



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS-SC-16-0076; SC16-983-2 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 implemented a recommendation from the Administrative Committee for Pistachios (Committee) to decrease the assessment rate established for pistachios grown in California, Arizona, and New Mexico for the 2016-2017 and subsequent production years from \$0.0035 to \$0.0010 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. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

DATES: Effective December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Sommers or Jeffrey Smutny, 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 obtain information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or 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 12866, 13563, and 13175.

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

In an interim rule published in the **Federal Register** on September 16, 2016, and effective on September 19, 2016, (81 FR 63679, Doc. No. AMS-SC-16-0076, SC16-983-2 IR), § 983.253 was amended by decreasing the assessment rate established for pistachios grown in the production area for the 2016-2017 and subsequent production years from \$0.0035 to \$0.0010 per pound. The decrease in the per pound assessment rate allows the Committee to maintain its

financial reserve while still providing adequate funding to meet program expenses.

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 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 19 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts less than \$750,000, and small agricultural service firms as those whose annual receipts are less than \$7,500,000. (13 CFR 121.201)

The National Agricultural Statistics Service (NASS) 2012 data on pistachio farm size indicates that there were 1,305 pistachio farms, of which 1,125 were less than 250 acres. That is, 87 percent were too small to have annual receipts of \$750,000. NASS 2015 annual production data indicates that the per-acre production of pistachios was 1,160 pounds. At an average value of \$2.54 per pound, each acre of pistachios could return \$2,948.40. In order for a producer to have \$750,000 in annual receipts, the producer would have to have at least 255.3 acres. Thus, the majority of handlers and producers in the production area may be classified as small entities.

Based on Committee data, it is estimated that about 53 percent of the handlers annually ship less than \$7,500,000 worth of pistachios. Nine of the 19 regulated handlers (47 percent) received enough pistachios at an average price of \$3.00 pound to be considered large handlers, leaving the percentage of small handlers at 53 percent.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2016-17 and subsequent production years from \$0.0035 to \$0.0010 per pound of

pistachios handled. The Committee unanimously recommended 2016-17 expenditures of \$922,500 and an assessment rate of \$0.0010 per pound of pistachios, which is \$0.0025 lower than the 2015-16 rate. The quantity of assessable pistachios for the 2016-17 production year is estimated at 750 million pounds. Thus, the \$0.0010 rate should provide \$750,000 in assessment income. Income derived from handler's assessments, along with interest and funds from the Committee's authorized reserve, should be adequate to cover expenses for the 2016-17 production year.

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 pistachio area of production and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 12, 2016, 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. 0581-0278. 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 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.

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 15, 2016. 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:

<https://www.regulations.gov/docket?D=AMS-SC-16-0076>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); 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** (81 FR 63679, September 16, 2016) 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 81 FR 63679 on September 16, 2016, is adopted as a final rule, without change.

Dated: December 23, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
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