

# Proposed Rules

Federal Register

Vol. 71, No. 78

Monday, April 24, 2006

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-192-A7; FV06-984-1]

#### Walnuts Grown in California; Hearing on Proposed Amendment of Marketing Agreement and Order No. 984

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

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 984, which regulates the handling of walnuts grown in California. The amendments are proposed by the Walnut Marketing Board (Board), which is responsible for local administration of order 984. The amendments would: Change the marketing year; include "pack" as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept contributions, and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The USDA proposes three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any changes to the order as may be necessary to conform with any amendment that may result from the hearing.

The proposed amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** The hearing will be held on May 17, 2006, in Modesto, California, beginning at 8:30 a.m. and ending at 4:30 p.m. The hearing will continue, if necessary, on May 18, 2006, commencing at 8:30 a.m.

**ADDRESSES:** The hearing location is: Stanislaus County Farm Bureau, 1201 L Street, Modesto, CA, 95353, telephone: (209) 522-7278.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259-7988, Fax: (435) 259-4945; or Kathleen M. Finn, 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.

Small businesses may request information on this proceeding 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.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." 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 Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments 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 the proposals.

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. 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 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are the result of a committee appointed by the Board to conduct a review of the order. The committee met several times in 2005 and drafted proposed amendments to the order and presented them at industry meetings. The proposed amendments were then forwarded to the Board, which unanimously approved them. The amendments are intended to streamline organization and administration of the marketing order program.

The Board's request for a hearing was submitted to USDA on March 3, 2004. The Board's proposed amendments to Marketing Order No. 984 (order) are summarized below.

1. Amend the order to change the marketing year from August 1 through July 31 to September 1 through August 31. This proposal would amend § 984.7, Marketing year, and would result in conforming changes being made to § 984.36, Term of Office, and § 984.48 Marketing estimates and recommendations.

2. Amend the order by specifying that the act of packing walnuts is considered a handling function. This proposal would amend § 984.13, To handle, as well as clarify the definition of "pack"

in § 984.15 by including the term “shell.”

3. (a) Amend all parts of the order that refer to cooperative seats on the Board, redistribute member seats among districts, and provide designated seats for a major handler, if such handler existed. A major handler would have to handle 35 percent or more of the crop. This proposal would amend § 984.35, Walnut Marketing Board and § 984.14, Handler.

3. (b) Amend the Board member nomination process to reflect proposed changes in the Board structure, as outlined in 3(a). This proposal would amend § 984.37, Nominations, and § 984.40, Alternate.

4. Require Board nominees to submit a written qualification and acceptance statement prior to selection by USDA. This proposal would amend § 984.39, Qualify by acceptance.

5. Change the name of the Walnut Marketing Board to the California Walnut Board. This proposal would amend § 984.6, Board, and § 984.35, Walnut Marketing Board.

6. Add authority to reestablish districts, reapportion members among districts, and revise groups eligible for representation on the Board. This proposal would add a new paragraph (d) to § 984.35, Walnut Marketing Board.

7. Amend Board quorum and voting requirements to add percentage requirements, add authority for the Board to vote by “any other means of communication” (including facsimile) and add authority for Board meetings to be held by telephone or by “any other means of communication”, providing that all votes cast at such meetings shall be confirmed in writing. This proposal would amend § 984.45, Procedure and would result in a conforming change in § 984.48(a), Marketing estimates and recommendations.

8. Amend the order to add authority to carry over excess assessment funds. This proposal would amend § 984.69, Assessments.

9. Amend the order by adding authority to accept contributions. This proposal would add a new § 984.70, Contributions.

10. Amend the order to clarify that members and alternate members may be reimbursed for expenses incurred while performing their duties and that reimbursement includes per diem. This proposal would amend § 984.42, Expenses.

11. Amend the order to add authority for the Board to appoint more than one inspection service as long as the functions performed by each service are separate and do not conflict with each other. This proposal would amend

§ 984.51, Inspection and certification of inshell and shelled walnuts.

