

## California Walnut Board

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## MARKETING ORDER REVISION COMMITTEE MEETING MINUTES

**Wednesday, June 4, 2014**

The California Walnut Board Marketing Order Revision Committee (MORC) met on Wednesday, June 4, 2014, at the Marriott in Rancho Cordova, CA. Committee Chairperson Jerry Siebert called the meeting to order at 3:40 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  
Mike Poindexter  
Bill Tos

Also in attendance were CWB staff members Dennis Balint, Heather Donoho and Dana Hull; Andrea Ricci of USDA/AMS; and Debbie Wray of USDA participated via telephone.

The first order of business was the approval of the minutes from the last MORC meeting held on November 11, 2013. Mr. Lea made a motion to approve the minutes as mailed, Mr. Crain seconded the motion and it carried unanimously.

Chairperson Siebert asked Mr. Balint to present the next agenda item, Marketing Order Revisions. Mr. Balint stated that the first issue to come before the Committee today is the marketing order's definition of "To handle." He stated when the marketing order was first put in place in 1948, the role of a handler was to process and put product into the currents of commerce. Over the last several years, we have had an emergence of a new layer of handlers, people we had previously thought of as brokers or agents, who had no capital investment per se, but facilitated transactions between growers and customers. These "paper handlers" are still subject to the same regulations, but it is more difficult for us to determine if they are reporting everything properly, as they generally do not have a processing facility that can be inspected – they contract everything out to another handler. We believe there is a slight degree of higher risk than a brick and mortar handler when it comes to proper inspection and food safety.

Mr. Balint stated that the marketing order language and nine-points documents that were sent to the Committee were a first draft attempt; MOAD provided feedback on the language and that has been incorporated into the documents and distributed to the Committee. Mr. Balint indicated that there are many areas of the nine-points document that need to be improved and

built upon. He asked Ms. Ricci to give an overview of the AMS perspective. Ms. Ricci stated that there are several concerns, specifically with the intent of the AMAA which is to help maintain market stability and increase producer revenue. That, along with creating barriers to trade is not something that USDA would support. Suggesting a brick and mortar regulation that would put several handlers out of business is going to require robust information as to why this is necessary and must be fact based. Even with all the questions answered on the feedback from MOAD, Ms. Ricci is not sure that the proposed language could withstand an OGC review or a hearing.

The Committee discussed the challenges of the Board's compliance activities in regard to "paper handlers". It is difficult to track inventory or conduct on-site compliance visits when a handling facility does not exist. They also discussed the food safety aspect; Ms. Ricci stated that technically, food safety is an FDA issue and that USDA can only regulate food quality. She stated that "to handle" is a cornerstone of the walnut marketing order and it is not an easy change. There has to be indisputable information and support evidence up front before the proposed language can even be submitted to OGC.

Ms. Ricci stated that rather than requiring brick and mortar, the order could require registration with the Board including name, address of business, and if the handler does not process, who will process for them. Mr. Balint stated that he and other staff members interview each new handler and collect that information already prior to the handler being added to the list.

Continuing the discussion about compliance issues, Ms. Hull and Ms. Donoho talked about the difficulties in getting reports from some of the new "paper handlers". Some of the handlers file one report and then staff cannot get in touch with them to follow up on remaining reports for the year.

Mr. Tos asked if a handler is doing custom work, can they be required to report to the Board the amount of commercial work they are doing and who they are doing it for. Ms. Donoho stated that we are doing that with the revised inventory report handlers complete three times per year; they have to report product they are holding for third parties (not owned by the reporting handler), but it does not necessarily capture everything. The Committee discussed how a reporting form could capture all the necessary information for custom processing and how to better enforce the compliance issues. Ms. Wray talked about the compliance rules for going after handlers for violating the order for not paying assessments, not getting inspections, and other issues; she agreed that it is not a speedy process. Ms. Donoho stated as far as compliance, we cannot enforce the rules we already have in a timely manner.

The Committee discussed the publication of the handler list and potential information that a handler could voluntarily have listed, i.e. DFA inspection scores, certifications, qualifications. Also discussed was how and why to remove a handler from the list for non-compliance. Mr. Balint mentioned that he talked to Mr. Martin Engeler at USDA/AMS a couple weeks earlier about the issue of removing non-compliant handlers and Mr. Engeler agreed that the Board could remove a listing if the handler has not reported shipments within the last 12 months.

Ms. Wray suggested that possibly the definition of "to handle" could be expanded to include contract/custom processors. Ms. Ricci's concern is that the contract processor is not the handler putting the product into commerce. The Committee continued to discuss the compliance problems with reporting requirements for paper handlers who have their product custom processed by another handler. Mr. Tos stated that most handlers in our industry want to protect the industry and their livelihood. He also thinks that the custom processing handlers know that the paper handler is supposed to do the reporting. He believes having the custom

processing handler report for whom they are processing and how much, could eliminate some of the confusion.

Mr. Balint asked Ms. Wray if she could work on some language to add custom processing to the marketing order definition of “to handle.” She indicated that she would be willing to draft some language for the Committee to review.

Mr. Balint gave an overview of the action items that have come from this meeting. The first would be to draft language to include custom processors in the definition of “to handle.” The second item is to design a form that would require better reporting of what custom processors receive and process for third parties. The third item is to update the handler list; staff will develop and submit to Ms. Ricci a handler list that will call out certain items and services we would like to report.

Chairperson Siebert asked Mr. Balint to discuss the next agenda item, Livermore. Mr. Balint stated that the Livermore variety was originally determined, by UC Davis, to not be a *juglans regia*. Due to that determination, the Livermore has not been subject to certification for color and has not been reported on handler inventory or shipment reports because it is not covered by the marketing order. With further work done at UC Davis, it has become apparent that the Livermore is a *juglans regia*; it is a hybrid, but it is a classic hybrid of two walnut species. The question now is, if we want the Livermore or any other species like the Livermore to fall under the order, can we get it to pass inspection on color. Mr. Balint has had some discussions with AMS and asked Ms. Ricci to explain. Ms. Ricci stated that there are a couple of ways to go about it. One way is to add a specific grade standard for Livermore in the marketing order, meeting US No. 1 or US Commercial, except for the color. The problem with that is it cannot be called a US No. 1 or US Commercial because it technically does not meet the grade standards (failing on color). The Board would have to come up with another name for the standard and it can be done through informal rulemaking. Ms. Ricci is still waiting to hear back from USDA inspection service to find out how to go about creating a new US Grade standard or making an exception to the color chart they use. The Committee asked staff to put together some language to present to them at a later date.

Under other business, Ms. Hull mentioned the variety section of the CWB crop acquisition report. She will send the Committee a copy of the report and would like their input on varieties that they believe should be added or dropped.

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 5:44 p.m.