloom in March and April, and the harvest of the earliest varieties begins in the first part of September. As later varieties mature, the harvest continues into November. The crop comes in from the field at about 25 percent moisture and the hulling and drying process typically takes place within 24 hours. The nuts are hulled (removal of the green husks) and dried to about 7 percent moisture before delivery to a handler. Some growers have their own hulling and drying equipment and others pay for this service. Drying to seven percent moisture keeps the nuts stable in storage and minimizes deterioration.

Once received by the handler, shelling varieties are shelled and have a shelf life of approximately 12 months. Unshelled varieties are cleaned, sized, and put into storage. Both shelled and unshelled nuts are shipped and distributed to customers throughout the marketing year. Approximately 75 percent of the California walnut crop is sold as kernels (shelled). Witnesses testified that advances in processing and packaging technologies continue to improve product quality, consistency, and shelf-life.

Weather is one of two main factors driving crop size variability, a significant feature of the walnut market. In some years, climatic conditions may contribute to fungus or other issues that damage the crop and cause nuts to fall prior to harvest. With walnuts grown over a large geographic area, some regions will have better weather than others in any particular year. Crops were larger in 2015 and 2018 and smaller in 2017 and 2019.

The other key variability factor is ''alternate bearing'' (a natural tendency of several types of tree nuts, in which a large crop is often followed by a small crop). As trees mature, alternate bearing can become more pronounced, and for many years this had a big impact on crop size variability. With recent new plantings, the average age of producing trees in California has dropped. There is less of an alternate bearing tendency with younger trees. Crop sizes have become less variable as younger trees reach bearing age, which typically occurs in the fifth year. Older trees are replaced with varieties with improved quality characteristics to meet changing consumer demand. Newer varieties are generally more productive, contributing to higher yields per acre and greater production.

The hearing record shows that crop size variability, particularly the reduced availability of walnuts in short crop years, continues to contribute to loss of demand, as some buyers of kernels as ingredients in baked goods and other products shift to other tree nuts. These lost market opportunities are additional factors in the industry's interest in product diversification through a credit-back program.

Additional factors that affect current market conditions are the longer-term supply impacts of growers responding to market signals. If producers decide to plant more trees because of strong market prices, such as in the 2011–2014 time period, they receive those trees one or two years later, based on contracts that vary with the type of nursery stock. This time lag, and penalties associated with dropping a planting contract, contribute to continued planting even after market prices drop and growers might otherwise not want to plant. For these reasons, there is a delayed response in planting new trees, and a delayed response in reducing the level of planting when prices and revenue per acre decline, such as in 2015–2018. One witness estimated that the rate of tree planting in recent years is about three times greater than tree removal. Another key factor is that the time from tree planting to bearing nuts is typically five years.

Record evidence shows that walnut production exceeded 600,000 inshell tons every season starting in 2015–2016. Witnesses testified that a key factor in their support of new demand expansion initiatives is their expectation that walnut production is likely to be at or above 700,000 tons within one or two seasons and may exceed 800,000 tons a few years later.

The hearing record shows that farm management decisions made years ago will have a large impact on walnut supply for the coming years, contributing to grower and handler support for major initiatives to increase demand, including credit-back.

About two-thirds of the walnut crop is typically exported, and for many

years, increasing international demand facilitated expansion of the walnut market. China emerged as a major walnut buyer, but also began large scale planting of walnuts. Prices continued to improve for years, reaching $1.86 per pound, ($3,710 per ton) in 2013–2014. As China's new plantings started coming into production, world walnut prices began to decline. By 2017–2018, walnut prices rebounded as Turkey and other Middle eastern countries took up some of the slack in world market demand, according to the hearing record.

Hearing evidence provided various reasons for the decline in walnut crop value since the peak level of $1.9 billion in 2014–2015. One was reduced export market opportunities. With increased trade barriers from China and India, significant volumes were shifted into other export markets, driving prices downward. Walnut production was also growing in Chile and Europe. The 2018–2019 price fell to $0.65 per pound ($1,300 per ton). With the reduced reliability of the international market, the industry is increasingly looking for ways to increase demand in the U.S. domestic market.

The hearing record shows that most of the grower and handler witnesses stated that a key reason for seeking credit-back authority was the need to increase demand after years of unfavorable marketing conditions. Witnesses stated that a key factor in their support of seeking new ways to increase market demand was several years of deteriorating profitability.