12. (a) Amend the order by broadening the scope of the quality control provisions and by adding authority to recommend different regulations for different market destinations. This proposal would amend § 984.50, Grade and size regulations.

12. (b) Amend the order by adding authority that would allow for shelled walnuts to be inspected after having been sliced, chopped, ground or in any other manner changed from shelled walnuts, if regulations for such walnuts are in effect. This proposal would amend § 984.52, Processing of shelled walnuts.

13. Amend the order by adding authority for marketing promotion and paid advertising. This proposal would amend § 984.46, Research and development.

14. Amend the order to replace the terms “carryover” with “inventory,” and “mammoth” with “jumbo,” to reflect current day industry procedures. This proposal would amend § 984.21, Handler inventory, § 984.67, Exemption, and would also result in conforming changes being made to § 984.48, Marketing estimates and recommendations, and § 984.71, Reports of handler carryover.

15. (a) Amend the order to clarify the term “transfer” and to add authority for the Board to recommend methods and procedures, including necessary reports, for administrative oversight of such transfers. This proposal would amend § 984.59, Interhandler transfers.

15. (b) Amend the order to add authority to require reports of interhandler transfers. This proposal would amend § 984.73, Reports of walnut receipts.

16. Update and simplify the language in § 984.22, Trade demand, to state “United States and its territories,” rather than name “Puerto Rico” and “The Canal Zone”.

17. Amend the order by adding language that would acknowledge that the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission. Any information sharing would be kept confidential. This would add a new § 984.91, Relationship with the California Walnut Commission.

The Board works with USDA in administering the orders. These proposals have not received the approval of the Department. The Board believes that the proposed changes would improve the administration, operation, and functioning of the

programs in effect for walnuts grown in California.

In addition, USDA proposes adding three provisions that would help assure that the operation of the program conforms to current Department policy and that USDA can make any necessary conforming changes. These provisions would:

18. Establish tenure requirements for Board members. This proposal would amend § 984.36, Term of office.

19. Require that continuance referenda be conducted on a periodic basis to ascertain industry support for the order and add more flexibility in the termination provisions. This proposal would amend § 984.89 Effective time and termination.

20. Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

**List of Subjects in 7 CFR Part 984**

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

**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. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Walnut Marketing Board are as follows:

**Proposal Number 1**

3. Revise § 984.7 to read as follows:

**§ 984.7 Marketing year.**

*Marketing year* means the twelve months from September 1 to the following August 31, both inclusive, or any other such period deemed appropriate and recommended by the Board for approval by the Secretary.

4. Revise § 984.36 to read as follows:

**§ 984.36 Term of office.**

The term of office of Board members, and their alternates shall be for a period of two years ending on August 31 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

5. Revise § 984.48 to read as follows:

**§ 984.48 Marketing estimates and recommendations.**

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least six members of the Board and shall include the following, and where applicable, on a kernelweight basis:

(1) Its estimate of the orchard-run production in the area of production for the marketing year;

(2) Its estimate of the handler carryover on September 1 of inshell and shelled walnuts;

(3) Its estimate of the merchantable and substandard walnuts in the production;

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade carryover, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler carryover of inshell and shelled walnuts on August 31 of each marketing year;

(6) Its recommendation as to the free and reserve percentages to be established for walnuts;

(7) Its recommendation of the percentage of reserve walnuts that may be exported pursuant to § 984.56, when it determines that the quantity of reserve walnuts that may be exported should be limited;

(8) Its opinion as to whether grower prices are likely to exceed parity; and

(9) Its recommendation for change, if any, in grade and size regulations.

(b) [Reserved].

**Proposal Number 2**

6. Revise § 984.13 to read as follows:

**§ 984.13 To handle.**

*To handle* means to pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: The term “to handle” shall not include sales and deliveries within the area of production by growers to handlers, or between handlers.

7. Revise § 984.15 to read as follows:

**§ 984.15 Pack.**

*Pack* means to bleach, clean, grade, shell or otherwise prepare walnuts for market as inshell or shelled walnuts.

