



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS-SC-17-0048; SC17-983-2 IR]

Pistachios Grown in California, Arizona, and New Mexico;

Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Administrative Committee for Pistachios (Committee) for a decrease in the assessment rate established for the 2017-18 and subsequent production years from \$0.0010 to \$0.0001 per pound of assessed weight pistachios handled under the marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of pistachios operating within the area of production, and a public member. Assessments upon pistachio handlers are used by the Committee to fund reasonable and necessary expenses of the program. The production year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this 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 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 comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Peter R. Sommers, Marketing Specialist, or Jeffrey Smutny, 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 Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, 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: Richard.Lower@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 Orders 13563 and 13175.

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of

Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 issued herein will be applicable to all assessable pistachios beginning September 1, 2017, 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 decreases the assessment rate established for the Committee for the 2017-18 and subsequent production years from \$0.0010 to \$0.0001 per pound of assessed weight pistachios.

The 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. The Committee also has a public member and an alternate public member who have no proprietary

involvement with the industry. The producers and handlers are familiar with the Committee'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 2016-17 and subsequent production years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from production year to production year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 10, 2017, and unanimously recommended 2017-18 expenditures of \$672,900, and met again on August 1, 2017, to deliberate and recommend the 2017-18 assessment rate. At that time, the Committee recommended an assessment rate of \$0.0001 per pound of assessed weight pistachios by majority vote. In comparison, last year's budgeted expenditures were \$922,500, and the assessment rate was \$0.0010 per pound of pistachios. The assessment

rate of \$0.0001 is \$0.0009 lower than the rate currently in effect.

The major expenditures recommended by the Committee for the 2017-18 production year include \$351,000 for salaries and benefits, \$125,000 for research, and \$80,400 for general and administrative expenses. Budgeted expenses for these items in the 2016-17 production year were \$351,000, \$375,000, and \$80,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California, Arizona, and New Mexico pistachios. Pistachio shipments for the production year are estimated at 550 million pounds which should provide \$55,000 in assessment income. Income derived from handler assessments, along with interest income, California Pistachio Research Board (CPRB) management income, and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum limit permitted by the order, which is approximately two production years' budgeted expenses as stated in §983.74(a)(2).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2017-18 production year budget and those for subsequent production years will 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 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 18 handlers subject to regulation under the order and approximately 1,236 producers of pistachios in the production area. The Small Business Administration defines small agricultural service firms as those whose annual receipts are less than \$7,500,000 and small agricultural producers as those having annual receipts less than \$750,000 (13 CFR 121.201).

Based on Committee data, it is estimated that about 50 percent of the handlers annually ship less than \$7,500,000 worth of pistachios. Nine of the 18 (50 percent) regulated handlers received enough pistachios at an average price of

\$2.50 per pound to be considered large handlers, leaving the percentage of small handlers at 50 percent.

The National Agricultural Statistics Service (NASS) 2012 data on pistachio farm size indicates that there were 1,305 pistachio farms, of which 945, or 72 percent, were less than 100 acres. NASS 2016 annual production data indicates that the per-acre production of pistachios was 3,750 pounds. At an average value of \$1.68 per pound, each acre of pistachios could return \$6,300. In order for a producer to have \$750,000 in annual receipts, the producer would have to have at least 119 acres. Thus, the majority of handlers and producers in the production area may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2017-18 and subsequent production years from \$0.0010 to \$0.0001 per pound of pistachios handled. The Committee unanimously recommended 2017-18 expenditures of \$672,900, and recommended an assessment rate of \$0.0001 per pound of assessed weight pistachios, by majority vote. The new assessment rate is \$0.0009 lower than the rate currently in effect. The quantity of assessable pistachios for the

2017-18 production year is estimated at 550 million pounds. Thus, the \$0.0001 rate should provide \$55,000 in assessment income. Income derived from handler's assessments, along with interest income, CPRB management income, and funds from the Committee's authorized reserve, will be adequate to cover expenses for the 2017-18 production year.

The major expenditures recommended by the Committee for the 2017-18 production year include \$351,000 for salaries and benefits, \$125,000 for research, and \$80,400 for general and administrative expenses. Budgeted expenses for these items in the 2016-17 production year were \$351,000, \$375,000, and \$80,000, respectively.

The assessment rate decrease is necessary to ensure the Committee's financial reserve remains within the limit specified under the order.

In addition, the Committee had funded research pertaining to Sterile Insect Technology (SIT) for Navel Orangeworm control during the 2016-2017 production year. Beginning with the 2017-18 production year, the CPRB will fully fund the SIT research, removing that financial burden from the committee. For this reason, the Committee recommended decreasing the assessment rate from \$0.0010 to

\$0.0001, by majority vote. The income generated from the lower assessment rate combined with interest income, CPRB management income, and funds from the financial reserve should provide sufficient income to cover anticipated 2017-18 expenses and maintain the financial reserve within the limit specified under the order.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources. Alternative expenditure levels were discussed, based upon the relative value of various activities to the pistachio industry. The Committee ultimately determined that the 2017-18 production year expenses of \$672,900 were prudent, and the assessment income provided by the reduced rate, interest income, CPRB management income, and funds from the financial reserve, would permit the Committee to meet its expenses, while not adding to the financial reserve.

According to data from NASS, the season average producer price was \$3.29 per pound of assessed weight pistachios in 2015 and \$1.68 per pound in 2016. A review of historical and preliminary information pertaining to the upcoming production year indicates that the producer revenue for the 2017-18 production year could range between

\$924,000,000 and \$1,809,500,000. Therefore, the estimated assessment revenue for the 2017-18 production year as a percentage of total producer revenue could range between 0.00003 and 0.00006 percent.

This action decreases 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. Additionally, the Committee's meetings were widely publicized throughout the California, Arizona, and New Mexico pistachio industry, and all interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2017, and August 1, 2017, meetings were public meetings 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 interim 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 OMB and assigned OMB No. 0581-0215, "Vegetable and Specialty Crop Marketing Orders." 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 action imposes 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 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because handlers are aware of this rule, which was recommended at a public meeting. This interim rule provides for a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule. The decreased assessment rate is necessary to fund reasonable and necessary expenses of the program, while keeping the funds in the reserve within the maximum limit permitted by the order. Moreover, the

decreased assessment rate reduces the economic burden on handlers.

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 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.

§§ 983.1 through 983.92 [Designated as Subpart A]

2. Designate §§ 983.1 through 983.92 as subpart A and add a heading for subpart A to read as follows:

Subpart A - Order Regulating Handling

[Subpart Redesignated as Subpart B and Amended]

3. Redesignate "Subpart - Rules and Regulations" as subpart B and revise the heading to read as follows:

Subpart B - Administrative Requirements

[Subpart Redesignated as Subpart C]

4. Redesignate "Subpart - Assessment Rate" as subpart C.

5. Section 983.253 is revised to read as follows:

§ 983.253 Assessment rate.

On and after September 1, 2017, an assessment rate of \$0.0001 per pound is established for California, Arizona, and New Mexico pistachios.

Dated: October 16, 2017.

Bruce Summers,
Acting Administrator,
Agricultural Marketing Service.

BILLING CODE 3410-02 P

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