Proposed Rules

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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; Secretary's Decision and Referendum Order on Amendments to Marketing Order No. 984

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 984 (Order), which regulates the handling of walnuts grown in California and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. 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: The referendum will be conducted from November 30, 2020, through December 11, 2020. The representative period for the purpose of the referendum is September 1, 2018, through August 31, 2019.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237.

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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); 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); and a Recommended Decision issued on July 8, 2020, and published in the August 5, 2020, issue of the **Federal Register** (85 FR 47305).

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

The proposed amendments are based on the record of a public hearing held via videoconference technology on April 20 and 21, 2020. The hearing was held 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 of marketing agreements and orders (7 CFR part 900). 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 amendments proposed by the Board in this decision 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 7 CFR part 984 (referred to as ''the Order'') to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors. As such, USDA is recommending two clarifying changes: One to the proposed language in § 984.46(a) and the other to the proposed regulatory text in § 984.546(e)(5)(iii).

The proposed language in § 984.46(a) would add credit-back authority to the Order. 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(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 in the proposed regulatory text of this decision.

USDA is also recommending a clarifying change to the proposed regulatory text in § 984.546(e)(5)(iii). The originally proposed wording of this paragraph by the Board 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 decision.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on July 8, 2020, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by September 4, 2020. No exceptions were filed.

Final Regulatory Flexibility Analysis

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 final 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 seven 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 have a significant impact on walnut supply for the coming years, contributing to grower and handler support for major initiatives meant 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 California 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 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 form 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 would likely 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 illustrates 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

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

	Calculation	Value
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.

AMS is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or

transacting business electronically to the maximum extent possible.

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.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the August 5, 2020, issue of the **Federal Register** (85 FR 47305) are hereby approved and adopted.

Marketing Order

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

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

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 through 900.407) to determine whether the annexed order amending the order regulating the handling of walnuts grown in California is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of walnuts in the production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2018, through August 31, 2019.

The agents of the Secretary to conduct such referendum are hereby designated to be Terry Vawter and Jeffery Rymer, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; telephone: 559–487–5901; or fax: 559–487–5906 or Email: *Terry.Vawter@usda.gov* or *Jefferym.Rymer@usda.gov,* respectively.

Order Amending the Order Regulating the Handling of Walnuts Grown in California [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 984, regulating the handling of walnuts grown in California.

Upon the basis of the record, it is found that:

(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 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 that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing 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 California; 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.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of walnuts grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued on July 8, 2020, and published in the August 5, 2020, issue of the **Federal Register** (85 FR 47305) will be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 984

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

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. Revise § 984.46 to 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

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

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 in paragraphs (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); and

(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), (2), (3), (4), and (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) 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.

[FR Doc. 2020–22334 Filed 10–19–20; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–110; NRC–2015–0028; NRC–2009–0196]

Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider, within the scope of a Commission-directed rulemaking (Incorporation of Lessons Learned from New Reactor Licensing Process (Parts 50 and 52 Licensing Process Alignment)), the issue raised in a petition for rulemaking (PRM) submitted by Michael D. Tschiltz, on behalf of the Nuclear Energy Institute (NEI), dated January 15, 2015. The petitioner requested that the NRC amend its regulations to clarify and extend the applicability of its regulations related to risk-informed categorization and treatment of structures, systems, and components (SSCs) for nuclear power reactors. The petition was docketed by the NRC on February 6, 2015, and was assigned Docket No. PRM–50–110. The NRC has determined that the PRM has merit and is appropriate for consideration in the rulemaking process.

DATES: The docket for the petition for rulemaking, PRM–50–110, is closed on October 20, 2020.

ADDRESSES: Please refer to Docket IDs NRC–2015–0028 and NRC–2009–0196 when contacting the NRC about the availability of information for this petition. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket IDs NRC–2015–0028 and NRC–2009–0196. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- The NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- Attention: The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James O'Driscoll, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1325; email: *James.O'Driscoll@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Petition

The NRC received and docketed a PRM [1] dated January 15, 2015, submitted by Michael D. Tschiltz, on behalf of NEI. On March 27, 2015, the NRC published a notice of docketing in the **Federal Register** (80 FR 16308). The NRC held a public meeting on September 16, 2015, to gain further

[1] On February 25, 2014, Anthony Pietrangelo, on behalf of NEI (petitioner), submitted a letter (ADAMS Accession No. ML14056A278) requesting that the NRC issue a direct final rulemaking to amend § 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors,'' making it applicable to holders of combined licenses (COLs). The NRC staff reviewed the petitioner's request and concluded that it did not meet the NRC's acceptance criteria in § 2.802(c) for a PRM because the request did not include a description of the petitioner's grounds for and interest in the requested action. On April 11, 2014, under § 2.802(c), the NRC offered the petitioner an opportunity to meet the NRC's petition acceptance criteria within 90 days. On January 15, 2015, Michael D. Tschiltz, on behalf of NEI, filed a PRM on the same topic, and included a description of the petitioner's grounds for and interest in the requested action. The NRC determined that the petition met the threshold sufficiency requirements for a petition for rulemaking under § 2.802, ''Petition for rulemaking,'' and the petition was docketed as PRM–50–110.