



Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS-SC-24-0021]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Administrative Committee for Pistachios (Committee) to decrease the assessment rate established for the 2024-2025 and subsequent production years from \$0.0007 to \$0.0003 per pound of assessable pistachios handled under the marketing order. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901; or Email: PeterR.Sommers@usda.gov or Abigail.Maharaj@usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Antoinette.Carter@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 983, as amended (7 CFR part 983), regulating

the handling of pistachios grown in California, Arizona, and New Mexico. Part 983 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of pistachios operating within the production area, and a public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Order 12866, as amended by Executive Order 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires federal agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule has been reviewed under Executive Order 12988 – Civil Justice Reform. Under the Order now in effect, pistachio handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the

assessment rate will be applicable to all assessable pistachios for the 2024-2025 production year, 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 8c(15)(A) of the Act (7 U.S.C. 608(c)(15)(A)), any handler subject to an order may file with U. S. Department of Agriculture (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 no later than 20 days after the date of the entry of the ruling.

This final rule decreases the assessment rate for pistachios handled under the Order from \$0.0007 per pound, the rate that was established for the 2021-2022 and subsequent production years, to \$0.0003 per pound for the 2024-2025 and subsequent production years.

Sections 983.70 and 983.71 of the Order authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2021-2022 and subsequent production years, the Committee recommended, and AMS approved, an assessment rate of \$0.0007 per pound of

assessable pistachios within the production area (87 FR 22105). That rate continues in effect from production year to production year unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS. This final rule decreases the assessment rate from \$0.0007 to \$0.0003 per pound of assessable pistachios for the 2024-2025 and subsequent production years.

The Committee held a public meeting on April 9, 2024, and unanimously recommended an assessment rate of \$0.0003 per pound of assessable pistachios for the 2024-2025 and subsequent production years. The Committee also met on July 10, 2024, and unanimously recommended 2024-2025 production year expenditures of \$956,700. In comparison, last period's budgeted expenses were \$1,145,161. The assessment rate of \$0.0003 is \$0.0004 less than the rate currently in effect. The Committee recommended decreasing the assessment rate to help ensure the Committee's compliance with § 983.74, which stipulates that assessments will be reduced to bring reserve funds to an amount that is less than or equal to two production years' budgeted expenses.

The major expenditures recommended by the Committee for the 2024-2025 production year include \$512,900 for salaries and related expenses, \$125,000 for research, \$100,000 for a contingency fund, \$73,500 for administrative expenses, and \$10,000 for compliance expenses. By comparison, budgeted expenses for these items during the 2023-24 production year were \$631,900, \$125,000, \$200,000, \$76,450, and \$10,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, anticipated production of assessable pistachios, and the amount of funds available in the authorized reserve. The expected 1 billion pounds of pistachios for the 2024-2025 production year would generate \$300,000 in assessment revenue at the assessment rate (1,000,000,000 pounds multiplied by \$0.0003 assessment rate). Income

derived from handler assessments, along with the California Pistachio Research Board (CPRB) management income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of \$956,700. Funds available in the reserve (currently about \$844,000) will be kept within the maximum level of approximately two production years' budgeted expenses as authorized by the Order.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information. Although this assessment rate will be in effect 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee 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 2024-2025 budget, and those for subsequent production years will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final 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 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 19 handlers subject to regulation under the Order, and approximately 1,871 producers of pistachios in the production area. Small agricultural producers of pistachios are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$3.75 million (NAICS code 111335, Tree Nut Farming). Small agricultural service firms (handlers) have been defined as those whose annual receipts are equal to or less than \$34 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Data from USDA's National Agricultural Statistics Service (NASS) can be used to characterize the proportion of small versus large pistachio producers and handlers according to the SBA standards. Due to the significant year-to-year variation in pistachio production and crop value, it is helpful to use two-year averages. The average value for crop years 2022 and 2023 (\$1.861 and \$2.98 billion, respectively) is \$2.42 billion. Dividing \$2.42 billion by 1,871 producers yields an estimated average sales receipt per producer estimate of about \$1.29 million, which is well below the \$3.75 million threshold for small producers. Assuming normal distribution, the majority of pistachio producers may be classified as small entities.

