

Proposed Rules

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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

[Docket No. FV99-984-2 PR]

Walnuts Grown in California; Reporting Walnuts Grown Outside of the United States and Received by California Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the Federal marketing order for California walnuts (order) to require handlers to report receipts of walnuts grown outside of the United States. This proposal also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the order. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Requiring handlers to report to the Board receipts of walnuts grown outside of the United States would allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product. This would facilitate program administration.

DATES: Comments must be received by October 18, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moabdoCKET.clerk@usda.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.

FOR FURTHER INFORMATION CONTACT:

Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail:

Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This proposal rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 the Secretary 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 the Secretary 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 the Secretary'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 proposed rule invites comments on revising the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This would allow the Board to have better information on the total available supply of walnuts within California, which includes both California and foreign product, which would facilitate program administration. This action was unanimously recommended by the Board at a meeting on September 11, 1998.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

The Board would like to have better information on the total supply of walnuts within California, which includes both California and foreign product. The Board would use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be

included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

According to the National Agricultural Statistics Service, the 10-year average annual production of California walnuts is 235,000 inshell tons. Bureau of Census data indicates that the 10-year average annual import figure for walnuts is 1,036.5 shelled tons. However, during short crop years in California such as the 1992-93 (203,000 inshell tons) and 1996-97 (208,000 inshell tons) seasons, imports increased to 8,046 and 5,806 shelled tons, respectively.

Thus, the Board recommended that handlers be required to report to the Board receipts of walnuts grown outside of the United States. This report, WMB Form No. 7, would be submitted to the Board four times per year as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report would include the quantity of such walnuts received, country of origin, and whether such walnuts were inshell or shelled.

The Board also recommended that, with each report, the handler submit a copy of a product tag issued by the Dried Fruit Association of California (DFA) for compliance purposes. The DFA is a private agency designated under the marketing order to provide inspection services for handlers to ensure that California walnuts meet minimum grade and size requirements in effect under the order. The product tag would indicate the name of the person from whom the walnuts were received, the date the walnuts were received by the handler, the number of containers and U.S. Custom's Service entry number, whether the product is inshell or shelled, the quantity of walnuts, country of origin, the name of the DFA inspector who issued the tag, and the date such tag was issued. The Board believes product tags are necessary to verify handler receipt reports for imported walnuts. Accordingly, a new § 984.476 is proposed to be added to the orders' administrative rules and regulations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1997-98 season, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds of walnuts. Based on an average price of \$2.10 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would add a new § 984.476 to the order's administrative rules and regulations which would require handlers to report to the Board receipts of walnuts grown outside of the United States. This would allow the Board to have better information on the total available supply of walnuts, including California and foreign product, which would facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 984.76 of the order.

Regarding the impact of the proposed action on affected entities, this rule should impose minimal additional costs. The Board estimates that about six handlers have imported walnuts over the past few years. Such handlers would be required to submit an additional report to the Board four times per year along with tags issued by the DFA verifying receipts of foreign product. The DFA currently provides inspection services for all handlers of California walnuts and would be available at no additional cost to issue product tags to handlers receiving imports. Handlers

would then submit these tags to the Board for verification purposes.

An alternative to the proposed action would be to not collect information from handlers on receipts of imported walnuts. However, as previously mentioned, the Board would like to have better information on the total available supply of walnuts within California, which includes both California and foreign product. The only way this information can be obtained by the Board is to collect it from handlers. This information would facilitate program administration by improving the Board's base of information from which to make decisions.

The Board also recommended that a system be established for monitoring walnuts grown outside of the United States that are received by California handlers. Under the proposed monitoring system, DFA inspectors would check whether or not foreign product had been inspected and met the requirements of section 8e of the Act. Under section 8e, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Walnuts are included under section 8e, and thus importers of walnuts are required to have such walnuts inspected. However, it is the USDA's responsibility to ensure that imported walnuts meet the requirements of section 8e. Thus, we are not proceeding with this recommendation.

Finally, the Board considered whether it would be useful to collect information on walnuts grown outside of California, but within the United States. However, Board members agreed that the amount of such walnuts was so small, it was not worth requiring handlers to report such information.

