

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Doc. No. AMS-FV-09-0050; FV09-984-5 FR]

#### Walnuts Grown in California; Changes to Regulations Governing Voting Procedures

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the administrative regulations governing voting procedures 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 specifies the voting procedures to be used for expanded types of non-assembled meetings and removes voting by telegraph. This will enable the Board to conduct business using current communication methods, which will result in time and cost savings to the Board and its members.

**DATES:** *Effective Date:* January 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wray, 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: [Debbie.Wray@ams.usda.gov](mailto:Debbie.Wray@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.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@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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. 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 final rule revises the administrative regulations governing the Board's voting procedures to implement authority from a recent amendment to the order. It expands the current procedures for voting by allowing voting by e-mail, facsimile, telephone, and videoconference, or by other means of communication. This rule was unanimously recommended by the Board at a meeting on May 18, 2009.

Section 984.45(b) of the California walnut marketing order specifies the percentage requirements for quorum and voting procedures of the Board. Section 984.45(c) of the order provides authority for the Board to vote by mail or telegram, or by any other means of communication, and to prescribe, with the approval of USDA, the minimum

number of votes that must be cast, as well as any other procedures that are necessary when the voting is by any of these communication methods. Section 984.45(d) of the order provides authority for the Board to meet by telephone or other means of communication.

Currently, Section 984.445 of the order's administrative regulations prescribes procedures for voting by mail or telegram but does not include procedures for voting by other means of communication, such as e-mail, facsimile, telephone, or videoconference.

At its meeting on May 18, 2009, the Board discussed the need to change the order's administrative regulations to include the use of current communication technologies to conduct business at non-assembled meetings, as authorized by a recent amendment to the order (73 FR 11328, March 3, 2008). Prior to the amendment, the Board had the authority to vote by mail or telegram upon due notice to all members but not to hold non-assembled meetings. As amended, the order provides for non-assembled meetings, but voting requirements and procedures for all such communication methods needed to be recommended by the Board and established through informal rulemaking. The Board unanimously recommended these changes at its meeting on May 18, 2009.

Using current communication methods and technology to vote at non-assembled meetings on matters deemed to be non-controversial, administrative, or of an emergency nature will result in cost savings by reducing time and travel expenses of Board members, many of whom are walnut producers and handlers who must travel long distances within California to attend meetings. Other Board expenses associated with holding assembled meetings, such as reserving meeting spaces, may also be reduced.

This final rule expands the procedures currently prescribed for voting by mail or telegram to include voting by e-mail and facsimile. In addition, reference to voting by telegram will be removed from the regulations since this communication method generally has been replaced by newer technology. Finally, voting by roll call will be prescribed for meetings conducted by telephone,

videoconference, or any other method of communication that enables interaction of Board members to ensure each member's vote by such method is accurately recorded.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final 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.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural growers are defined as those having annual receipts of less than \$750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008–09. The average yield for the 2008–09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008–09 crop at \$1,210 per ton, which is lower than the previous five-year average of \$1,598 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.96 tons per acre would have been expected to produce about 196 tons of walnuts during 2008–09. At \$1,210 per ton, that farm's production would have had an approximate value of \$237,000. 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 \$237,000 in 2008–09. 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 one-half of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2008–09 marketing year and would therefore be considered small handlers according to the SBA definition.

This final rule revises procedures currently prescribed under § 984.445 of the order for voting by mail and telegram to include other means of communication, including e-mail, facsimile, telephone, and videoconference. This revision to the regulations incorporates authority from a recent amendment to the order concerning voting procedures and allows the Board to conduct business at non-assembled meetings using current methods of communication. Authority for this action is provided in § 984.45 of the order.

The majority of the Board's members are walnut producers and handlers who are located at various locations throughout California, and it can be difficult to assemble these members in one location for a meeting, especially during harvest season. By prescribing procedures for voting by the communication methods authorized by the order, the Board will be able to vote on non-controversial, administrative, or emergency matters at non-assembled meetings, which will reduce travel time and expenses for producer and handler Board members. Board expenses associated with holding assembled meetings, such as the cost of reserving a meeting room, may also be reduced.