**Proposal Number 3(a)**

8. Revise § 984.35 to read as follows:

**§ 984.35 Walnut Marketing Board.**

(a) A Walnut Marketing Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

(1) Two handler members from District 1;

(2) Two handler members from District 2;

(3) Two grower members from District 1;

(4) Two grower members from District 2;

(5) One member nominated at-large from the production area; and,

(6) One member and alternate who shall be selected after the selection of

the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(b) In the event that one handler handles 35% or more of the crop the membership of the Board shall be as follows:

(1) Two handler members to represent the handler that handles 35% or more of the crop;

(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

9. Revise § 984.14 to read as follows:

**§ 984.14 Handler.**

Handler means any person who handles inshell or shelled walnuts.

**Proposal Number 3(b)**

10. Revise § 984.37 to read as follows:

**§ 984.37 Nominations.**

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting

information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their respective Districts. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler in such a manner that is consistent with the requirements of nominations of growers conducted by the Board. The two persons receiving the highest number of votes for the grower positions attributed to that handler (Group (b)(2) of § 984.35) shall be the nominees. The two persons receiving the third and fourth highest number of votes shall be designated as alternates.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler in such a manner that is consistent with the requirements of nominations of handlers conducted by the Board. The two (2) persons receiving the highest number of votes for the major handler positions shall be the nominees. The two persons receiving the third and fourth highest number of votes shall be designated as alternates.

(3) Nominations on behalf of all other grower members (Groups (b) (4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b) (4), (5) and (6) of § 984.35), regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before

June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any such year, the Secretary may select such member without nomination.

(g) The Board, with the approval of the Secretary, may change these nomination procedures should the Board determine that a revision is necessary.

11. Revise § 984.40 to read as follows:

#### **§ 984.40 Alternate.**

(a) An alternate for a member of the Board shall act in the place and stead of such member in his or her absence or in the event of his or her death, removal, resignation, or disqualification, until a successor for his or her unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his or her alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his or her disability or a vacancy, his or her alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member.

#### **Proposal Number 4**

12. Revise § 984.39 to read as follows:

#### **§ 984.39 Qualify by acceptance.**

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

#### **Proposal Number 5**

13. Revise § 984.6 to read as follows:

#### **§ 984.6 Board.**

*Board* means the California Walnut Board established pursuant to § 934.35.

14. In addition to the Board's recommended changes as set forth in Proposal No. 3(a), revise § 984.35(a) introductory text to read as follows:

**§ 984.35 California Walnut Board.**

(a) A California Walnut Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

\* \* \* \* \*

**Proposal Number 6**

15. In addition to the Board's recommended changes as set forth in Proposal No.3(a) and Proposal No. 5, add a new paragraph (d) to § 984.35 to read as follows:

**§ 984.35 California Walnut Board.**

\* \* \* \* \*

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board specified in paragraphs (a) and (b) of this section: Provided, That any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between Board apportionment and districts;

(4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;

(5) Other relevant factors.

**Proposal Number 7**

16. Revise § 984.45 to read as follows:

**§ 984.45 Procedure.**

(a) The members of the Board shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Board business as they deem advisable. The Board shall give the Secretary the same notice of its meetings as is given to members of the Board.

(b) All decisions of the Board, except where otherwise specifically provided, shall be by a sixty-percent (60%) super-majority vote of the members present. A quorum of six members, or the

equivalent of sixty percent (60%) of the Board, shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram, or by any other means of communication, upon due notice to all members. When any proposition is to be voted on by any of these methods, one dissenting vote shall prevent its adoption. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be cast when voting is by any of these methods, and any other procedures necessary to carry out the objectives of this paragraph.

(d) The Board may provide for meetings by telephone, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

17. In addition to the Board's recommended changes as set forth in Proposal No. 1, revise § 984.48(a) introductory text to read as follows:

**§ 984.48 Marketing estimates and recommendations.**

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following, and where applicable, on a kernelweight basis:

\* \* \* \* \*

**Proposal Number 8**

18. Revise § 984.69 to read as follows:

**§ 984.69 Assessments.**

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his or her pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per kernelweight pound of walnuts fixed by the Secretary times the kernelweight of merchantable walnuts he or she has certified. At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Reserve walnut pool expenses.* The Board is authorized temporary use of funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of reserve walnuts pooled. All such expenses shall be deducted from the proceeds obtained by the Board

from the sale or other disposal of pooled reserve walnuts.