Hearing evidence included data that facilitated comparing farm revenue per acre to cost of production, a key measure of walnut farm profitability. Tables 2 and 3 illustrate the decline in profitability by comparing two four-year periods with very different financial outcomes, 2011 to 2014 and 2015 to 2018.

TABLE 2—CALIFORNIA WALNUTS: COST OF PRODUCTION DATA FROM UNIVERSITY OF CALIFORNIA EXTENSION

Year	Average yield: tons per acre [1] (a)	Average yield: pounds per acre (b)	Sample yield (from Table 5 of UC study) that is closest to NASS yield in column (b) [2] (c)	Sample costs per acre associated with yield shown in column (c) [2] (d)
2011	1.74	3,480	.....	.....
2012	1.84	3,680	3,400	$3,318
2013	1.76	3,520	4,000	4,015
2014	1.97	3,940	.....	.....
2011–2014 avg	1.83	.....	.....	3,667
2015	2.02	4,040	4,500	4,509
2016	2.19	4,380	.....	.....
2017	1.88	3,760	4,500	5,574
2018	1.93	3,860	4,500	5,283
2015–2018 avg	2.01	.....	.....	5,122

[1] Source: NASS, USDA.
[2] Source: "Table 5. Ranging Analysis—Walnuts—Costs per Acre and Per Pound at Varying Yields to Produce Walnuts." Table 5 appears in each of the following five UC Cooperative Extension studies: "Walnuts Cost and Returns Study, Sacramento Valley," UC Coop. Extension—2012, 2015, 2018. "Walnuts Cost and Returns Study, San Joaquin Valley North", UC Coop. Extension—2013, 2017. Sample yields appear in column 2 of Table 5 in each publication.

Table 2 displays cost of production numbers that represent both time periods. University of California Extension conducted two cost of production studies in the 2011–2014 time period, and three studies between 2015 and 2019. Each of the five studies had ranges of production cost figures associated with different yields. To be representative of a typical or average walnut producer, the costs selected to present in column (d) were associated with University of California study yields (column c) closest to the NASS average annual yields for that year (column b).

The average production cost per acre figures for 2011–2014 and 2015–2018 were $3,667 and $5,122, respectively. Those figures were transferred to column (d) of Table 3, and the associated average yields (1.83 and 2.10 tons per acre) appear in column (b) of Table 3.

TABLE 3—CALIFORNIA WALNUTS: PRODUCER GROSS RETURN, COST OF PRODUCTION, NET RETURN

Range of years	Season average producer price, $/ton [1] (a)	Average yield: tons per acre [2] (b)	Producer gross return per acre (c) (a) * (b)	Total cost of production per acre [3] (d)	Producer net return per acre (gross return minus cost) (e) (c) − (d)
2011–2014	$3,245	1.83	$5,930	$3,667	$2,264
2015–2018	1,828	2.01	3,664	5,122	−1,458

[1] Source: NASS, USDA.
[2] Four-year averages computed in Table 1, based on annual NASS yield data.

[3] Computed in Table 1, based on U. of California Extension cost of production studies. For 2011–2014, the cost of production per acre is a two-year average (2012, 2013). For 2015–2018, the cost per acre is a 3-year average (2015, 2017, 2018).

Table 3 uses the data from Table 2 to show how the walnut farm profitability declined between the two time periods. Producer gross returns per acre for each of the two four-year time periods (column (c)) were computed by multiplying average yield by average price. Subtracting cost of production in column (d) yields the producer net return in column (e).

The two producer net return numbers in column(e) of Table 3 are the key results of this cost and return analysis. Four years of walnut farm profitability, represented by producer net return per acre of $2,264 for 2011–2014, were followed by four years of difficult market conditions (2015–2018), with a negative average net return figure (−$1,458). This analysis provides a numerical estimate that bears out the witness testimony that emphasized that a dramatic downward shift in their economic fortunes in recent years was a major factor in their support for a credit-back program that would leverage additional financial resources for handler-based promotional expenditures oriented toward increasing domestic demand for walnut products.

Domestic Market Demand for Walnuts

With reduced export market opportunities, the industry focused in recent years on ways to expand the domestic market. Record evidence showed that domestic per capita consumption has been approximately one-half pound for many years.

The Board commissioned a large consumer survey (with 1,000 respondents) showing that walnut products were reaching 40 percent of U.S. households, indicating significant expansion potential. The study pointed out significant differences among age groups, with 22 percent of those aged 18 to 24 being walnut consumers. Certain age groups are therefore the targets for demand expansion.

