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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. **AMS-FV-15-0038; FV15-983-1 PR**]

Pistachios Grown in California, Arizona, and New Mexico; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Administrative Committee for Pistachios (Committee) to increase the assessment rate established for the 2015-16 and subsequent production years from \$0.0005 to \$0.0035 per pound of assessed weight pistachios handled under the marketing order for pistachios grown in California, Arizona, and New Mexico. The Committee locally administers the order and is comprised of producers and handlers of pistachios operating within the area of production. Assessments upon pistachio handlers are used by the Committee to fund reasonable and necessary expenses of the program. The production year begins on 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 [INSERT DATE 15 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, 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>. All comments submitted in response to this proposed 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: Peter Sommers, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA;

Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: PeterR.Sommers@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 983, 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 proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California, Arizona, and New Mexico pistachio 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 pistachios beginning on September 1, 2015, 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 proposed rule would increase the assessment rate for the 2015-16 and subsequent production years from \$0.0005 to \$0.0035 per pound of assessed weight pistachios.

The California, Arizona, and New Mexico pistachio marketing order provides authority for the Committee, 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 Committee are producers and handlers of California, Arizona, and New Mexico pistachios. They are familiar with the Committee's needs and with the costs of 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 2011-12 and subsequent production years, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from production year to production year unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 9, 2015 and October 20, 2015 and unanimously recommended 2015-16 production year expenditures of \$1,056,402 and an assessment rate of \$0.0035 per pound of assessed weight pistachios handled to

fund Committee expenses. This represents an increase over the prior year's budget and assessment rate. In comparison, last year's budgeted expenditures were \$1,001,400. The assessment rate of \$0.0035 is \$0.0030 higher than the rate currently in effect. The Committee's recommended 2015-16 expenditures are \$55,002 higher than last year's budgeted expenditures. The reasons for the proposed increase include a significant increase in budgeted expenses in 2015 over actual expenses in 2014, a significantly smaller crop estimate in 2015, and allocation of funds for Sterile Insect Technology/Navel Orange Worm (SIT/NOW) research. When applied to the Committee's crop estimate for the 2015-16 production year of 265 million pounds, the current assessment rate of \$0.0005 would not generate sufficient income to cover anticipated expenses. The proposed assessment rate of \$0.0035 per pound of assessed weight pistachios would generate assessment income of \$927,500. Anticipated assessment income combined with financial reserves and other income would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2015-16 production year include \$560,000 for SIT/NOW research, \$92,402 for administrative expenses, \$314,000 for salary and related employee expenses, \$10,000 for compliance expenses, and \$80,000 for a contingency fund. Budgeted expenses in 2014-15 were \$360,000 for Technical Assistance Specialty Crop (TASC) Program research, \$125,000 for other research, \$117,400 for administrative expenses, \$314,000 for salary and related employee expenses, \$10,000 for compliance expenses, and \$75,000 for a contingency fund. Actual expenses in 2014-15 were significantly lower, at \$547,199, as the TASC research was not funded.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of California, Arizona, and New Mexico pistachios, and other pertinent factors. As mentioned earlier, pistachio production levels are estimated at 265 million pounds, which should generate \$927,500 in assessment income. Anticipated assessment income derived from handler assessments, along with other income and financial reserves would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial

reserve within the limit authorized under the order. The significant increase in the assessment rate is due to a significant increase in budgeted expenses in 2015 over actual expenses in 2014, and also a significantly smaller crop estimate in 2015. The financial reserve is estimated to be \$239,994 at the end of the 2015-16 production year.

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

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each production year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA would evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2015-16 budget and those for

subsequent production 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 proposed 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 businesses 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 1,152 producers of pistachios in the production area and approximately 19 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of 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 about 47 percent of the handlers annually ship less than \$7,000,000 worth of pistachios, and it is also estimated that 68 percent of the producers have annual receipts less than \$750,000. Thus, the majority of handlers in the production area may be classified as large entities, and the majority of producers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2015-16 and subsequent production years from \$0.0005 to \$0.0035 per pound of assessed weight pistachios. The Committee unanimously recommended 2015-16 expenditures of \$1,056,402 and an assessment rate of \$0.0035 per pound of assessed weight pistachios. The proposed assessment rate of \$0.0035 is \$0.0030 higher than the 2014-15 rate. The quantity of assessable pistachios for the 2015-16 production year is estimated at 265 million pounds. Thus, the \$0.0035 rate should provide \$927,500 in assessment income. Anticipated assessment income derived from handler assessments, along with other income and financial reserves would provide sufficient revenue for the Committee to meet its budgeted expenses while maintaining its financial reserve authorized

under the order which is approximately two production years' budgeted expenses.

The major expenditures recommended by the Committee for the 2015-16 production year include \$560,000 for SIT/NOW research, \$92,401 for administrative expenses, \$314,000 for salary and related employee expenses, \$10,000 for compliance expenses, and \$80,000 for a contingency fund. Budgeted expenses in 2014-15 were \$360,000 for TASC Program research, \$125,000 for other research, \$117,400 for administrative expenses, \$314,000 for salary and related employee expenses, \$10,000 for compliance expenses, and \$75,000 for a contingency fund. The reasons for the proposed increase include a significant increase in budgeted expenses in 2015 over actual expenses in 2014, a significantly smaller crop estimate in 2015, and allocation of funds for Sterile Insect Technology/Navel Orange Worm (SIT/NOW) research.

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditure levels but ultimately determined that 2015-16 expenditures of \$1,056,402 were appropriate and that the current assessment rate would generate insufficient revenue to meet its expenses.

According to data from the National Agricultural Statistics Service, the season average producer price was \$3.48 per pound of assessed weight pistachios in 2013 and \$3.10 per pound in 2014. A review of historical information and preliminary information pertaining to the upcoming production year indicates that the producer price for the 2015-16 production year could range between \$3.48 and \$3.10 per pound of assessed weight pistachios. Therefore, the estimated assessment revenue for the 2015-16 production year as a percentage of total producer revenue could range between 0.10 and 0.11 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. These costs would be offset by the benefits derived from the operation of the marketing order. 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 and participate in Committee deliberations on all issues. Like all Committee meetings, the July 9, 2015, and October 20, 2015, meetings were public 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. 0581-0215. No changes in those requirements are necessary as a result of this action. 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, Arizona, and New Mexico pistachio 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 action.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2015-16 production year began on September 1, 2015, and the marketing order requires that the rate of assessment for each production year apply to all assessable pistachios handled during such production year; (2) the Committee 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 Committee at a public meeting.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 983.253(a) to read as follows:

§ 983.253 Assessment rate.

(a) On and after September 1, 2015, an assessment rate of \$0.0035 per pound is established for California, Arizona, and New Mexico pistachios.

* * * * *

Dated: December 8, 2015.

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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