(c) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (c)(2) or (c)(3) of this section, it shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: Provided, That each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, That funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(d) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

**Proposal Number 9**

19. Add a new § 984.70 to read as follows:

**§ 984.70 Contributions.**

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 984.46, Research and development. Furthermore, such contributions shall be free from any encumbrances by the

donor and the Board shall retain complete control of their use.

#### Proposal Number 10

20. Revise § 984.42 to read as follows:

##### § 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

#### Proposal Number 11

21. Revise § 984.51 to read as follows:

##### § 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts for use as free or reserve walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; Provided, That if more than one inspection service is designated, the functions performed by each service shall be separate, and shall not conflict with each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts the grade and size of such walnuts as set forth in the United States Standards for Walnuts (*Juglans regia*) in the Shell. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts (*Juglans regia*). The Board, with the approval of the Secretary, may prescribe such additional information to be shown on the inspection certificates as it deems necessary for the proper administration of this part.

(b) Inshell merchantable walnuts certified shall be converted to the kernelweight equivalent at 45 percent of their inshell weight. This conversion percentage may be changed by the Board with the approval of the Secretary.

(c) Upon inspection, all walnuts for use as free or reserve walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be

altered or removed except as directed by the Board. The assessment requirements in § 984.69 shall be incurred at the time of certification.

(d) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of merchantable walnuts which has been previously inspected have been or are such as normally to cause deterioration, such lot of walnuts shall be reinspected at the handler's expense and recertified as merchantable prior to shipment.

#### Proposal Number 12(a)

22. Revise § 984.50 to read as follows:

##### § 984.50 Grade, quality and size regulations.

(a) *Minimum standard for inshell walnuts.* Except as provided in § 984.64, no handler shall handle inshell walnuts unless such walnuts are equal to or better than the requirements of U.S. No. 2 grade and baby size as defined in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(b) *Minimum standard for shelled walnuts.* Except as provided in § 984.64, no handler shall handle shelled walnuts unless such walnuts are equal to or better than the requirements of the U.S. Commercial grade as defined in the then effective United States Standards for Shelled Walnuts (*Juglans regia*) and the minimum size shall be pieces not more than 5 percent of which will pass through a round opening  $\frac{5}{64}$  inch in diameter. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(c) *Effective period.* The minimum standards established pursuant to paragraphs (a) and (b) of this section and the provisions of this part relating to the administration thereof, shall continue in effect irrespective of whether the season average price for walnuts is above the parity level specified in section 2(1) of the Act.

(d) *Additional grade, size or other quality regulation.* The Board may recommend to the Secretary additional grade, size or other quality regulations, and may also recommend different regulations for different market destinations. If the Secretary finds on the basis of such recommendation or other information that such additional regulations would tend to effectuate the declared policy of the Act, he or she shall establish such regulations.

(e) *Minimum requirements for reserve.* The Board, with the approval of the

Secretary, may specify the minimum kernel content and related requirements for any lot of walnuts acceptable for disposition for credit against a reserve obligation: Provided, That reserve walnuts exported must meet the requirements of paragraph (a) of this section if inshell, or paragraph (b) of this section if shelled.

#### Proposal Number 12(b)

23. Revise § 984.52 to read as follows:

##### § 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or unless such walnuts meet quality regulations established under § 984.50(d) if such regulations are in effect.

(b) Any lot of shelled walnuts which, upon inspection, fails to meet the minimum standard effective pursuant to § 984.50 solely due to excess shriveling may be certified for processing provided that the total amount of shrivel does not exceed 20 percent, by weight, of the lot. All such walnuts must be reinspected after processing and shall be certified as merchantable if the processed material meets the effective minimum standard. The provisions of this paragraph may be modified by the Secretary, upon recommendation of the Board or other information.

(c) The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected prior to being placed into the current of commerce.

