

# 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. FV96-983-1 PR; AO F&V-983-1]

#### **Pistachios Grown in California, Arizona, Nevada, New Mexico, and Utah; Hearing on Proposed Marketing Agreement and Order No. 983**

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

**ACTION:** Notice of public hearing on proposed marketing agreement and order.

**SUMMARY:** Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order to cover pistachios grown in California, Arizona, Nevada, New Mexico, and Utah. The proposed program would include authority for mandatory inspection, and grade, pack, container and labeling requirements. A proposal for a marketing order was submitted on behalf of the pistachio industry by the California Pistachio Commission (Commission) and the Western Pistachio Association (Association), which purport to represent nearly all of the industry. The program would be financed by assessments on handlers of pistachios grown in the production area. Assessment rates would be established by the Secretary of Agriculture (Secretary), based on the recommendations of a committee appointed by the Secretary to administer the program. The committee would consist of 10 members and their alternates.

**DATES:** The hearing will be held in Fresno, California, beginning on August 20, 1996, at 9:00 a.m. If necessary, additional sessions will be held in Fresno on August 21-23.

**ADDRESSES:** The hearing will be held in the State Building's room 1036, 2550 Mariposa Mall, at the corner of Tulare

and "O" Street, Fresno, California, 93721.

#### **FOR FURTHER INFORMATION CONTACT:**

Copies of this notice of hearing may be obtained from:

(1) Maureen T. Pello, Marketing Specialist, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487-5901, Fax (209) 487-5906; or

(2) James B. Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-2170, Fax (202) 720-5698.

(3) Small businesses may request information on compliance with this proposal by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed agreement and order would 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 the Secretary 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, the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Over the last five years, the Commission and the Association have facilitated discussions within the pistachio industry regarding the merits of establishing a Federal marketing order program. Industry members have concluded that a marketing order program, with authority for mandatory inspection, and grade, pack, and container requirements, is needed to enable the pistachio industry to improve returns to growers. The industry believes that an effective quality control program can be implemented to expand its markets, improve grower returns, and increase consumer satisfaction.

The proposal for an order has been widely discussed within the pistachio industry for at least five years, but has not yet received the approval of the Secretary of Agriculture.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and on all the recommendations and proposals contained in this notice, as well as any appropriate modifications or alternatives.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of pistachios produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for pistachios;

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the proposed production area and on the public affected by such a program; and

(e) Determining whether the proposed marketing agreement and order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this notice of hearing is issued and until the issuance of a final decision in this proceeding, U.S. Department of Agriculture (Department) employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with anyone having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (\*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

#### List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of the CFR, Chapter IX be amended as follows:

1. Part 983 is proposed to be added as follows:

### **PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, NEVADA, NEW MEXICO, AND UTAH**

#### **Subpart—Order Regulating Handling**

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- 983.88 Duration of immunities.
- 983.89 Agents.
- 983.90\* Counterparts.
- 983.91\* Additional parties.
- 983.92\* Order with marketing agreement.

Authority: 7 U.S.C. 601–674.

##### **Definitions**

##### **§ 983.1 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or

to whom authority may hereafter be delegated, the authority to act for the Secretary.

##### **§ 983.2 Act.**

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

##### **§ 983.3 Person.**

*Person* means an individual, partnership, corporation, trust, association, or any other business unit.

##### **§ 983.4 Production area.**

*Production area* includes the following States: California, Arizona, Nevada, New Mexico, and Utah.

##### **§ 983.5 Pistachios.**

*Pistachios* means the nut of the pistachio tree of the genus *Pistacia vera* grown in the production area.

##### **§ 983.6 Varieties.**

*Varieties* means and includes all classifications, subdivisions, or other types of pistachios according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the Committee and approved by the Secretary. The Committee, with the approval of the Secretary, may exempt any individual variety from any or all regulations issued under this part.

##### **§ 983.7 Shelled pistachio.**

*Shelled pistachio* means a pistachio kernel, or portion of a kernel, after the pistachio shell has been removed.

##### **§ 983.8 Kernel weight.**

*Kernel weight* means the weight of the kernels, without shells, in a quantity or lot of pistachios. The term does not include inedible pieces or particles of pistachio kernels.

