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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS-FV-11-0077; FV11-983-2 FIR]

Pistachios Grown in California, Arizona, and New Mexico;

Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Administrative Committee for Pistachios (Committee) for the 2011-12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. The Committee locally administers the marketing order which regulates the handling of pistachios grown in California, Arizona, and New Mexico. The interim rule was necessary to allow the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

EFFECTIVE DATE: [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrea Ricci or Kurt J. Kimmel, California Marketing Field Office, Marketing Order and Agreements Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Andrea.Ricci@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, Marketing Order Agreement Division, 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 Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico, 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.

Under the order, California, Arizona, and New Mexico pistachio handlers are subject to assessments, which provide funds to administer the order. Assessment rates as issued under the order are intended to be applicable to all assessable pistachios for the entire production year and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on September 1, 2011, and ends on August 31, 2012.

In an interim rule published in the **Federal Register** on September 29, 2011, and effective on September 30, 2011, (76 FR 60361, Doc. No. AMS-FV-11-0077; FV 983-2 IR], § 983.253 was amended by decreasing the assessment rate established for California, Arizona, and New Mexico pistachios for the 2011-12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. The decrease in the per pound assessment rate allows the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

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 rule 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 approximately 900 producers of pistachios in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000 and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000. (13 CFR 121.201) Based on Committee data, it is estimated that over 70 percent of the handlers ship less than \$7,000,000 worth of pistachios and would thus be considered small business under the SBA definition. It is also estimated that over 80 percent of the growers in the production area produce less than \$750,000 worth of pistachios and would thus be considered small businesses under the SBA definition.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2011-12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. At its July 21, 2011 meeting, the Committee unanimously recommended 2011-12 expenditures of \$681,850 and an assessment rate of \$0.0005 per pound of assessed weight pistachios. The assessment rate of \$0.0005 is \$0.0002 lower than the 2010-11 rate. Applying the \$0.0005 per pound assessment rate to the Committee's 400,000,000 pound crop estimate should provide \$200,000 in assessment income. Thus, income derived from handler assessments combined with the 2010-11 financial reserve, estimated interest income, and funds received from the CPRB is expected to provide sufficient revenues for the Committee to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

According to NASS, the season average producer price was \$1.67 in 2009 and \$2.22 per pound of assessed weight pistachios in 2010. A review of historical information and preliminary information pertaining to the upcoming production year indicates that the grower price for the 2011-12 production year could range between \$1.67 and \$2.22 per pound of assessed weight pistachios. Therefore, the

estimated assessment revenue for the 2011-12 production year as a percentage of total producer revenue during the 2011-12 production year could range between 0.030 and 0.023 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the California, Arizona, and New Mexico pistachio industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 21, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. 0581-0215 Pistachios Grown in California. No changes in those requirements as a result of this action are anticipated.

Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California, Arizona, and New Mexico 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before November 28, 2011. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0077-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 60361, September 29, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

PART 983 - PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

Accordingly, the interim rule amending 7 CFR part 983, which was published at 76 FR 60361 on September 29, 2011, is adopted as a final rule, without change.

Dated: April 6, 2012

David R. Shipman
Acting Administrator
Agricultural Marketing Service

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