Estimating the proportion of small handlers requires an additional computation. An average price per handler can be estimated using AMS Market News prices for pistachio packages at the San Francisco terminal market. The average terminal market price for 12 one-pound packages of pistachios at the San Francisco terminal market from January to July 2024 was \$41 per package. Dividing \$41 by the weight of the package (12 pounds) yields a handler average price estimate of \$3.417 per pound. Dividing the SBA size standard of \$34 million by \$3.417 yields an estimate of 9.951 million pounds per year (just under 10 million pounds). The Committee reported that 12 out of 19 handlers (63 percent) handled under 10 million pounds per year. Therefore, 63

percent of the pistachio handlers would be considered small handlers under the SBA standard.

The Committee's recommended assessment rate of \$0.0003 per pound of assessable pistachios complies with section 983.71(b) of the Order, which states that any assessment rate must not exceed one-half of one percent of the average price received by producers in the preceding production year. The decreased assessment rate of \$0.0003 per pound is well below the computed maximum allowable rate of \$0.01 per pound (0.5 percent times \$2.00, the 2023 average producer price reported by NASS).

Using the new rate, 2024-2025 annual Committee assessment as a percent of producer revenue (crop value) can be approximated using average production and crop value for the two prior years. NASS reported utilized inshell pistachio production of 882 million pounds and 1.49 billion pounds, respectively, for the 2022 and 2023 crop years, with an average of 1.186 billion pounds. Multiplying 1.186 billion pounds by \$0.0003 per pound yields estimated annual Committee revenue of \$355,800. Dividing estimated Committee revenue of \$355,800 by the two-year average crop value of \$2.42 billion crop yields an estimate of 0.01 percent. That is, the \$355,800 estimated annual assessment total represents one hundredth of one percent of estimated producer revenue.

This final rule decreases the assessment rate collected from handlers for the 2024-2025 and subsequent production years from \$0.0007 to \$0.0003 per pound of assessable pistachios. The Committee unanimously recommended 2024-2025 production year expenditures of \$956,700 and an assessment rate of \$0.0003 per pound of assessable pistachios. The assessment rate of \$0.0003 is \$0.0004 lower than the rate currently in effect. The volume of assessable pistachios for the 2024-2025 production year is estimated at one billion pounds. Thus, the \$0.0003 per pound of assessable pistachios should provide \$300,000 in assessment income (1,000,000,000 pounds multiplied by \$0.0003 assessment rate). Income derived from handler assessments, along with CPRB

management income of approximately \$220,200 and funds from the Committee's authorized reserve of approximately \$436,500, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2024-2025 production year include \$512,900 for salaries and related expenses, \$125,000 for research, \$100,000 for a contingency fund, \$73,500 for administrative expenses, and \$10,000 for compliance expenses. By comparison, budgeted expenses for these activities for the 2023-24 production year were \$631,900, \$125,000, \$200,000, \$76,450, and \$10,000, respectively.

The Committee recommended decreasing the assessment rate to utilize funds from the authorized reserve to cover Committee expenditures and ensure the financial reserve remains in compliance with Order requirements.

Prior to arriving at this budget and assessment rate, the Committee considered alternate potential expenditure levels and the impact of reducing the assessment rate more and/or less than the rate herein. However, the Committee determined that the recommended assessment rate would achieve its goals of both adequately funding Committee operations and reducing the reserve to an appropriate level.

A review of historical information and preliminary information pertaining to the upcoming production year indicates the average producer price for the 2024 – 2025 season should be approximately \$2 per pound. Therefore, the estimated assessment revenue for the 2024 – 2025 production year as a percentage of total producer revenue is expected to be about .015 percent ($\$0.0003$ divided by $\$2$ multiplied by 100).

This action decreases the assessment obligation imposed on pistachio handlers. Assessments are applied uniformly on all handlers, and some of the cost may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the pistachio industry and all interested persons are invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 9, 2024, and July 10, 2024, meetings were public and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection 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, Pistachios. 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 final rule will not impose any additional reporting or recordkeeping requirements on either small or large 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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action published in the Federal Register on October 30, 2024 (89 FR 86287). A 30-day comment period ending November 29, 2024, was provided to all interested persons to respond to the proposal. AMS received three comments regarding this proposal. One comment supported the decreased assessment

rate and two comments did not address the merits of the proposed rule. Accordingly, AMS made no changes to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 983 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. Section 983.253 is revised to read as follows:

§ 983.253 Assessment rate.

On and after September 1, 2024, an assessment rate of \$0.0003 per pound is established for California, Arizona, and New Mexico pistachios covered under the Order.

Erin Morris,
Administrator,
Agricultural Marketing Service.

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