#### Proposal Number 13

24. Revise § 984.46 to read as follows:

##### § 984.46 Research and development.

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 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.

#### Proposal Number 14

25. Revise § 984.21 to read as follows:

##### § 984.21 Handler inventory.

Handler inventory as of any date means all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account.

26. Revise § 984.67 to read as follows:

**§ 984.67 Exemptions.**

(a) *Exemption from volume regulation.* Reserve percentages shall not apply to lots of merchantable inshell walnuts which are of jumbo size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the Board may, with the approval of the Secretary, prescribe.

(b) *Exemptions from assessments, quality, and volume regulations:*

(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his or her own production free of the regulatory and assessment provisions of this part if he or she sells such walnuts in the area of production directly to consumers under the following types of exemptions.

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in (b)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

(c) *Rules and modifications.* The Board may establish, with the approval of the Secretary, such rules, regulations and safeguards and such modifications as will promote the objectives of this subpart.

27. In addition to the Board's recommended changes set forth in Proposal Nos. 1 and 7, revise § 984.48 (a)(2), (a)(4), and (a)(5) to read as follows:

**§ 984.48 Marketing estimates and recommendations.**

(a) \* \* \*

(1) \* \* \*

(2) Its estimate of the handler inventory on September 1 of inshell and shelled walnuts;

(3) \* \* \*

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade inventory, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler inventory of inshell and shelled walnuts on August 31 of each marketing year;

\* \* \* \* \*

28. Revise § 984.71 to read as follows:

**§ 984.71 Reports of handler inventory.**

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his or her inventory of inshell and shelled walnuts.

**Proposal Number 15(a)**

29. Revise § 984.59 to read as follows:

**§ 984.59 Interhandler transfers.**

For the purposes of this part, transfer means the sale of inshell and shelled walnuts within the area of production by one handler to another. The receiving handler shall comply with the regulations made effective pursuant to this part. The Board, with the approval of the Secretary, may establish methods and procedures, including necessary reports, for such transfers.

**Proposal Number 15(b)**

30. Revise § 984.73 to read as follows:

**§ 984.73 Reports of walnut receipts.**

Each handler shall file such reports of his or her walnut receipts from growers, handlers, or others in such form and at such times as may be requested by the Board with the approval of the Secretary.

**Proposal Number 16**

31. Revise § 984.22 to read as follows:

**§ 984.22 Trade demand.**

(a) *Inshell.* The quantity of merchantable inshell walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

(b) *Shelled.* The quantity of merchantable shelled walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

**Proposal Number 17**

32. Add a new § 984.91 to read as follows:

**§ 984.91 Relationship with the California Walnut Commission.**

In conducting Board activities and other objectives under this part, the

Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission, whose activities complement those of the Board. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

Proposals submitted by USDA are as follows:

**Proposal Number 18**

33. Revise § 984.36 to read as follows:

**§ 984.36 Term of office.**

The term of office of Board members, and their alternates shall be for a period of two years ending on June 30 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified. Board members may serve up to four consecutive, two-year terms of office. In no event shall any member serve more than eight consecutive years on the Board. For purposes of determining when a Board member has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. The limitation on tenure shall not apply to alternates.

**Proposal Number 19**

34. Amend § 984.89 by redesignating the current paragraph (b)(4) as (b)(5), and adding a new paragraph (b)(4) to read as follows:

**§ 984.89 Effective time and termination.**

(a) \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (2/3) majority of voting producers, or a two thirds (2/3) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of walnuts in the production area. Such termination shall be announced on or before the end of the production year.

\* \* \* \* \*



**Proposal Number 20**

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: April 18, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6-6071 Filed 4-21-06; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF ENERGY****10 CFR Part 626****RIN 1901-AB16****Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve**

**AGENCY:** Office of Petroleum Reserves, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Energy Policy Act of 2005 directs the Secretary of Energy to develop procedures for the acquisition of petroleum for the Strategic Petroleum Reserve (SPR) in appropriate circumstances. The Department of Energy (DOE) is today proposing procedures for the acquisition of petroleum for the SPR, including acquisition by direct purchase and transfer of royalty oil from the Department of the Interior. The proposed rule also has provisions concerning the deferral of scheduled deliveries of petroleum for the SPR.

