

use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule regarding this action was published in the **Federal Register** on June 30, 2010 (FR 75 37740). Copies of the proposed rule were also made available to all apricot handlers by Committee staff. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending July 15, 2010, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2010–11 fiscal period began on April 1, 2010, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) Washington apricots are currently being harvested and shipped to market; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 15-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2010, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: August 17, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–21037 Filed 8–23–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–09–0036; FV09–984–4 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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

DATES: *Effective Date:* August 25, 2010.

FOR FURTHER INFORMATION CONTACT: Jeff Smutny, 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:

Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

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

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

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866. This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This final rule revises the quality regulations for shelled walnuts to require inspection and certification after chopping or dicing them into smaller pieces (manufacturing) instead of before manufacturing, and to establish a process for specifying that manufactured products smaller than eight sixty-fourths of an inch in diameter are derived from walnut pieces that have been inspected and certified to U.S. Commercial grade standards. This will result in more efficient and cost-effective handler operations and will certify the final size and grade of all manufactured walnut pieces. This rule

was unanimously recommended by the Board at a meeting on September 12, 2008.

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

Currently, all shelled walnuts are inspected and certified before manufacturing by the American Council for Food Safety & Quality (also known as DFA of California and hereinafter referred to as "DFA") to ensure the walnuts meet marketing order requirements for U.S. Commercial grade. Following inspection, walnut pieces may be further manufactured by chopping them into smaller pieces, or "end products." Pieces smaller than eight sixty-fourths of an inch that are accumulated during the manufacturing process are considered a byproduct of this process and are called "meal." Walnut meal is sold into the market for industrial use, such as in commercial bakery products.

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

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

Currently, meal may be co-mingled into one output bin as it is accumulated from the manufacturing of several different lots of shelled walnuts. When this occurs, the certificate number from each original lot of shelled walnuts is

transferred to the meal certificate. As a result, the certificate for one output bin of meal may include multiple certificate numbers.

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

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

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

A document also referred to as a "meal certificate" will be issued for the walnut meal accumulated during each manufacturing run. Because the meal most closely resembles the color, freshness, and other characteristics of the smallest end product produced during manufacturing, the meal can be affiliated with that end product. If the end product passes inspection and is certified, the certificate number assigned to that end product will be referenced on the meal certificate. If that

end product fails inspection, the meal created during the same manufacturing process will be rejected and disposed of pursuant to the requirements of § 984.64. However, the end product that failed inspection can be reconditioned, re-sampled, and presented again for inspection and certification.

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

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

Final Regulatory Flexibility Analysis

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

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

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

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.96 tons per acre would have been expected to produce about 196 tons of walnuts during 2008–09. At \$1,210 per ton, that farm's production would have had an approximate value of \$237,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$237,000 in 2008–09. This is well below the SBA threshold of \$750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

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

This final rule amends § 984.450 of the order's administrative rules and regulations by adding a new paragraph (c) that requires inspection and certification of shelled walnuts after manufacturing instead of before manufacturing, and establishes a process for specifying that walnut meal is derived from manufactured walnut pieces that have been inspected and certified to U.S. Commercial grade standards. This results in more efficient and cost-effective handler operations, and certifies the final size and grade of all manufactured walnut pieces.

Authority for these changes is provided in §§ 984.50(d) and 984.52 of the order.

Regarding the impact of the action on affected entities, this final rule should not impose any additional costs. It should reduce costs to handlers by streamlining and improving the production process. Handlers will no

longer need to track lots of shelled walnuts through the manufacturing process in order to tie those original lots to the manufactured end products and meal. Handlers will be able to more easily manage inventory and production since they will no longer be required to manufacture an entire lot of shelled walnuts at one time in order to transfer the certificate number of the original lot to each end product and the meal. Since handlers will no longer be required to transfer certificate numbers from an entire lot of shelled walnuts to multiple manufactured end products, a portion of a lot could be held for manufacturing or remanufacturing at a later date.