The Board unanimously recommended these changes, which are necessary to implement authority provided by a recent amendment to the order. Therefore, no alternatives to these changes were considered practicable.

This action will not impose any additional reporting or recordkeeping requirements on either small or large 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 the 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.

The Board's meeting was widely publicized throughout the 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 May 18, 2009, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 9, 2009 (74 FR 52154). Copies of the proposed rule were also mailed or sent via facsimile to Board members and walnut handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 8, 2009, was provided to allow interested persons to respond to the proposal. No comments were received.

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.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the regulations governing voting procedures should reflect the authority that was implemented by a recent amendment to the order. Also, this action was recommended at a public meeting. Finally, a 60-day comment period was provided for in the proposed rule, and no comments were received.

### List of Subjects in 7 CFR Part 984

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

■ 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. Section 984.445 is revised to read as follows:

**§ 984.445 Procedures for voting by mail, e-mail, telephone, videoconference, facsimile, or any other means of communication.**

(a) Whenever the Board votes upon any proposition by mail, e-mail, or facsimile, at least six members or alternates acting as members must vote and one dissenting vote shall prevent its adoption. Each proposition to be voted upon by mail, e-mail, or facsimile shall specify a time limit for members to vote, after which the alternates shall be given the opportunity to vote.

(b) Whenever the Board conducts meetings by telephone, videoconference, or any technology that enables member interaction, the vote shall be conducted by roll call.

Dated: January 6, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–316 Filed 1–11–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM405, Special Conditions No. 25–394–SC]

**Special Conditions: Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 Series Airplanes; Passenger Seats With Non-Traditional, Large, Non-Metallic Panels**

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

**ACTION:** Final special conditions; request for comments; correction.

**SUMMARY:** This document makes a correction to a Final special conditions; request for comment document, published in the **Federal Register** on June 5, 2009 (74 FR 26946), which issued special conditions for the Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 series airplanes, for passenger seats with non-traditional, large, non-metallic panels. The Final special conditions; request for comment document, included an incorrect Special Conditions number.

**FOR FURTHER INFORMATION CONTACT:** Michael Menkin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356;

telephone (425) 227–22793 facsimile (425) 227–1230; or e-mail: [Michael.Menkin@faa.gov](mailto:Michael.Menkin@faa.gov).

**SUPPLEMENTARY INFORMATION:** The document designated as “Docket No. NM405, Special Conditions No. 25–283–SC” was published in the **Federal Register** on June 5, 2009 (74 FR 26946). The document issued special conditions pertaining to passenger seats with non-traditional, large, non-metallic panels for the Bombardier, Inc., Model DHC–8–100, –200, –300, and –400 series airplanes.

As published, the document contained an incorrect Special Conditions number; one that was used for a different set of special conditions. To correct that problem, the special conditions number pertaining to these special conditions is being changed.

Since no part of the regulatory information has been changed, the special conditions are not being republished.

#### Correction

In Final special conditions; request for comment document FR Doc. E9–13187, published on June 5, 2009 (74 FR 26946), make the following correction:

1. On page 26946, in the first column, fifth line, change No. 25–283–SC to No. 25–394–SC.

Issued in Renton, Washington, on December 28, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–290 Filed 1–11–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2009–0788; Directorate Identifier 2009–NM–193–AD; Amendment 39–16167; AD 2010–01–09]

**RIN 2120–AA64**

**Airworthiness Directives; The Boeing Company Model 737–300, –400, and –500 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Model 737–300, –400, and –500 series airplanes. This AD requires repetitive external non-destructive inspections to detect cracks in the fuselage skin along the chem-mill step at stringers S–1 and

S–2 right, between station (STA) 827 and STA 847, and repair if necessary. This AD results from a report of a hole in the fuselage skin common to stringer S–1 and S–2 left, between STA 827 and STA 847 on an airplane that diverted to an alternate airport due to cabin depressurization and subsequent deployment of the oxygen masks. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

**DATES:** This AD is effective February 16, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 16, 2010.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on September 15, 2009 (74 FR 47148). That NPRM proposed to require repetitive