

Proposed Rules

Federal Register

Vol. 65, No. 66

Wednesday, April 5, 2000

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. FV00-984-1 PR]

Walnuts Grown in California; Report Regarding Interhandler Transfers of Walnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the Federal marketing order for California walnuts (order) regarding reports of interhandler transfers of walnuts. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments.

DATES: Comments must be received by June 5, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moabdocket.clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist,

California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

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

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 the Secretary a petition stating that the order or 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 the Secretary would rule on the petition. The Act provides that the district court of the United States in any

district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revising the order's administrative rules and regulations regarding reports of interhandler transfers of walnuts. Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. This action was unanimously recommended by the Board at a meeting on February 18, 2000.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

Section 984.59 of the order provides authority for handlers to transfer walnuts between handlers. Paragraph (a) of that section states that inshell walnuts may be sold or delivered by one handler to another for packing or shelling within California. In such cases, the receiving handler assumes marketing order obligations with respect to the transferred walnuts, including assessment and inspection requirements. Paragraph (b) of § 984.59 pertains to transfers of walnuts when volume regulation is in effect. Specifically, handlers may, for purposes of meeting their reserve obligation, acquire walnuts from other handlers. In such cases, the buying handler assumes marketing order obligations with respect to the transferred walnuts, including assessment, reserve, and inspection

requirements. Paragraph (c) of § 984.59 provides that, with the exceptions stated in paragraphs (a) and (b) of § 984.59, whenever transfers of walnuts are made between handlers, the first handler thereof shall assume all marketing order obligations pertaining to the walnuts.

Currently, handlers are required to report interhandler transfers on monthly shipment reports, WMB Form No. 6. However, the monthly shipment reports do not require handlers to indicate the date the walnuts were transferred, and whether the transferred walnuts were certified by the Dried Fruit Association (DFA). The agency designated under the order to provide inspection services for handlers. Also, the reports do not indicate the date the walnuts were received by the handler accepting the walnuts, or include a confirmation by the accepting handler that such walnuts were received. This information on transfers would be useful to the Board as it reconciles handler shipments and inventories.

The Board recommended that a new form be developed specific to interhandler transfers. A handler who transferred walnuts to another handler would have to complete and submit WMB Form No. 8 to the Board within 10-calendar days following the transfer. The report would have the following information: (1) The date of the transfer; (2) the net weight, in pounds, of the walnuts transferred; (3) whether such walnuts were certified by the DFA; (4) whether such walnuts were inshell or shelled; (5) the name and address of the transferring handler; and (6) the name and address of the receiving handler. The transferring handler would be required to send two copies of the report to the receiving handler at the same time the transferring handler would submit the report to the Board. The receiving handler would then certify, on one copy of the report, that he or she received the walnuts. The receiving handler would then submit the report to the Board within 10-calendar days after the walnuts, or copies of the report, have been received, whichever is later. Transfers of reserve walnuts during periods of volume regulation would continue to be reported on WMB Form No. 17.

This rule would provide the Board with more accurate and complete information regarding handler transfers and shipments of walnuts, thereby facilitating program administration. Accordingly, a new § 984.459 is proposed to be added to the order's administrative rules and regulations.

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 initial 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1998–99 season, as a percentage, 24 percent of the handlers shipped over 2.6 million kernelweight pounds of walnuts, and 76 percent of the handlers shipped under 2.6 million kernelweight pounds of walnuts. Based on an average price of \$1.88 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would add a new § 984.459 to the order's administrative rules and regulations which would require handlers to report transfers of walnuts between handlers on a separate form. Currently, interhandler transfers are reported on handlers' monthly shipment reports. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. Authority for requiring handlers to submit this information to the Board is provided in §§ 984.59 and 984.76 of the order.

Regarding the impact of the proposed action on affected entities, this rule would impose a minimal, additional reporting burden on handlers who transfer walnuts. Handlers who transfer walnuts are already reporting transfers to the Board on monthly shipment reports. This action would require such handlers to report transfers on a separate form. Board staff estimates that there are about 25 interhandler transfers per year (20 total during the months of October, November, and December, and

0–1 during the other 9 months). This action is designed to provide the Board with more accurate and complete information on shipments and transfers which would facilitate program administration.

Regarding alternatives to the recommended action, the Board and industry members discussed at the Board's February 18, 2000, meeting different time frames for the submission of the separate, interhandler transfer report. A 5-day time frame was considered whereby transferring handlers would submit their report to the Board within 5 days of the transfer, and the receiving handler would submit their report within 5 days of receiving the walnuts. However, the Board believed that 5 days was too short a time frame for handlers, and recommended the 10-day time frame.

