

**§ 305.3 Processes for adding, revising, or removing treatment schedules in the PPQ Treatment Manual.**

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**§ 305.5 [Amended]**

- 5. Section 305.5 is amended as follows:
  - a. In paragraph (a)(1), by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
  - b. In paragraph (c)(1), in the first sentence, by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”; and, in the second sentence, by adding the words “or approved in accordance with § 305.2” after the word “Manual”.
  - c. In paragraph (c)(3), in the first sentence, by adding the words “or in another approved treatment schedule” after the word “Manual”.

**§ 305.6 [Amended]**

- 6. Section 305.6 is amended as follows:
  - a. In paragraph (a) introductory text, by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
  - b. In paragraph (c)(1), by adding the words “or in another approved treatment schedule” after the word “Manual”.
  - c. In paragraph (d)(14), by adding the words “or in accordance with another approved treatment schedule” after the word “Manual”.

- 7. Section 305.7 is amended as follows:
  - a. In the second sentence, by removing the word “the” before the word “fruits”.
  - b. By adding a new sentence at the end of the section to read as set forth below.

**§ 305.7 Quick freeze treatment requirements.**

\* \* \* Requests to authorize quick freeze as a treatment for other fruits and vegetables may be made in accordance with § 305.2(c).

**§ 305.8 [Amended]**

- 8. In § 305.8, paragraph (a)(1) is amended by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
- 9. Section 305.9 is amended as follows:
  - a. In paragraph (d)(1), by adding the words “or in another treatment schedule approved in accordance with § 305.2” after the word “Manual”.
  - b. In paragraph (i), by adding the words “or in another approved

treatment schedule” after the word “Manual”.  
 ■ c. In paragraph (j)(2), by adding the words “or by another approved treatment schedule” after the word “Manual”.

■ d. In paragraph (n), by adding the words “or the plant pests for which another treatment schedule is approved in accordance with § 305.2” after the word “Manual”.  
 ■ e. By adding a new paragraph (o) to read as set forth below.

**§ 305.9 Irradiation treatment requirements.**

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(o) *Substitution of irradiation for other treatments.* Treatment of fruits and vegetables that are from foreign localities, from Hawaii, Puerto Rico, and the U.S. Virgin Islands, or from domestic areas under quarantine with irradiation in accordance with this section may be substituted for other approved treatments if the target pests of the other approved treatments are approved for treatment with irradiation in the PPQ Treatment Manual or approved for treatment with irradiation in accordance with § 305.2.

\* \* \* \* \*

Done in Washington, DC, this 23rd day of September 2011.

**Kevin Shea,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 983**

[Doc. No. AMS–FV–11–0077; FV–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 decreases the assessment rate established for the Administrative Committee for Pistachios (Committee) for the 2011–12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. The Committee locally administers the marketing order which regulates the handling of pistachios grown in California, Arizona, and New Mexico. 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 September 30, 2011. Comments received by November 28, 2011, 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; or Internet: <http://www.regulations.gov>. Comments should reference the document 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 the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci, Marketing Specialist or Kurt J. 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: [Andrea.Ricci@ams.usda.gov](mailto:Andrea.Ricci@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: [Laurel.May@ams.usda.gov](mailto:Laurel.May@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 Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing 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, 2011, 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 2011–12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios.