##### **§ 983.9 Inshell pistachio.**

*Inshell pistachio* means a pistachio that has a shell that has not been removed.

##### **§ 983.10 Naturally opened pistachios.**

*Naturally opened pistachios* means pistachios that are inshell and have opened naturally on the tree. This definition may be modified based on a recommendation made by the Committee and approved by the Secretary.

##### **§ 983.11 Artificially opened pistachios.**

*Artificially opened pistachios* means pistachios that are inshell and have not opened naturally on the tree but have

been opened by hand, mechanical, or other means. This definition may be modified based on a recommendation made by the Committee and approved by the Secretary.

**§ 983.12 Merchantable pistachios.**

*Merchantable pistachios* means inshell and shelled pistachios that meet the minimum grade regulations in effect pursuant to § 983.62.

**§ 983.13 Substandard pistachios.**

*Substandard pistachios* means pistachios, inshell or shelled, that do not meet the minimum grade regulations in effect pursuant to § 983.62.

**§ 983.14 Bleaching.**

*Bleaching* means to cause pistachios to be treated, directly or indirectly, with hydrogen peroxide, or other chemicals or products to remove shell stains.

**§ 983.15 Blending.**

*Blending* means to commingle or cause to be commingled, artificially opened pistachios with naturally opened pistachios.

**§ 983.16 Grower.**

*Grower* is synonymous with *producer* and means any person engaged in a proprietary capacity in the commercial production of pistachios.

**§ 983.17 To process.**

*To process* means to hull and dry, in preparation for market, pistachios from one's own production or pistachios received from another producer.

**§ 983.18 Handler.**

*Handler* means any person engaged in the activities defined in § 983.19. For purposes of this part, there are two types of handlers, processing and non-processing. A *processing handler* is a handler who engages in the activities defined in § 983.19(a). A *non-processing handler* is a handler who engages in the activities defined in § 983.19(b).

**§ 983.19 To handle.**

(a) *By a processing handler.*

(1) *To handle* means to process pistachios; or

(2) To process pistachios and further prepare them for market by sorting, sizing, shelling, roasting, cleaning, salting, packaging, or cause such pistachios to be placed in the current of commerce by marketing, distributing, selling, consigning or shipping.

(b) *By a non-processing handler.*

(1) *To handle* means to receive pistachios after they have been processed and further prepare them for market by sorting, sizing, shelling,

roasting, cleaning, salting or packaging; or

(2) To receive pistachios after they have been processed and further prepare them for market as described in paragraph (b)(1) of this section and cause such pistachios to be placed in the current of commerce by marketing, distributing, selling, consigning or shipping.

(c) *To handle* shall not include the transportation of pistachios by a common or contract carrier owned by another person or the transportation of pistachios within the production area from the orchard to the processing facility.

**§ 983.20 Production year.**

*Production year* is synonymous with *fiscal period* and *marketing season* and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the Committee and approved by the Secretary.

**§ 983.21 Committee.**

*Committee* means the Pistachio Administrative Committee established pursuant to § 983.30.

**§ 983.22 District.**

*District* means any of the following geographical areas within the production area:

(a) *District 1* shall include the California counties of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial;

(b) *District 2* shall include the California counties of Kings, Fresno, Madera, and Merced;

(c) *District 3* shall consist of all counties in the State of California which are not included in Districts 1 and 2; and

(d) *District 4* shall consist of all counties in the States of Arizona, Nevada, New Mexico, and Utah.

**§ 983.23 Books and records.**

*Books and records* means books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, memoranda, or other data pertaining to matters relating to the activities subject to the provisions of this part.

**§ 983.24 Pack.**

*Pack* means the specific arrangement, weight, count, or grade of a quantity of pistachios in a particular type and size of container, or any combination thereof.

**§ 983.25 Container.**

*Container* means a jar, box, bag, bin, carton, case, package, or any other type of receptacle used in the packaging or handling of pistachios.

