

## California Walnut Board

101 Parkshore Drive, Suite 250

Folsom, CA 95630-4726

(916) 932-7070

(916) 932-7071 Fax

info@walnuts.org

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## MARKETING ORDER REVISION COMMITTEE MEETING MINUTES

**Monday, November 11, 2013**

The California Walnut Board Marketing Order Revision Committee (MORC) met on Monday, November 11, 2013 at the California Farm Bureau Federation in Sacramento. Committee Chairperson Jerry Siebert called the meeting to order at 1:30 p.m. Ms. Hull called the roll and established a quorum. The following Committee members were present:

Jerry Siebert, Chairperson  
Chuck Crain, Vice-Chairperson  
Bill Carriere  
Bob Lea  
Steve Lindsay  
Jack Mariani  
Donald Norene (on phone)  
Mike Poindexter

Committee member Bill Tos was absent. Also in attendance were CWB staff members Dennis Balint, Heather Donoho and Dana Hull; CWC members Steve Zaffarano, Todd Ramos (on the phone) and Pat Mecklenburg (on the phone); and Andrea Ricci of USDA/AMS.

The first order of business was the approval of the minutes from the last MORC meeting held on June 5, 2013. Mr. Crain made a motion to approve the minutes as mailed, Mr. Lea seconded the motion and it carried unanimously by roll call vote.

Chairperson Siebert asked Mr. Balint to present the next agenda item, Marketing Order Revisions. Mr. Balint stated that the issue to come before the Committee today is section 984.13 of the marketing order – the definition of “To handle.” There has been a lot of informal discussion within the industry about the increase in the number of handlers and questions about whether or not they are actually handlers; based on the current definition, they are.

Mr. Balint asked Ms. Ricci to discuss the procedure and timeline for formal rulemaking. Ms. Ricci distributed a document outlining the nine points of justification of proposal for formal rulemaking. She indicated that the Committee would put together the responses to the nine points and present it to the full Board for approval. Once the Board approves and formally presents the justifications to USDA, the Board would work with the formal rulemaking team to take the proposal through the process. It takes a minimum of 15-24 months to get the changes through the USDA channels; a public hearing takes place during the process, after which the recommended decision is drafted in MOAB and published in the Federal Register, followed by a 30-day comment period. Once the Secretary’s decision is published in the Federal Register, a Referendum Order and press release are issued. A referendum ballot goes out to all growers

who have a vote on the changes. The final decision, once approved, is published in the Federal Register and a press release is issued.

Chairperson Siebert asked what the purpose of the discussion is today. Mr. Poindexter commented that we are trying to establish a minimum requirement to be a handler/processor and to establish a more level playing field between the processors. Mr. Mariani commented that food safety is a big issue with our industry and that ties in with the handler requirements. Mr. Balint stated that there is considerable concern about people who are not really familiar with food processing becoming handlers. Mr. Carriere asked if a custom processor, not a handler, contracted by handlers who do not have processing facilities, would fall under FSMA. Mr. Balint stated that the product would still have to be inspected. In the past two years, Mr. Balint has conducted an in-person interview with all new handlers; initially we saw a number of growers who wanted to handle their own product and the recent majority have been agents or brokers. One of the reasons he decided to interview potential new handlers was to fully understand what their motivation was and hopefully to intercept problems before they occurred.

Mr. Mariani asked if the industry can put requirements on handlers that would say for every plant that processes and inspects walnuts be subject to a minimum DFA plant inspection standard. Ms. Ricci stated that she did not think that it could be a mandatory requirement; USDA is “food quality”, not “food safety.” Food safety falls under FDA. Mr. Carriere stated that, by definition then, handlers would be required to have a facility, otherwise there is nothing to inspect. Ms. Ricci stated that the marketing order for tomatoes has in their definition “a registered handler is a handler who has adequate facilities in the production area and who is registered with the committee pursuant to the rules established with the approval of the Secretary.” She stated that she believes the intent was that the handler owns their facility. Ms. Ricci commented that the CWB would not have to use the same language, but it is an example of a marketing order that does require a handler have an adequate facility within the production area. Mr. Lea asked what the definition of a “facility” is in the order. Ms. Ricci stated that the definition is not spelled out in the tomato marketing order.

The Committee discussed other ideas for tightening the handler definition, including requiring an FDA inspection prior to any new handler beginning operation and posting DFA audit scores of handlers. Ms. Ricci stated that the industry cannot do anything that will limit a growers potential to sell product to a certain number of entities. We have to be very careful about how changes to the marketing order will affect growers’ ability to sell their product – the changes will not be approved by OMB if they negatively impact growers/small businesses. The Committee continued to discuss options to changes to the handler definition and requirements. Ms. Ricci commented that we can require that handlers are registered with the state – several other marketing orders have that requirement.

Mr. Balint stated that the Committee has talked a lot about requirements, but not the actual language. In the marketing order definition of “to handle”, if we could just get rid of the word “or” when it appears that would solve some of the issues. We still have to determine if renting, leasing (long- or short-term), or borrowing a facility, or contracting with another handler to do the processing, is acceptable. The Committee agreed that “adequate facility” should include borrowing or leasing. Mr. Mariani stated that it would be nice to tie it into a minimum plant inspection for the food safety aspect. Ms. Ricci will have to check to see if that is something that can be put in the language.

Ms. Ricci stated that the hearing process will give industry members an opportunity to present testimony before the final decision comes out. If there is a lot of negative testimony at the hearing, the language can be changed to something that is the intent but more acceptable to the industry. She indicated that she will get back to the Committee in a week or two with answers to their questions after Mr. Martin Engeler is back in the office. Ms. Ricci explained

that Mr. Engeler has eight years' experience in rule writing, so he is better equipped to answer the Committee's questions.

Ms. Ricci reviewed her list of discussion items to cover with Mr. Engeler and will get back to the Committee with answers. The Committee would like to know the following: can the marketing order require FDA registration of handlers; can mandatory plant inspections be required; can DFA and/or FDA do audits/plant inspections; is Food Safety part of Food Quality; what does "quantify" mean; is there harmonization with FDA and FTC guidelines as far as communication goes and can't we just do that under the order; and if we are allowed to require mandatory audits can plant audit scores be released?

The time and place of the next meeting will be determined by the Chairperson and staff. There was no need for Executive Session. Hearing no further business, Chairperson Siebert adjourned the meeting at 2:50 p.m.