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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. FV06-983-3 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases the assessment rate established for the Administrative Committee for Pistachios (committee) for the 2006-07 and subsequent production years from \$0.0014 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 (order), made this recommendation to help reduce the monetary reserve and ensure that it remains at a level consistent with order requirements. 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.

**EFFECTIVE DATE:** November 17, 2006.

**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. It is intended that the assessment rate as issued herein will be applicable to all assessable pistachios beginning September 1, 2006, and continue until amended, 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 decreases the assessment rate established for the committee for the 2006-07 and subsequent production years from \$0.0014 to \$0.0007 per pound of assessed-weight pistachios.

The assessment obligation for each handler is computed by applying the assessment rate to each handler's assessed weight, computed pursuant to § 983.6 of the order.

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 (§ 983.253). 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 assessed-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 assessed-weight pistachios received for processing. The \$0.0007 assessment rate is one-half of the \$0.0014 assessment rate. Reducing the assessment rate will help reduce the reserve and 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. In comparison, major expenditures for the 2005–06 production year included: \$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 will help to reduce 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 remained 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 reduce the reserve in the event that some of the variable components, such as crop estimate, are understated.

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 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 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 2006–07 budget and those for subsequent production years will be reviewed and, as appropriate, approved by USDA.

#### Final 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 final 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 as 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 decreases 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 to reduce the monetary reserve to ensure that it remains 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. Assessment income coupled with funds on hand at the beginning of the production year of nearly \$500,000 should provide the committee with adequate funds to meet its 2006–07 expenses and maintain an

adequate reserve that is within the requirements of the order.

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. In comparison, major expenditures for the 2005–06 production year included: \$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 remained 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 believed it should reduce the reserve in the event that some of the variable components, such as crop estimate, are understated.

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. The committee also reviewed information from its Executive Subcommittee, which met on March 1, 2006. Some committee 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.

A review of historical information and preliminary information pertaining to the 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 will reduce the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California pistachio 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.

This rule imposes no additional reporting and recordkeeping 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

A proposed rule concerning this action was published in the **Federal Register** on August 25, 2006 (71 FR 50374). Copies of the proposed rule were also mailed or sent via facsimile to all pistachio handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2006, was provided for interested persons to respond to the proposal. No comments were received.

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.

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 the 2006–07 production year began on September 1, 2006, and pistachio handlers are already receiving 2006–07 crop pistachios from growers. The decreased assessment rate applies to all pistachios received during the 2006–07 year and subsequent seasons. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### 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**

■ 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: November 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–9252 Filed 11–14–06; 1:09 pm]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 984**

[Docket No. FV06–984–2 IFR]

#### **Walnuts Grown in California; Increased Assessment Rate**

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2006–07 and subsequent marketing years from \$0.0096 to \$0.0101 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** November 17, 2006. Comments received by January 16, 2007 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 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 made 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:** Shereen Marino, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: [Shereen.Marino@usda.gov](mailto:Shereen.Marino@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,