The California, Arizona, and New Mexico pistachio marketing 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. 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. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006–07 production year, 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 21, 2011, and unanimously recommended 2011–12 expenditures of \$681,850 and an assessment rate of \$0.0005 per pound of pistachios. In comparison, last year's budgeted expenditures were \$803,400. The assessment rate of \$0.0005 is \$0.0002 lower than the rate currently in effect. This action will allow the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2011–12 year include \$115,850 for administrative expenses, \$10,000 for compliance expenses, \$281,000 for salaries, \$125,000 for research, and \$150,000 for a contingency fund. Budgeted expenses for these items in 2010–11 were \$112,400 for administrative expenses, \$10,000 for compliance expenses, and \$281,000 for salaries, \$250,000 for a new research and food quality line item budget and \$150,000 for a contingency reserve.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of pistachios grown in California, Arizona, and New Mexico, and additional pertinent factors. In its recommendation, the Committee utilized an estimate of 400 million pounds of assessable pistachios for the 2011–12 production year. If realized, this would provide estimated assessment revenue of \$200,000. Additional anticipated revenue will be provided by other sources, including the financial reserve (\$369,234), estimated interest income (\$2,000), and funds received from the California Pistachio Research Board (CPRB) (\$110,616). When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 2011–12 production year may be carried over to cover expenses during the succeeding production year. Funds in the reserve at the end of 2011–12 production year are estimated to be approximately \$228,037 which would be within the amount permitted in the order.

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 2011–12 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 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.

There are approximately 900 producers of pistachios in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000. Based on Committee data, it is estimated that over 70 percent of the handlers ship less than \$7,000,000 worth of pistachios and would thus be considered small business under the SBA definition. It is also estimated that over 80 percent of the growers in the production area produce less than \$750,000 worth of pistachios and would thus be considered small businesses under the SBA definition.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011–12 and subsequent production years from \$0.0007 to \$0.0005 per pound of assessed weight pistachios. The

Committee unanimously recommended 2011–12 expenditures of \$681,850 and an assessment rate of \$0.0005 per pound of assessed weight pistachios. The assessment rate of \$0.0005 is \$0.0002 lower than the 2010–11 rate. The quantity of assessable pistachios for the 2011–12 production year is estimated at 400,000,000 pounds. Thus, the \$0.0005 rate should provide \$200,000 in assessment income. Income derived from handler assessments combined with the 2010–11 financial reserve, estimated interest income, and funds received from the CPRB is expected to provide sufficient revenues for the Committee to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

The major expenditures recommended by the Committee for the 2011–12 year include \$115,850 for administrative expenses, \$10,000 for compliance expenses, \$281,000 for salaries, \$125,000 for research, and \$150,000 for a contingency fund. Budgeted expenses for these items in 2010–11 were \$112,400 for administrative expenses, \$10,000 for compliance expenses, and \$281,000 for salaries, \$250,000 for a new research and food quality line item budget and \$150,000 for a contingency reserve.

The recommended 2011–12 expenditures of \$681,850 include a substantial decrease in research expenses and a slight increase in administrative expenses. The Committee discussed alternative expenditure levels, including continuing with the current assessment rate, but determined the lower assessment rate will better allow the Committee to provide sufficient revenue to meet its expenses while maintaining a financial reserve within the limit authorized under the order.

According to NASS, the season average producer price was \$1.67 in 2009 and \$2.22 per pound of assessed weight pistachios in 2010. A review of historical information and preliminary information pertaining to the upcoming production year indicates that the grower price for the 2011–12 production year could range between \$1.67 and \$2.22 per pound of assessed weight pistachios. Therefore, the estimated assessment revenue for the 2011–12 production year as a percentage of total producer revenue during the 2011–12 production year could range between 0.030 and 0.023 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. In addition, the Committee's meeting was widely publicized throughout the California, Arizona, and New Mexico pistachio industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 21, 2011, 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 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 the Office of Management and Budget (OMB) and assigned OMB No. 0581–0215 Pistachios Grown in California. 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 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.

In addition, 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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2011–12 production year begins on September 1, 2011, and the marketing order requires that the rate of assessment for each production year apply to all assessable pistachios handled during such production year; (2) this action decreases the assessment rate for assessable pistachios beginning with 2011–12 production year; (3) handlers are aware of this action which unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of the this rule.

#### 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.

■ 2. In § 983.253, paragraph (a) is revised to read as follows:

#### § 983.253 Assessment rate.

(a) On and after September 1, 2011, an assessment rate of \$0.0005 per pound is established for California, Arizona, and New Mexico pistachios.

\* \* \* \* \*

Dated: September 23, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

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