The majority of walnuts going into the domestic market are kernels (shelled). One key segment is retail sales, with the main product being bags of raw kernels. Another major segment is industrial—use as an ingredient by food manufacturers in making pastries and other products. Record evidence shows that walnut industry participants consider these two segments to be a narrow group of uses which needs to be expanded.

Witnesses reported that among the Board's strategic objectives, the top priority is retail sector growth, and the snack category in particular. However, current Board marketing programs are generic in nature and focus largely on the traditional forms of walnuts: Raw. Raw walnuts as a snack product are important components but expanding retail market development beyond the raw product is considered critical by industry participants, according to the hearing record. New consumption growth will mainly be achieved through new products and forms that appeal to a larger consumer audience, witnesses stated.

According to the hearing record, opportunities for significant walnut demand expansion include snack products such as roasted, salted, glazed, and trail mixes, and other new products such as beverages, spreads and meat alternatives. Witnesses stated that these demand expansion opportunities are best achieved through brand advertising and other handler-based promotional approaches, rather than the generic promotion currently authorized through the Order. Witnesses reported that this is a key reason why adding credit-back authority would be helpful for demand expansion—by providing incentives for handler-based product development and promotion.

A small handler stated that if credit-back authority is added to the marketing order, his firm was likely to partner with another company to create a snack product, providing evidence that credit-back authority would help small handlers as well as large ones.

Estimated Economic Impact of the Proposed Credit-Back Program

The hearing record included evidence of the estimated impact of the credit-back program on walnut grower total revenue and net return. Table 4 presents an illustrative example of the impact of handlers taking advantage of the credit-back incentive by increasing their promotional spending. Based on the assumptions shown in the table, walnut growers would see increased total revenue of $21.1 million (row K) and increased net return of $16.8 million (row L). The table shows that there are four computational steps that lead up to the final computations in rows K and L.

The first step is to estimate a typical annual budget of the Board ($25 million in row C) by multiplying the current assessment rate paid to the board ($0.04) by a number representing an annual walnut production level representative of recent years (625 million hundredweight [cwt]).

TABLE 4—CALCULATING THE IMPACT OF THE WALNUT CREDIT-BACK PROGRAM ON PRODUCER TOTAL REVENUE AND NET RETURN

	Calculation	Value
A. Total production (cwt)		625,000,000
B. Assessment rate ($/cwt)		$0.04
C. Total Board budget	C = A * B	$25,000,000
D. Share of budget allocated to Credit-Back program (%)		10%
E. Credit-Back program budget	E = C * D	$2,500,000
F. Credit-Back rate (%)		70%
G. Total advertising and promotion expenditures with Credit-Back program	G = E/F	$3,571,429
H. Increase in advertising and promotion expenditure	H = G − E	$1,071,429
I. Increase in TOTAL revenue per dollar of advertising/promotion [1]		$19.75
J. Increase in NET return per dollar of advertising/promotion [1]		$15.67
K. Increase in TOTAL revenue	K = H * I	$21,160,714
L. Increase in NET return	L = H * J	$16,789,286

[1] Estimates of total revenue and net return per dollar spent on promotion are from a report prepared for the Board by Dr. Harry M. Kaiser of Cornell University entitled "Economic Evaluation of the California Walnut Board's Advertising and Promotion Programs: An Analysis of the Direct and Indirect Impacts", July 5, 2018.

If the Board allocated 10 percent of a $25 million annual budget to the credit-back program, the funds available to allocate to pay handlers for eligible promotional spending would be $2.5 million (row E). According to the hearing record, this is a level of credit-back funding supported by growers and handlers.

Handlers would receive 70 percent of the amount they expended on creditable expenditures. If the Board expended its full annual credit-back budget of $2.5 million, the total promotional expenditure would rise to $3.57 million ($2.5/0.70) as shown in row G. The Credit-Back expenditure would create the incentive for handlers to spend the $2.5 million plus an additional $1.07 million (row H).

The final step is the overall economic impact on the walnut market of the increased spending on advertising and promotion. A 2018 economic analysis of walnut promotion impacts by Dr. Harry Kaiser (cited in the footnote of Table 4) showed that each dollar of walnut advertising and promotional expenditure yielded $19.75 in total revenue and $15.67 in net return to walnut growers (rows I and J). Multiplying $1.07 million by those two promotional impact-per-dollar figures yields the estimated increase in total revenue per year and net return per year of $21.16 million and $16.79 million, respectively, shown in rows K and L. Net return is what is returned to walnut growers after accounting for the cost of the promotion program.

