

Proposed Rules

Federal Register

Vol. 75, No. 158

Tuesday, August 16, 2011

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

[Doc. No. AMS-FV-11-0062; FV11-984-1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Walnut Board (Board) for the 2011–12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 15, 2011.

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 document 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>. All comments submitted in response to this rule will be included in the record and will be made available to the public.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jeff Smutny, 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: Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: Laurel.May@ams.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. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable walnuts beginning on September 1, 2011, and continue until amended, suspended, or terminated.

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 would increase the assessment rate established for the Board for the 2011–12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board’s needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010–11 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0174 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 9, 2011, and unanimously recommended 2011–12 expenditures of \$7,402,450 and an assessment rate of \$0.0175 per kernelweight pound of assessable walnuts. In comparison, last year’s budgeted expenditures were \$6,812,000. The assessment rate of \$0.0175 is \$0.0001 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2011–12 marketing year is estimated at 470,000 tons (inshell), which is 35,000 tons more than the 435,000 during the 2010–11 marketing year. At the recommended higher assessment rate of \$0.0175 per kernelweight pound, the Board should

collect approximately \$7,402,500 in assessment income, which would be

adequate to cover its 2011–12 budgeted expenses of \$7,402,450.

The following table compares major budget expenditures recommended by

the Board for the 2010–11 and 2011–12 marketing years:

Budget expense categories	2010–11	2011–12
Employee Expenses	\$577,500	\$693,500
Travel/Board Expenses/Annual Audit	208,000	218,000
Office Expenses	118,850	117,750
Program Expenses Including Research:		
Controlled Purchases	20,000	20,000
Crop Acreage Survey	95,000	95,000
Crop Estimate	105,000	115,000
Production Research Director	88,500	88,500
Production Research	1,042,000	1,036,000
Sustainability Project	0	25,000
Grades and Standards Research	125,000	150,000
Block Grant Research	0	200,000
Domestic Market Development	4,400,000	4,635,000
Reserve for Contingency	32,250	8,700

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. The 470,000 ton (inshell) estimate for merchantable shipments is an average of the two prior years' shipments. The Board met on June 9, 2011, and unanimously approved using a two prior years' average to formulate the 2011–12 estimate. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (470,000 tons × 2,000 pounds per ton × 0.45), which yields 423,000,000 kernelweight pounds. At \$0.0175 per pound, the new assessment rate should generate \$7,402,500 in assessment income and allow the Board to cover its expenses.

Section 984.69 of the order authorizes the Board to maintain a financial reserve of not more than two years' budgeted expenses. Excess assessment funds may be retained in the reserve or may be used temporarily to defray expenses of the subsequent marketing year, but if so used, must be made available to the handlers from whom they were collected within five months after the end of the marketing year.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA.

Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2011–12 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

Initial 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 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.

There are approximately 4,500 growers of California walnuts in the production area and approximately 74 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the 2007 Census of Agriculture, approximately 89 percent

of California's walnut farms were smaller than 100 acres.

USDA's National Agricultural Statistics Service (NASS) reports that the average yield for the 2010–11 crop was 2.22 tons per acre. NASS also reported the average price received for the 2010–11 crop was \$2,110 per ton.

A 100-acre farm with an average yield of 2.22 tons per acre would therefore have been expected to produce about 222 tons of walnuts during 2010–11. At \$2,110 per ton, that farm's production would have had an approximate value of \$468,420. Assuming that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$468,420 in 2010–11, which 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 2010–11 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2011–12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2011–12 expenditures of \$7,402,450 and an assessment rate of \$0.0175 per kernelweight pound of assessable walnuts. The proposed assessment rate of \$0.0175 is \$0.0001 higher than the 2010–11 rate. The quantity of assessable walnuts for the 2011–12 marketing year is estimated at

470,000 tons inshell weight, or 423,000,000 pounds kernelweight. Thus, the \$0.0175 rate should provide \$7,402,500 in assessment income and be

adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2010–11 and 2011–12 marketing years:

Budget expense categories	2010–11	2011–12
Employee Expenses	\$577,500	\$693,500
Travel/Board Expenses/Annual Audit	208,000	218,000
Office Expenses	118,850	117,750
Program Expenses Including Research:		
Controlled Purchases	20,000	20,000
Crop Acreage Survey	95,000	95,000
Crop Estimate	105,000	115,000
Production Research Director	88,500	88,500
Production Research	1,042,000	1,036,000
Sustainability Project	0	25,000
Grades and Standards Research	125,000	150,000
Block Grant Research	0	200,000
Domestic Market Development	4,400,000	4,635,000
Reserve for Contingency	32,250	8,700

The Board reviewed and unanimously recommended 2011–12 expenditures of \$7,402,450. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of \$0.0175 per kernelweight pound of assessable walnuts was derived by dividing anticipated expenses of \$7,402,450 by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 423,000,000 pounds, which should provide \$7,402,500 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to \$ 984.69 of the order.

According to NASS, the season average grower prices for the years 2009 and 2010 were \$1,710 and \$2,110 per ton, respectively. These prices provide a range within which the 2011–12 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of \$0.86 to \$1.06. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2011–12 price range estimate of \$1.91 to \$2.36 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment

rate, the assessment rate of \$0.0175 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2011–12 marketing year as a percentage of total grower revenue will thus likely range between .74 and .92 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, 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 June 9, 2011, 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 comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose 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 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.

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/MarketingOrderSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2011–12 marketing year begins on September 1, 2011, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

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 proposed to be 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 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2011, an assessment rate of \$0.0175 per kernelweight pound is established for California merchantable walnuts.

Dated: August 10, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–20788 Filed 8–15–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2011–0868; Directorate Identifier 2011–CE–027–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain SOCATA Model TBM 700 Airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A TBM700 operator reported an occurrence where, as a result of handling the standby compass lighting bulb cover in flight, both essential bus bars (ESS BUS 1 and ESS BUS 2) failed, leading to loss of a number of instruments and navigation systems.

The technical investigations carried out by SOCATA have shown that the cause of this occurrence was that the electrical protection of some TBM 700 aeroplanes is insufficient

to allow in-flight handling of the standby compass lighting cover when energized.

This condition, if not corrected, may compromise the ability of the pilot to safely operate the aeroplane under certain flight conditions due to the increase of workload.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 30, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; telephone: +33 (0)5 62 41 73 00; fax: +33 (0)5 62 41 7–54; or in the United States contact SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141; Internet: <http://www.socatanorthamerica.com>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City,

Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; e-mail: albert.mercado@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2011–0868; Directorate Identifier 2011–CE–027–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2011–0130, dated July 8, 2011 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

A TBM700 operator reported an occurrence where, as a result of handling the standby compass lighting bulb cover in flight, both essential bus bars (ESS BUS 1 and ESS BUS 2) failed, leading to loss of a number of instruments and navigation systems.

The technical investigations carried out by SOCATA have shown that the cause of this occurrence was that the electrical protection of some TBM 700 aeroplanes is insufficient to allow in-flight handling of the standby compass lighting cover when energized.

This condition, if not corrected, may compromise the ability of the pilot to safely operate the aeroplane under certain flight conditions due to the increase of workload.

To address this unsafe condition, SOCATA have developed a modification which consists of installing a protection fuse on the wire at the standby compass connector, introduced by SOCATA Service Bulletin (SB) 70–192–34.

For the reasons described above, this AD requires installation of a protection of the electrical wire at the standby compass connector.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

DAHER–SOCATA has issued TBM Aircraft Mandatory Service Bulletin SB