

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. FV06-983-3 PR]

#### Pistachios Grown in California; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate established for the Administrative Committee for Pistachios (committee) for the 2006-07 and subsequent production years from \$0.0014 per pound of assessed-weight pistachios to \$0.0007 per pound of assessed-weight pistachios. The committee, which locally administers the marketing order regulating the handling of pistachios grown in California, made this recommendation for the purpose of lowering the monetary reserve to ensure that the reserve is maintained at a level consistent with order requirements. Assessments upon commodity 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 25, 2006.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); 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.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax (559) 487-5906, or E-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, 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: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 983, regulating the handling of pistachios grown in California, 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California pistachio handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 2004-05 production year, an assessment rate of \$0.0014 per pound of assessed-weight pistachios received for processing was approved by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This proposal would decrease the assessment rate to \$0.0007 per pound for the 2006-07 production year and would continue in effect indefinitely unless modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 would decrease the assessment rate established for the committee for the 2006-07 and subsequent production years. Section 983.253 established an assessment rate of \$0.0014 per pound of assessed-weight pistachios for the 2004-05 and subsequent fiscal periods. The assessment obligation for each handler is computed by applying the assessment rate set by USDA to each handler's assessed weight, computed pursuant to § 983.6 of the order. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule proposes decreasing the assessment rate to \$0.0007 per pound for 2006-07 and would remain in effect during subsequent fiscal periods until modified, suspended, or terminated by USDA.

Sections 983.52 and 983.53 of the order provide authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. In addition, the order authorizes the use of a monetary reserve to cover program expenses (§ 983.56). The monetary reserve may not exceed approximately two production years' budgeted expenses. That section also requires the committee to reduce future assessments so that the reserve funds are less than or equal to two production years' budgeted expenses.

The members of the committee are producers and handlers of California pistachios. They 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. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 production year, the committee recommended, and USDA approved, an assessment rate of \$0.0014 per pound of assessed-weight pistachios. The assessment rate 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 May 23, 2006, and unanimously recommended 2006–07 expenditures of \$340,906 and an assessment rate of \$0.0007 per pound of assessable weight pistachios received for processing. By comparison, expenses for the 2005–06 production year totaled \$324,403 and the assessment rate was \$0.0014 per pound of assessable weight pistachios received for processing. The assessment rate of \$0.0007 is one-half of the assessment rate currently in effect under the order. This proposal would lower the reserve to ensure that it remains at a level consistent with order requirements.

The major expenditures recommended by the committee for the 2006–07 production year include: \$80,952 for administrative expenses; \$10,000 for compliance expenses; \$149,954 for salaries; and \$100,000 for a contingency reserve.

The major expenditures recommended by the committee for the 2005–06 production year include \$85,046 for administrative expenses; \$10,000 for compliance expenses; \$129,357 for salaries; and \$100,000 for a contingency reserve.

The committee believes that maintaining the current assessment rate could eventually result in a financial reserve balance beyond order requirements that the reserve not exceed approximately two production years' expenses. Based on this, the committee determined that decreasing the assessment rate at this time would draw down the monetary reserve and ensure the reserve is maintained at a level consistent with order requirements.

The assessment rate recommended by the committee was derived by dividing anticipated expenses minus the reserve funds that will be utilized to meet expenses by expected receipts (the assessed weight) of California pistachios during the 2006–07 season (\$340,906 minus \$200,906 divided by 200,000,000

pounds = \$0.0007 per pound). With pistachio receipts for the year estimated at 200,000,000 pounds, assessment income is expected to total \$140,000.

If the assessment rate remains at \$0.0014 per pound (estimated \$280,000 assessment income), the estimated reserve on August 31, 2007, would be \$448,741. Although this amount would still be within the order's reserve requirements, the committee believes it should draw down the reserve in the event that some of the variable components, such as crop estimate, are understated.

The proposed assessment rate would 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 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 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 2006–07 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), 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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California pistachios subject to regulation under the order and approximately 740 producers in the production area. The Small Business

Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000, and defines small agricultural service firms those whose annual receipts are less than \$6,500,000. Of the 740 producers, approximately 722 have annual receipts of less than \$750,000. Eight of the 50 handlers subject to regulation have annual pistachio receipts of at least \$6,500,000. Thus, the majority of handlers and producers of California pistachios may be classified as small entities.