**§ 983.26 Part and subpart.**

*Part* means the order regulating the handling of pistachios grown in the States of California, Arizona, Nevada, New Mexico, and Utah, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a *subpart* of such part.

Administrative Committee

**§ 983.30 Establishment and membership.**

A Pistachio Administrative Committee, consisting of 10 members and alternates, is hereby established. Each member shall have an alternate member who shall have the same qualifications as the member for whom he or she is an alternate. Seven grower members shall be from Districts 1, 2, and 3. An additional grower member shall be an at-large member and shall be the grower who has produced the largest quantity of pistachios from any district during the production year prior to nomination. Of the seven growers from Districts 1, 2, and 3, three members shall be from District 1, three shall be from District 2, and one shall be from District 3. One processing handler member shall be an at-large member and shall have processed the largest quantity of assessed pistachios from any district during the year prior to nomination. The tenth member shall be from District 4 and can be either a processing handler or grower.

**§ 983.31 Term of office.**

Elected grower members and grower alternate members of the Committee shall serve for terms of two years, but initial elected grower members and alternates shall, through a lottery, be seated for terms of 1 or 2 years so that approximately half of the memberships' terms expire each year. Initial terms for members and alternate members filling mandated seats shall be as follows: District 4 member—2 years, largest grower member—1 year, largest processing handler member—1 year. Each member and alternate member shall continue to serve until his or her successor is selected and has qualified. The term of office shall begin on July 1st of each year, or as soon thereafter as possible, or such other date as recommended by the Committee and approved by the Secretary. Committee members and alternates may serve up to four consecutive, two-year terms of office.

**§ 983.32 Nomination procedures.**

Nomination of Committee members and alternates shall follow the procedures set forth below:

(a) For purposes of nominating the members and alternates of the initial Committee, the Secretary shall conduct nominations by mail;

(b) Except as provided in paragraph (c) of this section, the Committee shall hold, or cause to be held, not later than March 1st of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the Committee. Any such meetings shall be supervised by the Committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned;

(c) Nominations in any or all districts may be conducted by mail in a manner recommended by the Committee and approved by the Secretary;

(d) If a nomination meeting is held, only persons present at nomination meetings may participate in nominations. Growers who commercially produce pistachios during the current production year will be eligible to vote. Any person nominated by growers shall certify that he or she is engaged in the business of producing pistachios for market as an owner, director or employee of a producing entity. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces. No grower shall participate in the nomination of members in more than one district. If a grower grows pistachios in more than one district, such grower shall select the district in which such grower will so participate and notify the Committee of such choice. Proxy voting shall not be permitted;

(e) Nominees shall provide background information for the purpose of informing voters about their qualifications. Candidates for nomination shall, upon the request of the Committee, submit all necessary documents in order to establish qualifications for nomination; and

(f) Not more than three members and three alternates on the Committee shall be persons employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization. In addition, only one elected member and one elected alternate in any one district shall be employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization,

exclusive of the at-large members. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. In the case of a producer cooperative, a person will not be deemed to be connected in a proprietary capacity with the cooperative, notwithstanding any outstanding retains, contributions, or other financial indebtedness owed by the cooperative to the person, if the person has not marketed pistachios through the cooperative pursuant to a membership agreement during the current and the preceding marketing season. The qualifications of a member or alternate must continue throughout the entire term of office.

(g) For the at-large grower member position, the Committee shall notify the grower who has produced the largest quantity of pistachios from any district during the production year prior to nomination. Such grower shall provide the Committee with the names of the member and alternate who he or she nominates to serve on the Committee. The Committee shall then provide those names to the Secretary.

(h) For the at-large handler member position, the Committee shall notify the processing handler who processed the largest quantity of assessed pistachios from any district during the year prior to nomination. Such handler shall provide the Committee with the names of the member and alternate who he or she nominates to serve on the Committee. The Committee shall then provide those names to the Secretary.

(i) For the District 4 position, which can be filled by a grower or handler, only growers will be eligible to nominate and vote for persons to fill that member and alternate position.

**§ 983.33 Selection.**

From the nominations made pursuant to § 983.32 or from other qualified persons, the Secretary shall select the 10 members of the Committee and an alternate for each such member.

