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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–08–0091; FV09–984–1 FIR]

Walnuts Grown in California; Changes to Regulations Governing Board Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with a change, an interim final rule revising the administrative rules and regulations governing nominations for the California Walnut Board (Board). The Board locally administers the marketing order that regulates the handling of walnuts grown in California (order). This rule continues in effect an action that removes references to independent handlers, revises specifications under which groups of growers may submit nominations for certain grower positions on the Board, and corrects numerical references to other sections of the order. These changes are needed to bring the administrative rules and regulations into conformance with recently enacted amendments to the order concerning Board structure and nomination procedures.

DATES: *Effective Date:* April 1, 2009.

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

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov*.

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

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that revises the administrative rules and regulations governing Board nominations by removing references to ''independent'' handlers, adding language specifying that groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35% of the prior year's crop may submit nominations for grower positions on the ballots, and correcting references to order sections that were renumbered as a result of recent order amendments.

Section 984.35 of the California walnut marketing order provides for the allocation of grower and handler positions on the Board. Historically, some members represented the interests of a major industry cooperative, and some members represented independent interests. Some members represented the interests of certain production area districts, and some served the industry ''at large.'' Recently, the structure of the industry changed when the major cooperative handler became a publicly-traded corporation. Subsequently, the industry approved amendments to the order that restructured the Board to reflect the changes to the industry's composition. Language specifying membership allocation between cooperative and independent interests was removed from the order because all production area walnut handlers are now considered independent. Alternative membership allocation provisions were added to the order. Board membership positions are now allocated between growers and handlers, the specific Districts within the production area, and grower positions with no District affiliation (''at large'' positions). In the event that one industry handler handles 35 percent or more of the crop, such handler—and growers affiliated with such handler—are entitled to a given number of Board positions. As a result of the amendments, some sections of the order were renumbered.

Section 984.37 of the order provides authority for the Board, with the approval of USDA, to make changes to the Board nomination procedures specified in the order. The procedures are contained in the order's administrative rules and regulations. Prior to this action, § 984.437 of the regulations specified that if the ''at large'' grower position on the Board was assigned to represent independent growers, groups of ten or more growers who marketed a combined volume of 500 or more tons of walnuts through independent handlers in the prior year could propose a nominee for the ballot. The previous regulations also specified that groups of ten or more growers from

each district who marketed an aggregate of 500 or more tons of walnuts through independent handlers in the prior year could propose nominees for the independent grower positions in their districts.

The amended order no longer differentiates between cooperative and independent entities, and Board positions are no longer apportioned to represent either cooperative or independent entities. References in the order to independent handlers have been removed from the provisions specifying Board nominations. This rule continues in effect the action that changes § 984.437(a) and (b) of the administrative rules and regulations by removing references to independent handlers. Changes made to those paragraphs also specify that groups of ten or more growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to serve in the ''at large'' grower positions. Further revisions to the regulations specify that groups of ten or more growers from each district who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to represent each district. Finally, this rule also continues in effect the revision of certain references to renumbered order provisions in the regulations that are no longer correct.

This rule was unanimously recommended by the Board at its meeting on September 12, 2008.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. The Small Business Administration (SBA) defines small agricultural service firms as those whose annual receipts are less than $7,000,000, and defines small agricultural producers as those whose annual receipts are less than $750,000 (13 CFR 121.201).

There are currently 55 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,000 growers in the production area. USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.49 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at $2,320 per ton, which is considerably higher than the previous five-year average of $1,384 per ton.

At the time of the 2002 Census of Agriculture, which is the most recent information available, approximately 83 percent of California's walnut farms were smaller than 100 acres. Forty-seven percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.49 tons per acre would have been expected to produce about 149 tons of walnuts during 2007–08. At $2,320 per ton, that farm's production would have had an approximate value of $345,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $345,000 in 2007–08. This is well below the SBA threshold of $750,000, thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule continues in effect the action that revises the administrative rules and regulations governing the nomination of Board members. References to independent handlers are being removed from the regulations to conform to recent amendments to the order. Procedures for the nomination of grower members by groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop are being added. References to renumbered sections of the order are being corrected. This action imposes no additional cost or burden on growers or handlers of any size.

The Board unanimously recommended these changes, which were necessary to bring the order's administrative rules and regulations into conformance with the recently amended order. As such, no alternatives were considered practicable.

The Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on December 5, 2008. Copies of the rule were mailed or sent by facsimile to all walnut handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended February 3, 2009. No comments were received.

The interim final rule published in the **Federal Register** contained an incorrect reference to an order provision. Section 984.437 has been modified to include the correct reference.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the Board, and other information, it is found that finalizing the interim final rule as published in the **Federal Register** (73

FR 73995, December 5, 2008), with a change, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

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

■ Accordingly, the interim final rule amending 7 CFR part 984, which was published at 73 FR 73995 on December 5, 2008, is adopted as a final rule with the following change:

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 § 984.437 paragraphs (a) and (b) are revised to read as follows:

§ 984.347 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) With regard to Board grower member positions specified in § 984.35(a)(5) and (b)(6), any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a)(3) and (4) or § 984.35(b)(4) and (5) and who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

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Dated: February 24, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–4291 Filed 2–27–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–08–0074]

Soybean Promotion, Research, and Information Program: Amend Procedures To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the procedures to request a referendum under the Soybean Promotion, Research, and Consumer Information program, commonly known as the soybean checkoff program, by updating the number of soybean producers in the United States. The number of soybean producers, based on information provided by the Department of Agriculture (USDA), Farm Service Agency (FSA), is 589,182.

Additionally, this rule amends the regulations pursuant to administrative changes to Web site addresses and office locations made for the USDA's Agricultural Marketing Service (AMS).

DATES: *Effective Date:* March 3, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to *Kenneth.Payne@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The final rule would not preempt any other Federal or State laws, regulations, or policies.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Regulatory Flexibility Act

AMS has determined that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). 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 disproportionately burdened.

For the purpose of the Request for Referendum, the Secretary will use the most recent number of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA is 589,182 and was obtained using information from 2006 and 2007 acreage reports. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one