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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Docket No. AMS-FV-08-0091; FV09-984-1 IFR]

#### Walnuts Grown in California; Changes to Regulations Governing Board Nominations

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the administrative rules and regulations governing nominations for the California Walnut Board (Board). The Board locally administers the marketing order that regulates the handling of walnuts grown in California (order). This rule removes references to independent handlers, revises specifications under which groups of growers may submit nominations for certain grower positions on the Board, and corrects numerical references to other sections of the order. This change is needed to bring the administrative rules and regulations into conformance with recently enacted amendments to the order concerning Board structure and nomination procedures.

**DATES:** Effective December 6, 2008. Comments received by February 3, 2009 will be considered prior to issuance of a final rule.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.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, or can be viewed at: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Martin J. Engeler, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or e-mail: [Martin.Engeler@usda.gov](mailto:Martin.Engeler@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation 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, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating 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 Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA 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 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.

This rule revises the administrative rules and regulations governing Board nominations by removing references to "independent" handlers, adding language specifying that groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35% of the prior year's crop may submit nominations for grower positions on the ballots, and correcting references to order sections that were renumbered as a result of recent order amendments.

Section 984.35 of the California walnut marketing order provides for the allocation of grower and handler positions on the Board. Historically, some members represented the interests of a major industry cooperative, and some members represented independent interests. Some members represented the interests of certain production area districts, and some served the industry "at large." Recently, the structure of the industry changed when the major cooperative handler became a publicly-traded corporation. Subsequently, the industry approved amendments to the order that restructured the Board to reflect the changes to the industry's structure. Language specifying membership allocation between cooperative and independent interests was removed from the order because all production area walnut handlers are now considered independent. Alternative membership allocation provisions were added to the order. Board membership positions are now allocated between growers and handlers, the specific Districts within the production area, and grower positions with no District affiliation ("at large" positions). In the event that one industry handler handles 35 percent or more of the crop, such handler—and growers affiliated with such handler—are entitled to a given number of Board positions. As a result of the amendments, some sections of the order were renumbered.

Section 984.37 of the order provides authority for the Board, with the approval of USDA, to make changes to the Board nomination procedures

specified in the order. The procedures are contained in the order's administrative rules and regulations. Currently, § 984.437 of the regulations specifies that if the "at large" grower position on the Board is assigned to represent independent growers, groups of ten or more growers who marketed a combined volume of 500 or more tons of walnuts through independent handlers in the prior year may propose a nominee for the ballot. The current regulations also specify that groups of ten or more growers from each district who marketed an aggregate of 500 or more tons of walnuts through independent handlers in the prior year may propose nominees for the independent grower positions in their districts.

The amended order no longer differentiates between cooperative and independent entities, and Board positions are no longer apportioned to represent either cooperative or independent entities. References in the order to independent handlers have been removed from the provisions specifying Board nominations. This rule makes changes to § 984.437(a) and (b) of the administrative rules and regulations by removing references to independent handlers. Changes are also made to those paragraphs to specify that groups of ten or more growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to serve in the "at large" grower positions. This rule also revises the regulations to specify that groups of ten or more growers from each district who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to represent each district. Finally, this rule also revises certain references to renumbered order provisions in the regulations that are no longer correct.

This rule was unanimously recommended by the Board at its meeting on September 12, 2008.

#### **Initial Regulatory Flexibility Analysis**

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. The Small Business Administration (SBA) defines small agricultural service firms as those whose annual receipts are less than \$7,000,000, and defines small agricultural producers as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

There are currently 55 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,000 growers in the production area. USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.49 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at \$2,320 per ton, which is considerably higher than the previous five year average of \$1,384 per ton.

At the time of the 2002 Census of Agriculture, which is the most recent information available, approximately 83 percent of California's walnut farms were smaller than 100 acres. Forty-seven percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.49 tons per acre would have been expected to produce about 149 tons of walnuts during 2007–08. At \$2,320 per ton, that farm's production would have had an approximate value of \$345,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$345,000 in 2007–08. This is well below the SBA threshold of \$750,000, thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule revises the administrative rules and regulations governing the nomination of Board members. References to independent handlers are being removed from the regulations to conform to recent amendments to the order. Procedures for the nomination of grower members by groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the

prior year's crop are being added. References to renumbered sections of the order are being corrected. This action imposes no additional cost or burden on growers or handlers of any size.

The Board unanimously recommended these changes, which were necessary to bring the order's administrative rules and regulations into conformance with the recently amended order. As such, no alternatives were considered practicable.

The Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the administrative rules and regulations currently prescribed under the marketing order for California walnuts. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the

Board, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The marketing order amendments prompting these changes were implemented on April 2, 2008; (2) related issues were discussed in amendatory proceedings (including a public hearing) and amendments to the order were subsequently approved by producers; (3) the revised regulation should be in effect prior to January 2009, when Board nominations will be conducted; (4) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (5) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to finalization of this rule.

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

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

■ For the reasons set forth in the preamble, 7 CFR part 984 is 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. In § 984.437, paragraphs (a) and (b) are revised to read as follows:

#### § 984.437 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) With regard to Board grower member positions specified in § 984.35(a)(5) and (6), any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be

included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a)(3) and (4) and § 984.35(b)(4) and (5) and who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

\* \* \* \* \*

Dated: November 26, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–28673 Filed 12–4–08; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM393; Special Conditions No. 25–377–SC]

#### Special Conditions: Airbus A318, A319, A320, and A321 Series Airplanes; Astronautics Electronic Flight Bags With Lithium Battery Installations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Airbus A318, A319, A320, and A321 series airplanes. These airplanes, as modified by L2 Consulting Services, will have a novel or unusual design feature associated with Astronautics electronic flight bags which use lithium battery technology. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 12, 2007, L2 Consulting Services of Dripping Springs, Texas, applied for a supplemental type certificate to install Astronautics electronic flight bags on Airbus A318, A319, A320, and A321 series airplanes. In addition to lithium batteries, the Astronautics electronic flight bags contain the following equipment:

- Multiple electronic flight bag display units,
- Multiple electronic units (computer),
- Electronic flight bag power On/Off switches, and
- Mounting arms and mounting brackets.

At present, there is limited experience with use of rechargeable lithium batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

##### 1. Overcharging

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging that causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

##### 2. Over-Discharging

Discharge of some types of lithium batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements