

public meetings and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule and the comment received has been considered in reaching a final decision on this matter.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

*Authority:* 7 U.S.C. 601–674.

#### PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.234 is revised to read as follows:

##### § 916.234 Assessment rate.

On and after March 1, 2006, an assessment rate of \$0.21 per 25-pound container or container equivalent of nectarines is established for California nectarines.

#### PART 917—PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.258 is revised to read as follows:

##### § 917.258 Assessment rate.

On and after March 1, 2006, an assessment rate of \$0.21 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 28, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 06–7377 Filed 8–31–06; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. FV06–983–2 FR]

#### Pistachios Grown in California; Modification of Small Handler Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the current handling requirements prescribed under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). The modification increases the exemption threshold for pistachio handlers who handle small amounts of pistachios, primarily for home or personal use. Currently, handlers of 1,000 pounds or less of hulled and dried pistachios (assessed weight) are exempt from most handling requirements. Under this modification, the exemption is extended to handlers of less than 5,000 pounds of assessed weight pistachios. This change is not expected to have a significant impact on the overall quality of California pistachios found in the marketplace.

**EFFECTIVE DATE:** This final rule becomes effective September 5, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Senior 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; 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 final rule is issued under Marketing Order No. 983 (7 CFR part 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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. A 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 final rule modifies the current handling requirements prescribed under the California pistachio order. This modification increases the exemption threshold for pistachio handlers who handle small amounts of pistachios from the current level of 1,000 pounds or less of assessed weight pistachios to less than 5,000 pounds of assessed weight pistachios. Under this change, pistachio handlers who handle less than 5,000 pounds of assessed weight pistachios are exempt from most handling requirements established under the order, including those relating to aflatoxin testing, minimum quality inspection, and payment of assessments.

Previous rules, one section of the order, and two sections of the rules and regulations refer to “dried pounds” or “dried weight” of pistachios. While these terms are not defined in the order, they are generally interchangeable with the defined term “assessed weight.” For the purposes of this final rule, the term “assessed weight” will be used.

Section 983.70 of the pistachio order currently exempts any handler who handles 1,000 pounds or less of assessed weight pistachios in any production year from the requirements of §§ 983.38 through 983.45 and § 983.53 of the order. A “production year” begins on

September 1 and ends the following August 31.

Section 983.38 of the order establishes a maximum aflatoxin level and the aflatoxin testing protocol, among other things.

Section 983.39 of the order establishes minimum quality levels in terms of maximum defects and minimum sizes.

Section 983.40 of the order establishes procedures for reworking pistachios that fail to meet the requirements prescribed in §§ 983.38 and 983.39.

Section 983.41 of the pistachio order authorizes alternative aflatoxin testing methods for handlers handling less than 1 million pounds of assessed weight pistachios per production year, and authorizes the committee to grant such handlers exemptions from minimum quality testing requirements.

Section 983.42 of the order permits commingling of inspected and certified lots with other inspected and certified lots.

Section 983.43 of the order authorizes rules and regulations to establish conditions under which pistachios would be subject to reinspection.

Under § 983.44 of the order, all pistachios required to be inspected and certified may be subject to container marking or other identification requirements.

Section 983.45 of the order requires the committee (with USDA's approval) to establish reporting and disposition procedures for substandard pistachios (those not meeting aflatoxin and minimum quality requirements).

Finally, § 983.53 of the order authorizes handler assessment to defray program administrative costs.

The committee met on March 1, 2006, and unanimously recommended increasing the current handler exemption from including handlers who handle 1,000 pounds or less of assessed weight pistachios to handlers who handle less than 5,000 pounds of assessed weight pistachios. This action is authorized under § 983.70 of the order, and will be implemented by adding a new section in the marketing order's rules and regulations (§ 983.170 Handler exemption). This rule also makes conforming changes to the order's rules and regulations to reflect the change in the exemption level.

Specifically, the new § 983.170 exempts handlers who handle less than 5,000 pounds of assessed weight pistachios in a production year from the requirements of §§ 983.38 through 983.45 and § 983.53 of the order.

In addition, conforming changes are necessary in § 983.143, paragraph (b)(2), as well as in § 983.147, paragraphs (c) and (g), to clarify that the handling

exemption applies to handlers of less than 5,000 pounds of assessed weight pistachios rather than the currently-applicable level of 1,000 pounds or less of assessed weight pistachios.

The committee estimates that the amount of pistachios handled by handlers with less than 5,000 pounds of assessed weight pistachios is approximately 48,515 pounds of the total 283,419,713 pounds handled in the 2005–2006 production year, or less than 0.02 percent of all pistachios handled that production year. In the committee's opinion, quantities of pistachios that are less than 5,000 pounds are not commercially-significant and are unlikely to have an impact in the marketplace. These pistachios would likely be sold at local farmers' markets; kept for home use; distributed to friends, neighbors, business associates, or others; or used for other non-commercial purposes, rather than enter the conventional channels of trade.

Exempt handlers will continue to file the required report, the ACP–4, with the committee by November 15 of each production year (§ 983.147 Reports). Also, under the authority contained in § 983.50, Random verification audits, and § 983.51, Verification of reports, the committee would maintain the right to spot-check these handlers to ensure marketing order compliance.

The committee noted that when the order was promulgated, there was limited information about pistachio handlers and the volumes of pistachios each handled. Thus, the initial order provided for what was believed to be a reasonable exemption level of 1,000 pounds or less of assessed weight pistachios. After operating under the marketing order regulations for approximately one year, the committee believes that the handling exemption level is too low and recommended this relaxation.

#### 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 action 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 who are subject to regulation under the order and about 741 producers of pistachios in the production area. This final rule results in about 28 of the current handlers being exempt from most regulatory provisions of the order. The number of known handlers has increased since the committee began operation because they now have the authority under the order to gather information about handlers.

The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than \$6,500,000 and defines small agricultural producers as those having annual receipts of less than \$750,000. Thirty-three of the 50 handlers subject to regulation have annual pistachio receipts of less than \$6,500,000. In addition, 722 of the 741 producers have annual receipts less than \$750,000. Therefore, a majority of handlers (66 percent) and producers (97 percent) may be classified as small entities under the SBA standards.

This final rule increases the current handling exemption level for handlers from 1,000 pounds or less of assessed weight pistachios to less than 5,000 pounds of assessed weight pistachios. Exempt handlers could handle their pistachios free from the requirements of §§ 983.38 through 983.45 and § 983.53 of the order.

The committee met on March 1, 2006, to consider the handling exemption and unanimously recommended revising the level from 1,000 pounds or less of assessed weight pistachios to less than 5,000 pounds of assessed weight pistachios handled per production year.

The committee estimates that the total volume of pistachios handled by the 28 handlers with less than 5,000 pounds of assessed weight pistachios is approximately 48,515 pounds of the total 283,419,713 pounds handled in the 2005–2006 production year. This represents less than 0.02 percent of all pistachios handled that production year. In the committee's opinion, 5,000 pounds of assessed weight pistachios is not commercially significant and represents pistachios that are unlikely to enter conventional channels of trade.

The committee also noted that when the order was promulgated, there was very little information about pistachio handlers and their relative volumes. The initial order provided for what was believed to be a reasonable exemption level of 1,000 pounds or less of assessed weight pistachios. The committee now

believes that the exemption level is too low and should be increased.

The committee recommendation on March 1, 2006, resulted from deliberations of its Technical Subcommittee (subcommittee), the subcommittee charged with compliance, quality, and inspection issues under the order. The March 1, 2006, meeting of the subcommittee was also a public meeting, where opinions and concerns of industry representatives were solicited, openly discussed, and deliberated at some length.

The subcommittee and committee discussed alternatives to this modification, including not making any changes or modifying the handling exemption for handlers of less than 10,000 pounds of assessed weight pistachios. Both the subcommittee and the committee ultimately determined that exempting handlers of less than 5,000 pounds of assessed weight pistachios was prudent because only 14 additional handlers would be affected, and the total volume of exempted pistachios handled is relatively insignificant (less than 0.02 percent of total production). Thus, exempting an estimated total of 28 handlers with less than 5,000 pounds of assessed weight pistachios would not affect the overall quality of the pistachios handled as those pistachios are likely to be for home or personal use and will not compete in traditional markets.

Both the subcommittee and the committee noted that spot-checks on small handlers would be continued to ensure compliance with order requirements.

This action reduces the reporting requirements for pistachio handlers who fall below the 5,000 pound threshold. Such handlers are also exempt from most of the other regulatory requirements imposed under the authority.

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 accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement that is contained in this rule has been submitted to the Office of Management and Budget (OMB) for approval.

The 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 final rule.

Further, the committee's meetings are widely publicized throughout the pistachio industry and all interested persons are encouraged to attend the meetings and participate in the committee's deliberations. In this respect, the March 1, 2006, subcommittee and committee meetings regarding the handler exemption were public meetings and all entities, both large and small, were encouraged to express their views on this issue.

The committee recommendation on March 1, 2006, resulted from deliberations of its Technical Subcommittee, which is charged with compliance, quality, and inspection issues under the marketing order. During the subcommittee meeting, the opinions and concerns of industry representatives were solicited, openly discussed, and deliberated at some length. The subcommittee made its unanimous recommendation to the committee, who agreed with the recommendation unanimously, as well.

A proposed rule concerning this action was published in the **Federal Register** on June 19, 2006 (71 FR 35201). Copies of the rule were sent to all committee members and pistachio handlers. Also, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period, ending July 10, 2006, was provided to allow interested persons to respond to the proposal. No comments were received in response to the proposed rule. Accordingly, no changes will be made 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: <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 matters presented, including 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in effect in time for the beginning of the production year on September 1, 2006.

Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed 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

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 983.143, revise paragraph (b)(2) to read as follows:

#### § 983.143 Reinspection.

\* \* \* \* \*

(b) \* \* \*

(2) Handlers exempted from order requirements under § 983.170 are exempt from all reinspection requirements.

■ 3. In § 983.147, paragraphs (c) and (g) are revised to read as follows:

#### § 983.147 Reports.

\* \* \* \* \*

(c) *ACP–4, Federal Marketing Order Exempt Handler Notification.* Each handler who handles less than 5,000 pounds of assessed weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

\* \* \* \* \*

(g) *Exemptions.* Handlers who handle less than 5,000 pounds of assessed weight pistachios during any production year are exempt from filing all forms, with the exception of the ACP–4.

\* \* \* \* \*

■ 4. In part 983, Subpart—Administrative Rules and Regulations is amended by adding new § 983.170 to read as follows:

#### § 983.170 Handler exemption.

Pursuant to § 983.70, any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and § 983.53 if such pistachios are handled in quantities of less than 5,000 pounds of assessed weight in any production year.

Dated: August 28, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-7376 Filed 8-31-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25703; Directorate Identifier 2006-SW-20-AD; Amendment 39-14747; AD 2006-17-51]

RIN 2120-AA64

#### Airworthiness Directives; Agusta S.p.A. Model AB139 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the *Federal Register* an amendment adopting Airworthiness Directive (AD) 2006-17-51, sent previously to all known U.S. owners and operators of Agusta S.p.A. (Agusta) Model AB139 helicopters by individual letters. This AD requires, before further flight and at specified intervals, certain visual inspections of each tailpipe assembly for a crack and for overheating. If you find areas of overheating, this AD also requires, before further flight, certain inspections for damage to the surrounding structure, outside of the cowling, and inside of each tailpipe assembly in certain areas. This AD also requires, before further flight, if you find a crack, replacing the tailpipe assembly with an airworthy tailpipe assembly. This AD is prompted by several reports of tailpipe assembly cracks. The actions specified by this AD are intended to prevent a fire due to the structure in the cowling area overheating, separation of a part of a tailpipe assembly, and subsequent loss of control of the helicopter.

**DATES:** Effective September 18, 2006, to all persons except those persons to whom it was made immediately effective by Emergency AD 2006-17-51, issued on August 15, 2006, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 31, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

- Fax: (202) 493-2251; or

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605-222595.

#### Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://dms.dot.gov>, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

**FOR FURTHER INFORMATION CONTACT:** Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5355, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** On August 15, 2006, the FAA issued Emergency AD 2006-17-51 for Agusta Model AB139 helicopters, which requires before further flight and at specified intervals, certain visual inspections of each tailpipe assembly for a crack and for overheating. If you find areas of overheating, the AD also requires, before further flight, certain inspections for damage to the surrounding structure, outside of the cowling, and inside of each tailpipe assembly in certain areas using a flashlight or a mirror and a flashlight depending on the location. The AD also requires, before further flight, if you find a crack, replacing the tailpipe assembly with an airworthy tailpipe assembly. That action was prompted by several reports of tailpipe

assembly cracks. This condition, if not corrected, could result in a fire due to the structure in the cowling area overheating, separation of a part of a tailpipe assembly, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on Agusta S.p.A. Model AB139 helicopters. EASA advises that the field has reported tailpipe assembly cracks. EASA also advises that this issue, if not corrected, could lead to overheating of the structure in the cowling area or separation of parts hence endangering the safety of helicopter flight.

Agusta has issued Bollettino Tecnico No. 139-069, dated August 11, 2006 (BT), which describes procedures for a detailed visual inspection for cracks on the tailpipe. EASA classified this BT as mandatory and issued Emergency AD No. 2006-0242-E, dated August 11, 2006.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, EASA has kept the FAA informed of the situation described above. The FAA has examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Agusta Model AB139 helicopters of the same type design, the FAA issued Emergency AD 2006-17-51 to prevent a fire due to the structure in the cowling area overheating, separation of a part of a tailpipe assembly, and subsequent loss of control of the helicopter. The AD requires the following:

- Before further flight, and thereafter at intervals not to exceed 25 hours time-in-service, access the rear areas of each tailpipe assembly by removing the rear cowling.

- Visually inspect each tailpipe assembly inside the cowling for a crack.

- Inspect the structure surrounding each tailpipe assembly for overheating. If you find areas of overheating, inspect for damage to the surrounding structure.

- Inspect for overheating in the area of each tailpipe assembly outside the cowling. Inspect the internal part of each tailpipe assembly in the areas depicted in Areas A, Figure 1, of this AD for a crack:

- Clean the end of each tailpipe assembly with a cloth. While applying