Record evidence indicates that all industry members, growers and handlers, would benefit proportionally from an increase in demand brought about due to the credit-back program. The credit-back program would be funded by allocating to the credit-back program a portion of the total Board promotional budget, funded at the current assessment rate. With no increase in the Board's assessment rate, there would be no increased costs to growers or handlers.

All handlers, large and small, would benefit proportionally by participating in the credit-back program. Handlers will participate only if they decide that they will benefit, and would incur no costs if they choose not to participate. No handler can benefit disproportionately from the program, since a handler's maximum credit-back payment from the Board is based on that handler's share of total industry acquisitions from the prior year, according to the hearing record. As cited above, a small handler testified that their smaller size would not be a hindrance to using the credit-back program, because his walnut processing operation could develop a new product in partnership with another firm.

Consumers would benefit from product diversification of the walnut market. They could choose to buy any of the new products that become available, thereby adding new foods to their diet, at prices that fit within their food budget.

The record shows that the proposal to add authority to establish the credit-back program would, in itself, have no significant economic impact on producers or handlers of any size. If the proposed authority and the accompanying requirements were implemented, both benefits and costs could be anticipated. Costs of complying with the new program could include handler maintenance and delivery of receipts and documentation for reimbursement of creditable expenditures, but these would be minimal and are considered standard business practices. For the reasons described above, it is determined that the benefits of adding authority for a credit-back program would outweigh the potential costs of future implementation.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

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.

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR part 984) are approved under OMB No. 0581–0178 Vegetables and Specialty Crops. No changes in these requirements are anticipated as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

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.

Civil Justice Reform

The amendments to the Order 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 no later than 20 days after the date of entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings 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.

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

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which 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 order, as amended, and as hereby proposed to be further amended, prescribes, 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 order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written exceptions received within the comment period will be considered, and a producer referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 984

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

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, 7 CFR part 982 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.

■ 2. In § 984.46:

■ a. Designate and revise the existing paragraph as paragraph (a); and

■ b. Add paragraphs (b) and (c).

The revision and additions read as follows:

§ 984.46 Research and development.

(a) *Research and development authorities.* 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 and may be credited back pursuant to paragraphs (b) and (c) of this section.

(b) *Credit-back for promotion expenses.* The Board may provide for crediting the pro rata expense assessment obligations of a handler with such portion of his or her direct expenditure for marketing promotion, including paid advertising, as may be authorized. The credit-back amount available to each handler shall be determined by that handler's percent of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget. No handler shall receive credit-back for any creditable expenditures that would exceed the total amount of credit-back available to him or her for the applicable marketing year. Further, no handler shall receive credit-back in an amount that exceeds that handler's assessments paid in the applicable marketing year at the time the credit-back application is made. Marketing promotion expenses shall be credited at a rate recommended by the Board and approved by the Secretary, where the credit rate is based on the amount per dollar of marketing promotion expenses for creditable expenditures paid by a handler during the applicable marketing year. Credit may be paid directly to the handler as a reimbursement of assessments paid or may be issued as recommended by the Board and approved by the Secretary. The Board may also establish, subject to the approval of the Secretary, different credit rates for different products or different marketing promotion activities according to priorities determined by the Board and its marketing plan.

(c) *Creditable expenditures.* The Board, with the approval of the Secretary, may credit-back all or any portion of a handler's direct expenditures for marketing promotion including paid advertising that promotes the sale of walnuts, walnut products or their uses. Such expenditures may include, but are not limited to, money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media, including the actual standard agency commission costs not to exceed 15 percent, or as otherwise recommended by the Board and approved by the Secretary.

■ 3. Add subpart D to read as follows:

Subpart D—Research and Development Requirements

Sec.
984.546 Credit for marketing promotion activities, including paid advertising.
984.547 [Reserved]

Subpart D—Research and Development Requirements

§ 984.546 Credit for marketing promotion activities, including paid advertising.

(a) *Timeliness of reimbursement claim and credit-back rate.* For a handler to receive credit-back for his or her own marketing promotional activities pursuant to § 984.46, the Board shall determine that such expenditures meet the applicable requirements of this section. Credit-back may be granted in the form of reimbursement for all creditable expenditures paid within the applicable marketing year subject to the effective credit-back rate; *Provided,* that such creditable expenditures are documented to the satisfaction of the Board within 15 days after the end of that marketing year. Credit may be granted for a handler's creditable expenditures in an amount not to exceed that handler's pro-rata share of the credit-back fund. No more than 70 cents ($0.70) shall be credited back to a handler for every dollar spent on qualified activities.