This rule would decrease the assessment rate established for the committee and collected from handlers for the 2006–07 and subsequent production years from \$0.0014 to \$0.0007 per pound of assessed-weight pistachios received for processing. The committee unanimously recommended 2006–07 expenditures of \$340,906 and an assessment rate of \$0.0007 per pound of assessed-weight pistachios. The recommendation was made for the purpose of lowering the monetary reserve to ensure that the reserve is maintained at a level consistent with order requirements. The quantity of assessed-weight pistachios anticipated for the 2006–07 production year is estimated at 200,000,000 pounds. The total assessments collected are estimated to be \$140,000. Coupled with the funds on hand at the beginning of the production year of nearly \$500,000, the committee would have adequate funds to meet the 2006–07 expenses and maintain an adequate reserve that is within the requirements of the order.

At its meeting on May 23, 2006, the committee discussed the alternative levels of assessments it believed would provide both adequate funding of expenses and result in a reduced financial reserve. Some members believed that the reserve funds alone would be adequate to sustain committee operations in the absence of any assessment rate. Others believed a smaller assessment rate was prudent, thus keeping consistent assessment collections from one production year to the next. That way, the committee reasoned, handlers would be in a better position to plan for assessments from year to year.

After deliberating the value of both proposals, the committee ultimately unanimously recommended a reduced assessment rate of \$0.0007 per pound of assessed-weight pistachios and expenses totaling \$340,906.

The major expenditures recommended by the committee for the 2006–07 production year include: \$80,952 for administrative expenses; \$10,000 for compliance expenses;

\$149,954 for salaries; and \$100,000 for a contingency reserve.

The major expenditures recommended by the committee for the 2005–06 production year include \$85,046 for administrative expenses; \$10,000 for compliance expenses; \$129,357 for salaries; and \$100,000 for a contingency reserve.

The assessment rate recommended by the committee was derived by dividing anticipated expenses minus the reserve funds that will be utilized to meet expenses by expected receipts (the assessed weight) of California pistachios during the 2006–07 season (\$340,906 minus \$200,906 divided by 200,000,000 pounds = \$0.0007 per pound). With pistachio receipts for the year estimated at 200,000,000 pounds, assessment income is expected to total \$140,000.

If the assessment rate remains at \$0.0014 per pound (estimated \$280,000 assessment income), the estimated reserve on August 31, 2007, would be \$448,741. Although this amount would still be within the order's reserve requirements, the committee believes it should draw down the reserve in the event that some of the variable components, such as crop estimate, are understated.

The assessment rate recommended by the committee is one-half of the current assessment rate. The committee believes that maintaining the current assessment rate would result in a financial reserve balance that is higher than needed for operations under the order.

The committee reviewed and unanimously recommended these expenditures after considering information from their Executive Subcommittee, which met on March 1, 2006. As noted, the committee considered both eliminating the assessment rate for one year and assessing at the proposed rate before recommending the proposed assessment rate of \$0.0007 per pound of assessed-weight pistachios. This proposed assessment rate is one-half of the assessment rate currently in effect; and, coupled with carry-in funds and assessments to be collected, would provide adequate funds for the committee's 2006–07 production year operations.

A review of historical information and preliminary information pertaining to the upcoming production year indicates that the grower price for the 2006–07 production year could range between \$1.65 and \$1.75 per pound of assessed-weight pistachios. Therefore, the estimated assessment revenue for the 2006–07 production year as a percentage of total grower revenue

could range between .040 and .042 percent.

While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the production area commodity industry and all interested persons were invited to attend the meeting and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the May 23, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

Finally, interested persons are invited to submit comments on the informational and regulatory impacts of this action on small businesses.

This proposed rule would not impose additional reporting and recordkeeping on both small and 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to compliance 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.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because the 2006–07 production year begins on September 1, 2006, and the marketing order requires that the rate of assessment for each production year apply to all assessable pistachios handled during such production year.

#### 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

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 amended by revising paragraph (a) to read as follows:

#### § 983.253 Assessment rate.

(a) On and after September 1, 2006, a continuing assessment rate of \$0.0007 per pound of assessed-weight pistachios is established for California pistachios. The assessment obligation of each handler shall be computed by applying the assessment rate to the assessed weight computed pursuant to § 983.6.

\* \* \* \* \*

Dated: August 21, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–14114 Filed 8–24–06; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2006–25038; Airspace Docket No. 06–ANM–4]

#### Proposed Revision of Class E Airspace; Sheridan, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise Class E airspace at Sheridan, WY. Additional controlled airspace is necessary to accommodate airspace using the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Sheridan County Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Sheridan County Airport.

**DATES:** Comments must be received by October 10, 2006.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2006–25038; Airspace Docket No. 06–ANM–4, at the beginning