**§ 983.34 Failure to nominate.**

If nominations are not made within the time and in the manner prescribed in § 983.32, the Secretary may, without regard to nominations, select the members and alternate members of the Committee on the basis of the representation provided for in § 983.30.

**§ 983.35 Acceptance.**

Each person to be selected by the Secretary as a member or as an alternate

member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

**§ 983.36 Vacancies.**

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor for the unexpired term of such member or alternate member of the Committee shall be nominated and selected, in the manner specified in §§ 983.32 and 983.33. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 983.30.

**§ 983.37 Alternate members.**

An alternate member of the Committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

**§ 983.38 Procedure.**

(a) Six members of the Committee or alternate members acting for members, shall constitute a quorum at an assembled meeting of the Committee, and any action of the Committee shall require the concurring vote of at least six members: *Provided*, That actions of the Committee with respect to the following issues shall require at least eight concurring votes regarding any recommendation for adoption or change in:

- (1) Minimum grade and quality regulations;
- (2) Packaging regulations;
- (3) Aflatoxin regulations;
- (4) Either a food chemical regulation or a regulation regarding the blending of artificially and naturally opened pistachios;
- (5) Any change caused by establishment or changes in inspection programs;
- (6) Any change in bylaws, administrative or nomination procedures;

(7) Approval of an annual budget exceeding  $\frac{1}{2}$  of one percent (.5%) of the farm gate crop value; and

(8) Approval to borrow funds as necessary.

(b) The Committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast at such meetings shall be confirmed promptly in writing: *Provided:* That if an assembled meeting is held, all votes shall be cast in person.

#### **§ 983.39 Powers.**

The Committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

#### **§ 983.40 Duties.**

The Committee shall have among others, the following duties:

(a) To select from among its members such officers and adopt bylaws and rules for the conduct of its meetings as it deems advisable, and to define the duties of such officers;

(b) To submit to the Secretary prior to the beginning of each fiscal period a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(c) To act as intermediary between the Secretary and any processing handler and grower;

(d) To investigate and assemble data on the growing, handling and marketing conditions with respect to pistachios;

(e) To keep minutes, books and records which will clearly reflect all of its acts and transactions, and such minutes, books and records shall be available for examination by the Secretary at any time;

(f) To furnish to the Secretary such available information as requested;

(g) To appoint such employees as it deems necessary and determine their salaries, define their duties and fix the bonds of the Committee;

(h) To cause the books of the Committee to be audited by one or more certified public accountants approved by the Committee at least once for each marketing year and at such other times as the Committee deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits,

including quarterly financial reports made, and to make available to the industry, such audits that do not contain confidential data;

(i) To give the Secretary the same notice of the meetings of the Committee as is given to its members;

(j) To furnish to the Secretary a written report of the proceedings of each meeting of the Committee;

(k) To follow the Secretary's guidelines in considering and recommending regulatory actions;

(l) To investigate compliance with the provisions of this part; and

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in pistachio production within the districts and the production area.

#### **§ 983.41 Compensation and expenses.**

The members of the Committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary actual expenses, as approved by the Committee: *Provided,* That the Committee may request the attendance of one or more alternates not acting as members at any meeting of the Committee, and such alternates may be allowed their necessary expenses.

#### **§ 983.42 Annual report.**

The Committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

#### **Expenses and Assessments**

#### **§ 983.50 Expenses.**

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each production year for the maintenance and functioning of the Committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate. The funds to cover such expenses shall be acquired in the manner prescribed in § 983.51.

#### **§ 983.51 Assessments.**

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Committee during a production year, each processing handler during such period shall pay to the Committee, upon demand, assessments on all

pistachios so processed. Assessments shall be based on pounds of edible, inshell pistachios processed. The payment of assessments for the maintenance and functioning of the Committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a production year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. Such expenses may include an item for accumulation and maintenance of an operating reserve fund not to exceed approximately two production years' budgeted expenses. At any time during or after the production year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 983.64(e), must be limited to a maximum assessment of  $\frac{1}{2}$  of one percent (.5%) of the latest farm-gate crop value unless the annual budget exceeding that amount has been approved in accordance with the super majority required in § 983.38(a). The Committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

(c) Any processing handler who fails to pay an assessment within the time required by the Committee shall pay to the Committee a late charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of  $1\frac{1}{2}$  percent per month or such other figures as recommended by the Committee and approved by the Secretary.