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

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

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

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large walnut handlers. As with all Federal

marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

In addition, the Board's meeting on September 12, 2008, when this action was considered, was widely publicized throughout the walnut industry. This issue was also deliberated at a Grades and Standards Committee meeting on May 20, 2008; a Board meeting on May 28, 2008; and a Grades and Standards Committee work group meeting on September 2, 2008. Like all Board meetings, these meetings were public meetings, and all interested persons were invited to attend the meetings and participate in deliberations on all issues. A proposed rule concerning this action was published in the **Federal Register** on June 21, 2010 (75 FR 34950). Copies of the rule were mailed or sent via facsimile to all Board members and walnut handlers. Finally, the rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 15-day comment period ending July 6, 2010, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. Both comments were made in support of the proposal.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

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

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place for the upcoming marketing year, which begins September 1, 2010. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, 15 days were provided for comments to the proposed rule.

List of Subjects in 7 CFR Part 984

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

■ For the reasons set forth in the preamble, 7 CFR part 984 is 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.

§ 984.450 [Amended]

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

§ 984.450 Grade and size regulations.

(a) *Minimum kernel content requirements for inshell walnuts for reserve disposition credit.* For purposes of §§ 984.54 and 984.56, no lot of inshell walnuts may be held, exported, or disposed of for use by governmental agencies or charitable institutions unless it meets the minimum requirements for merchantable inshell walnuts effective pursuant to § 984.50(a). * * *

* * * * *

(c) *Inspection and certification of shelled walnuts that are manufactured into products.* For purposes of §§ 984.50(d) and 984.52(c), shelled walnuts may be cut or diced without prior inspection and certification: *Provided*, That the end product, except for walnut meal, is inspected and certified. For purposes of this section, *end product* shall be defined as walnut pieces equal to or larger than eight sixty-fourths of an inch in diameter. *Walnut meal* shall be defined as walnut pieces smaller than eight sixty-fourths of an inch in diameter.

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

United States Standards for Shelled Walnuts (*Juglans regia*).

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

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

Dated: August 17, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–21010 Filed 8–23–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Doc. No. AMS–DA–09–0062; AO–14–A73, *et al.*; DA–03–10]

Milk in the Northeast and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule maintains the current fluid milk product definition’s compositional standard of 6.5 percent nonfat milk solids criterion and incorporates an equivalent 2.25 percent true milk protein criterion for determining if a product meets the compositional standard. This final rule also determines how milk and milk-derived ingredients should be priced under all Federal milk marketing orders when used in products meeting the fluid milk product definition. It provides exemptions for drinkable yogurt products containing at least 20 percent yogurt (by weight), kefir, and products intended to be meal

replacements from the fluid milk product definition. A referendum was held and the required number of producers approved the issuance of the orders as amended.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Henry H. Schaefer, Economist, USDA/AMS/Dairy Programs, Upper Midwest Milk Market Administrators Office, Suite 200, 1600 West 82nd Street, Minneapolis, Minnesota 55431–1420, (952) 831–5292, e-mail address: hschaefer@fmma30.com; or William Francis, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231—Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6274, e-mail address: william.francis@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule amends the fluid milk product definition in all Federal milk marketing orders. This rulemaking action maintains the current fluid milk product definition’s compositional standard of 6.5 percent nonfat milk solids and incorporates an equivalent 2.25 percent true milk protein criterion for determining if a product meets the compositional standard. This final rule also amends determining how milk and milk-derived ingredients should be priced under all Federal milk marketing orders when used in products meeting the fluid milk product definition. It exempts drinkable yogurt products containing at least 20 percent yogurt (by weight), kefir, infant formulas, dietary products (meal replacements) and other products that may contain milk-derived ingredients from the fluid milk product definition.

This administrative 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 Order 12866.

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

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department 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 the law. A handler is afforded the