

Currently, there are approximately 100 producers and approximately 70 handlers of Florida tomatoes. The majority of growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 966, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. While no comments were received in response to the notice, AMS had also published a notice of review in the June 24, 2002, issue of the **Federal Register** (67 FR 42530), as part of a previous schedule, and one written comment in support of the order was received. The comment is referenced in the AMS analysis below.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes grade, size, quality, maturity, and pack and container regulations, as well as research and promotion, and reporting and inspection requirements. The order also authorizes the Committee to establish marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. Finally, the order authorizes the collection and dissemination of information for the benefit of the industry. The grade, size, maturity, and inspection regulations are also applied

to imported tomatoes under section 608e of the Act.

The grade, size, and maturity requirements have helped maintain demand for Florida tomatoes over the years by ensuring only quality product reaches the consumer. The compilation and dissemination of aggregate statistical information collection from handlers is used by the industry to make informed production and marketing decisions. Funds to administer the order are obtained from handler assessments.

Regarding complaints or comments received from the public concerning the order, USDA received no comments as a result of the notice of review published on March 18, 2008. However, one comment was received from the then chairperson of the Committee in response to a separate notice of review published in the **Federal Register** on June 24, 2002 (67 FR 42530). In the comment, the commenter noted that the order has contributed significantly to the success of the Florida tomato industry. He attributes dramatically increased yields to research authorized under the order, while crediting the marketing aspects of the order with contributing to the increase in consumption of fresh tomatoes. He also states that the most important aspect of the order has been its stabilizing effect on fresh tomato markets. The commenter believes the order has been a success in meeting the terms of the Act, and expressed his strongest support for its continuation.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in 1955 and was last amended in July 1986. During the 53 years the order has been effective, AMS and the Florida tomato industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations

implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Florida tomato marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, maturity, and pack, as well as research and promotion, and reporting requirements continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the Florida tomatoes industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS–FV–08–0010; FV08–984–610 Review]

#### Walnuts Grown in California; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 984, regulating the handling of walnuts grown in California (order). AMS has determined that the order should be continued.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250-0237; Fax: (202) 720-8938; or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). A copy of the review may also be obtained via the Internet at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kurt J. Kimmel or Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, #102-B, Fresno, CA 93721; Telephone: (559) 487-5901; Fax: (559) 487-5906; or E-mail: [Kurt.Kimmel@USDA.gov](mailto:Kurt.Kimmel@USDA.gov) or [Martin.Engeler@USDA.gov](mailto:Martin.Engeler@USDA.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 984, as amended (7 CFR part 984), regulates 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 order establishes the California Walnut Board (Board) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Board consists of 10 members. Five of the members are growers of walnuts, four are handlers, and one member is a non-industry member. Each member has an alternate. Board members and alternates are nominated by the industry and selected by the Department of Agriculture (USDA).

Currently, there are approximately 4,000 producers and approximately 58 handlers of California walnuts. The majority of growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 984, under criteria contained in section 610 of the RFA (5 U.S.C. 601-612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the California walnut marketing order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. No comments were received in response to the notice.

The review was undertaken to determine whether the California walnut marketing order should be continued without being changed,

amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes quality regulations including minimum grades and sizes for shelled and inshell walnuts, with mandatory inspection to ensure these requirements are met. The order also authorizes production research and marketing research, and marketing promotion (including paid advertising) activities, as well as collection and dissemination of information. Finally, the order authorizes the use of volume control to manage excess supplies in years of oversupply, but this feature has not been used since the 1980s. The grade and size regulations and inspection requirements are also applied to imported walnuts under section 608e of the Act.

The grade and size requirements have helped ensure that good quality product reaches the consumer, thus contributing to consumer confidence. The marketing promotion activities have helped to build consumer awareness of the product and to increase and maintain demand over the years. Production research projects have enabled the industry to address production-related issues, resulting in improved techniques and more efficient operations. The compilation and dissemination of aggregate industry statistical information is a valuable tool used by producers and handlers to assist them in their harvesting, marketing, and sales decisions. In the past, the volume control provisions of the order have helped the industry manage excess supplies, but their use has not been necessary in recent years as supply is more in line with demand. Funds to administer the order are obtained from handler assessments.

Regarding complaints or comments received from the public concerning the order, AMS received no comments in response to the Notice of Review.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are

considered in the decision making process by the Committee and the AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for California walnuts. There is, however, a state program that provides related services to the California walnut industry. The California Walnut Commission (Commission) works cooperatively with the Federal order to ensure there is no duplication of effort. The Commission is primarily responsible for international promotion activities. This complements the activities of the Federal order pertaining to domestic promotion activities. The programs share staff and office space, and several of the Federal marketing order Board members are also members of the state Commission. This arrangement helps assure that the programs complement each other rather than conflict, duplicate, or overlap. Both programs operate in concert with each other to benefit the California walnut industry.

The order was established in 1948 and was last amended in April, 2008. During the 60 years the order has been in effect, AMS and the California walnut industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Board meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In addition, the order has been amended seven times since its inception. Different authorities have been added to the order, and numerous changes to existing authorities under the order have been made to reflect the evolving needs of the industry.

Based on the potential benefits of the order to producers, handlers, and

consumers, AMS has determined that the California walnut marketing order should be continued. The order was established to help the California walnut industry work with USDA to solve marketing problems. The order's regulations on grade and size, as well as research and promotion, and collection and dissemination of information continue to be beneficial to producers, handlers, and consumers.

AMS will continue to work with the California walnut industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 25

[Docket ID OCC-2008-0024]

RIN 1557-AD19

## FEDERAL RESERVE SYSTEM

#### 12 CFR Part 228

[Regulation BB; Docket No. R-1342]

## FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 345

RIN 3064-AD39

## DEPARTMENT OF TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 563e

[Docket ID OTS-2008-0021]

RIN 1550-AC29

### Community Reinvestment Act Regulations

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

**ACTION:** Joint final rule; technical amendment.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (collectively, the "agencies") are amending their

Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define "small bank" or "small savings association" and "intermediate small bank" or "intermediate small savings association." As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

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

#### FOR FURTHER INFORMATION CONTACT:

**OCC:** Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**Board:** Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785-6054; or Brent Lattin, Attorney, (202) 452-3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

**FDIC:** Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**OTS:** Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906-7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

#### Background and Description of the Joint Final Rule

The agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2),

228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2008 (72 FR 72571 (Dec. 21, 2007)). The CRA regulations, as revised on December 21, 2007, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.061 billion are "small banks" or "small savings associations." Small banks and small savings associations with assets of at least \$265 million as of December 31 of both of the prior two calendar years and less than \$1.061 billion as of December 31 of either of the prior two calendar years are "intermediate small banks" or "intermediate small savings associations." 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2008, the CPIW increased by 4.49 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2009, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion are "small banks" or "small savings associations." Small banks or small savings associations with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years are "intermediate small banks" or "intermediate small savings associations." The agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at <http://www.ffiec.gov/cra/>.

#### Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the CRA regulations that the agencies previously published for