This action would impose some additional reporting and recordkeeping burden on handlers. As previously mentioned, it is estimated that there are about 25 interhandler transfers per year. It would take handlers about 10 minutes to complete the new form for a total industry burden of about 4 hours per year. With interhandler transfers no longer on monthly shipment reports, the burden for handlers to complete the monthly shipment report would be reduced from 15 to 10 minutes per report, or from a total of 3 to 2 hours per year. Thus, the total annual increase in burden for the industry is estimated at 3 hours. The revised shipment report and the new, interhandler transfer report have been submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. All interested persons were invited to attend the meeting and participate in the Board's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 984

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

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be 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. A new § 984.459 is added to read as follows:

§ 984.459 Reports of interhandler transfers.

(a) Any handler who transfers walnuts to another handler within the State of California shall submit to the Board, not later than 10-calendar days following such transfer, a report showing the following:

- (1) The date of transfer;
- (2) The net weight, in pounds, of the walnuts transferred;
- (3) Whether such walnuts were certified by the inspection service;
- (4) Whether such walnuts were inshell or shelled;
- (5) The name and address of the transferring handler; and
- (6) The name and address of the receiving handler.

(b) The transferring handler shall send two copies of the report to the receiving handler at the time the report is submitted to the Board. The receiving handler shall certify, on one copy of the report, to the receipt of such walnuts and submit it to the Board within 10-calendar days after the walnuts, or copies of such report, have been received, whichever is later.

Dated: March 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8300 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 560

[No. 2000–34]

RIN 1550–AB37

Responsible Alternative Mortgage Lending

AGENCY: Office of Thrift Supervision, Treasury

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is reviewing its mortgage lending regulations to determine their effect in today's markets on not only savings associations and their customers but also on state-regulated housing creditors who may be making alternative mortgage transactions under the Alternative Mortgage Transactions Parity Act and their customers. This advance notice of proposed rulemaking (ANPR) seeks public input on questions OTS will consider as part of that review. OTS could pursue a variety of regulatory approaches to help ensure that the lending regulations are meeting the purposes for which they were intended: encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden. The agency welcomes comments on the advantages, disadvantages, and potential interactions and side effects of various approaches. The agency is particularly interested in public input on potential approaches that will facilitate thrifts' efforts to responsibly address the lending needs of traditionally underserved markets, consistent with safe and sound operation.

DATES: Comments must be received on or before July 5, 2000.

ADDRESSES: Please send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–34. Hand deliver comments to 1700 G Street, NW., lower level, from 9:00 a.m. to 5:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Donna Deale, Manager, Supervision Policy, (202) 906–7488; Theresa Stark, Project Manager, Compliance Policy, (202) 906–7054; Paul Robin, Assistant Chief Counsel, (202) 906–6648; Ellen Sazzman, Counsel (Banking and Finance), (202) 906–7133; Koko Ives, Counsel (Banking and Finance), (202) 906–6661, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Goals of the ANPR

Savings associations have long played a major role in providing responsible, affordable home financing. Over the past 25 years, however, the types of loans they have offered—and the competitors they face—have changed considerably. In today's market, mortgage lenders offer potential borrowers a wide variety of options besides the traditional 30-year fixed-rate purchase money mortgage. A secondary market has developed that has narrowed the interest-rate spread on high quality mortgages. Securitization, once available only for high quality fixed-rate mortgages, now funds much of the subprime market. Changes in tax laws have encouraged home equity lending for traditionally unsecured consumer lending purposes.

As the mortgage market has changed over time, so too have OTS's lending regulations, currently codified at 12 CFR part 560. These regulations are based in large part on the assumption that most components of a loan contract should, within the bounds of safety and soundness, be a matter of negotiation between the borrower and the lender. In our experience, that assumption has proven sound for the overwhelming majority of traditional mortgage loans made by savings associations. One of the key issues on which we want public input in this ANPR is whether that assumption holds true for newly developed types of mortgage products—in both the purchase money mortgage and home equity contexts.

We recognize that data about the characteristics of these new products and the markets to which they may be targeted is still being developed. We encourage commenters to share data with us about market trends and the types of loans, lenders, and borrowers involved in various transactions and products. We are particularly interested in data involving high-cost lending and the subprime market, as we believe thrifts are not engaged in significant levels of these activities. Because the