**DATES:** Comments are due on May 24, 2006.

**ADDRESSES:** You may submit comments, identified by RIN Number 1901-AB16 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-Mail: [nancy.marland@hq.doe.gov](mailto:nancy.marland@hq.doe.gov). Include RIN Number 1901-AB16 in the subject line of the message.
- Mail: Office of Petroleum Reserves, FE-40, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

You may obtain electronic copies of this notice of proposed rulemaking and review comments received by DOE at the following Web sites: <http://www.fe.doe.gov/programs/reserves> and <http://www.spr.doe.gov>. Those without Internet access may access this information by visiting the DOE Freedom of Information Reading Room, Rm. 1E-190, 1000 Independence Avenue SW., Washington, DC, (202)

586-3142, between the hours of 9 a.m. and 4 p.m., Monday to Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lynnette le Mat, Director, Operations and Readiness, Office of Petroleum Reserves, FE-43, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-4398.

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**I. Introduction****A. Background**

The Strategic Petroleum Reserve was established pursuant to the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*) to store petroleum to diminish the impact on the United States of disruptions in petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA authorizes the storage of up to one billion barrels of petroleum and permits the Secretary of Energy to acquire petroleum for storage in the SPR by a variety of methods.

Since its authorization, the Federal Government has created six crude oil storage sites and subsequently decommissioned two of the six. The SPR currently consists of underground storage caverns located in the four Government-owned sites. The locations are Bryan Mound and Big Hill in Texas and West Hackberry and Bayou Choctaw in Louisiana. These four storage locations have salt dome caverns with 727 million barrels of useable storage capacity.

Over the last thirty years, the Government has acquired approximately 800 million barrels of petroleum for the SPR. Over 100 million barrels of oil have been withdrawn from the SPR for sale or exchange. The inventory reached its highest level of 700.7 million barrels in August 2005 before the drawdown, exchange and sale

of 20.8 million barrels in the aftermath of Hurricane Katrina.

Crude oil was initially acquired for the SPR by direct purchases on the open market. Through an Interagency Agreement, the Department of Defense served as DOE's agent to acquire crude oil using appropriated funds to attempt to meet a series of target fill rates specified by Congress. Petroleum was acquired through a combination of spot market purchases and term contracts, including a matching purchase and sale involving the Government's share of production from the Naval Petroleum Reserve in California. Except for various pauses occasioned by geopolitical events, e.g., Desert Storm, the Defense Fuel Supply Center (currently the Defense Energy Support Center) continued to function as DOE's acquisition agent for direct purchases through 1994, at which time funds from direct appropriations and receipts from sales in 1990 and 1991 were exhausted.

In December 1981, DOE entered into the first of a series of four country-to-country contracts with Petroleos Mexicanos (PEMEX), the state-owned oil company of Mexico. These term contracts—under which deliveries of approximately 220 million barrels of petroleum were completed in 1990—employed commercial market terms and were priced according to a formula indexed to prices of globally-traded petroleum.

In 1996, in a series of congressionally-mandated sales, an aggregate 28 million barrels of SPR inventory were sold to fund SPR programmatic requirements and for general deficit reduction purposes. Subsequently, pursuant to a 1999 Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and DOE, DOE initiated a program to replace the 28 million barrels by the transfer to DOE of crude oil royalties collected in-kind on production from Federal leases in the Gulf of Mexico Outer Continental Shelf. Under this MOU, DOE contracted with commercial entities to receive the royalty oil at offshore production facilities and transfer it to the SPR, either directly or by exchange for other crude oil meeting SPR quality specifications.

In 1998, in order to improve the efficiency of drawdown operations at the Bryan Mound site, DOE conducted a competition under the exchange authority in EPCA to trade crude oil of one type for another type of superior quality. Although this resulted in a net decrease in the number of barrels in inventory, the upgrade in oil quality maintained the value of the