(b) *Assessment payments.* The handler assessment is due as defined in § 984.69. A handler shall be current on all assessment payments prior to receiving credit-back for creditable expenditures.

(c) *Handler eligibility for reimbursement.* The Board shall grant credit-back for qualified activities only to the handler who performed such activities and who filed a claim for credit-back in accordance with this section.

(d) *Applicability to marketing year.* Credit-back shall be granted only for creditable expenditures for qualified activities that are conducted and completed during the marketing year for which credit-back is requested.

(e) *Qualified activities.* The following requirements shall apply to all creditable expenditures resulting from qualified activities:

(1) Credit-back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for credit-back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities.

(2) The clear and evident purpose of each qualified activity shall be to promote the sale, consumption or use of California walnuts.

(3) No credit-back will be given for any activity that targets the farming or grower trade.

(4) Credit-back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

(5) Credit-back shall be granted for those qualified activities specified (e)(5)(i) through (iv) of this section:

(i) Credit-back shall be granted for paid media directed to end-users, trade or industrial users, and for money spent on paid advertising space or time, including, but not limited to, newspapers, magazines, radio, television, online, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) Credit-back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product public relations (provided that no credit-back shall be given for related fees charged by an advertising or public relations agency);

(C) Sales Promotion (in-store demonstrations, production of promotional materials, sales and marketing presentation kits, etc., excluding couponing);

(D) Trade shows (booth rental, services, and promotional materials).

(iii) For any qualified activity involving a handler promoting branded products, a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or joint participation by a handler and a manufacturer or seller of a complementary product(s), the amount allowed for credit-back shall reflect that portion of the activity represented by walnuts. If the product is owned or distributed by the handler, in order to receive any amount of credit-back, the product must list the ownership or distributorship on the package and display the handler's name and the handler's brand. The words ''California Walnuts'' must be included on the primary, face label. Such activities must also meet the requirements of paragraphs (e)(1) through (5) of this section.

(iv) If the handler is engaged in marketing promotion activities pursuant to a contract with the Foreign Agricultural Service (FAS), USDA, and/or the California Department of Food and Agriculture (CDFA), unless the Board is administering the foreign marketing program, such activities shall not be eligible for credit-back unless the handler certifies that he or she was not and will not be reimbursed by either FAS or CDFA for the amount claimed for credit-back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA shall not be eligible for credit-back.

(6) *Credit-back Reimbursement claims.* A handler must file claims with the Board to obtain credit-back for creditable expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks or other proof of payment issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the qualified activity.

(ii) Handlers may receive reimbursement of their paid assessments up to their pro-rata share of available dollars to be based on their percentage of the prior marketing year crop total. In all instances, handlers must remit the assessment to the Board when billed, and reimbursement will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved credit-back claims will be mailed to handlers within 30 days of receipt of eligible claims.

(iv) Final claims for the marketing year pertaining to such qualified activities must be submitted with all required elements within 15 days after the close of the Board's marketing year.

(f) *Appeals.* If a determination is made by the Board staff that a particular marketing promotional activity is not eligible for credit-back because it does not meet the criteria specified in this section, the affected handler may request the Executive Committee review the Board staff's decision. If the affected handler disagrees with the decision of the Executive Committee, the handler may request that the Board review the Executive Committee's decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his or her discretion.

§ 984.547 [Reserved]

Bruce Summers,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0667; Airspace Docket No. 20–AGL–24]

RIN 2120–AA66

Proposed Amendment of Multiple Air Traffic Service (ATS) Routes in the Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend nine VHF Omnidirectional Range (VOR) Federal airways, V–15, V–26, V–55, V–78, V–100, V–159, V–175, V–219, and V–307, and two Area Navigation (RNAV) routes, T–285 and T–354, in the Northcentral United States. The modifications are necessary due to the planned decommissioning of the VOR portion of the Park Rapids, MN, VOR/Distance Measuring Equipment (VOR/DME); Sioux City, IA, VOR/Tactical Air Navigation (VORTAC); and Huron, SD, VORTAC navigation aids (NAVAIDs). The NAVAIDs provide navigation guidance for segments of the affected air traffic service (ATS) routes. The VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before September 21, 2020.