This action would impose some additional reporting and recordkeeping burden on handlers that receive walnuts grown outside of the United States. It is estimated that six handlers may import walnuts during the season. Such handlers would be required to submit a receipt report to the Board four times per year. It is estimated that it would take such handlers 5 minutes to complete each report. Thus, the additional annual burden should total no more than 2 hours for the industry. The information would be collected on WMB Form No. 7. That form is being submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581-0178. As with other similar marketing order programs,

reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has identified one relevant Federal rule regarding requirements for walnuts grown outside of the United States. As previously stated, walnuts are included under section 8e. Thus, importers of walnuts are required to have such walnuts inspected by the USDA's inspection service. Importers whose walnuts meet section 8e requirements do not have to submit any paperwork to the USDA. However, importers whose walnuts fail section 8e requirements, or whose walnuts are exempt from section 8e because such walnuts are so immature that they cannot be used for drying and sale as dried walnuts (green walnuts), or are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to the USDA. However, only a small amount of information requested by the USDA in these instances or by the Board through this rule, would be duplicative.

In addition, the Board's meeting on September 11, 1998, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. This issue was also deliberated at an earlier Board meeting on February 2, 1998, and at a Grades and Standards Subcommittee meeting on June 5, 1998. All interested persons were invited to attend these meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for vegetable and specialty crop marketing orders, which includes the Federal marketing order for California walnuts.

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581-0178.

Expiration Date of Approval: July 31, 2000.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California walnut

marketing order program, which has been operating since 1948.

On September 11, 1998, the Board unanimously recommended revising the order's administrative rules and regulations to require handlers to report to the Board receipts of walnuts grown outside of the United States. This information would be reported on WMB Form No. 7. This notice concerns this report, in addition to the accompanying regulation previously discussed regarding requiring this report be submitted by handlers to the Board.

The Board would like to have better information on the total supply of walnuts available within California, which includes both California and foreign product. The Board would use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board has some concerns that, particularly in short crop years when handlers may import more walnuts to meet customer demands, imported walnuts could be included in handler inventory reports of California walnuts. Accurate information regarding the supply of walnuts within California is needed by the Board in its administration of the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: California walnut handlers who receive walnuts grown outside of the United States.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0178 and the Vegetable and Specialty Crop Marketing Orders, and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

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. A new § 984.476 is added to read as follows:

§ 984.476 Report of walnut receipts from outside of the United States.

Each handler who receives walnuts from outside of the United States shall file with the Board, on WMB Form No. 7, a report of the receipt of such walnuts. The report shall be filed as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number,

whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

Dated: August 17, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-21666 Filed 8-18-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-206-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes. That action would have required replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the proposed action has already been accomplished on all affected airplanes. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Meghan Gordon, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2207; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 6, 1997 (62 FR 31020). The proposed rule would have required replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer. That action was prompted by reports indicating that, due to a missing

washer, the bolt end fittings of the double flight attendant seats can become loose. The proposed actions were intended to ensure that a washer between the bolt head and bushing is installed. A missing washer could allow movement of the bolt end fittings, which can cause the restraint belts to release and, consequently, result in injury to the flight attendants.

Actions Since Issuance of the NPRM

Since the issuance of that NPRM, the FAA has received a comment from the airplane manufacturer indicating that the replacement of the existing retaining bolt of the attendant seat lap belt with a new bolt and a washer, in accordance with Boeing Service Bulletin 767-25-0217, dated January 13, 1994, has been accomplished on all affected airplanes. Though the manufacturer did not provide documentation to support its statement, the FAA also has received substantiating documentation from each affected operator that the service bulletin has been incorporated on its fleet of airplanes. In the case of one operator, the FAA contacted the Principal Maintenance Inspector (PMI) to determine whether the replacement had been accomplished on that operator's affected airplanes. The PMI verified that the service bulletin had been accomplished on all affected airplanes in that operator's fleet.

In addition, the airplane manufacturer has also updated the Illustrated Parts Catalog to include the washer that corrects the unsafe condition in the seat assembly; therefore, the unsafe condition is not likely to be reintroduced in the future.

FAA's Conclusions

Based upon the FAA's review of the data submitted by the affected operators and the airplane manufacturer, the FAA has determined that the previously identified unsafe condition no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 96-NM-206-AD, published in the **Federal Register** on June 6, 1997 (62 FR 31020), is withdrawn.

Issued in Renton, Washington, on August 13, 1999.

D. L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-21574 Filed 8-18-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-351-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737-300, -400 and -500 series airplanes. This proposal would require replacement, with new parts, of the existing actuators or the rod ends on the existing actuators at wing leading edge slat positions 1, 2, 5, and 6. This proposal is prompted by reports indicating that the rod ends on several leading edge slat actuators have fractured. The actions specified by the proposed AD are intended to prevent fatigue cracking of the rod ends of the leading edge slat actuators, which could result in uncommanded deployment of the wing leading edge slat and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-351-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00