#### **§ 983.53 Accounting.**

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.51(a): *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any production year may be applied by the Committee at the end of such production year as credit for such person, toward the Committee's fiscal

operations of the following production year;

(2) The Committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two production year's budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) to cover deficits incurred during any production year when assessment income is less than expenses;

(iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and,

(iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected;

(b) All funds received by the Committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Committee and its members to account for all receipts and disbursements; and

(c) Upon the removal or expiration of the term of office of any member of the Committee, such member shall account for all receipts and disbursements and deliver all Committee property and funds in his or her possession to the Committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Committee full title to all of the Committee property, funds, and claims vested in such member pursuant to this part.

#### Regulations

#### § 983.60 Marketing policy.

Each season prior to making any recommendations pursuant to § 983.61, the Committee may adopt a report setting forth its marketing policy for the ensuing season. Such marketing policy report may contain information relative to:

(a) The estimated total production of pistachios within the production area;

(b) The expected general quality of pistachios in the production area and in other areas;

(c) The expected demand conditions for pistachios in different market outlets;

(d) The expected shipments of pistachios produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Other factors having a bearing on the marketing of pistachios; and

(g) The type of regulations expected to be recommended during the season.

#### § 983.61 Recommendation for regulations.

(a) Whenever the Committee deems it advisable to regulate the handling of any variety or varieties of pistachios in the manner provided in § 983.62, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the Committee shall give consideration to current information with respect to the factors affecting the supply and demand for pistachios during the period or periods when it is proposed that such regulations should be made effective. With each recommendation for regulation, the Committee shall submit to the Secretary the data and information on which the recommendation is predicated and other available information as the Secretary may request.

#### § 983.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of pistachios whenever the Secretary finds, from the recommendations and information submitted by the Committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit during any period or periods, the shipment of pistachios by establishing, in terms of grades, minimum standards of quality, including standards for aflatoxin, bleaching, and the blending of artificially and naturally opened pistachios;

(2) Limit during any period or periods, the use of specified containers for shipment;

(3) Fix the size, capacity, weight, dimensions, markings, labeling, or pack of the container, or containers, which may be used in the packaging or processing of pistachios; and

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of pistachios to destinations within any geographical area or market type identified and recommended by

the Committee and approved by the Secretary.

(b) The Committee shall be informed immediately of any such regulation issued by the Secretary and the Committee shall promptly give notice thereof to processing handlers and non-processing handlers, each of whom will be bound by any such regulation.

#### § 983.63 Modification, suspension, or termination of regulations.

(a) In the event the Committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 983.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the Committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

#### § 983.64 Inspection and certification.

(a) Incoming inspection. Whenever the processing of any variety of pistachios is regulated pursuant to § 983.62, each processing handler who receives pistachios from a grower to hull and dry may be required to have such pistachios inspected by the Federal or Federal-State Inspection Service or such other inspection service as may be recommended by the Committee and approved by the Secretary. Such pistachios shall be certified as meeting the applicable requirements of such regulation.

(b) Outgoing inspection. Whenever the handling of any variety of pistachios is regulated pursuant to § 983.62, each person who handles pistachios, prior to the sale, consignment, shipment, marketing or distribution of such pistachios, may be required to have such pistachios inspected by the Federal or Federal-State Inspection Service or such other inspection service as may be recommended by the Committee and approved by the Secretary. Such pistachios shall be certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for pistachios which previously have been

so inspected and certified, only if such pistachios have been regraded, resorted, repackaged, or in any other way further prepared for market.

(c) Promptly after inspection and certification as prescribed in paragraphs (a) or (b) of this section, each such handler shall submit, or cause to be submitted, to the Committee a copy of the certificate of inspection issued with respect to such pistachios. The Committee may, with the approval of the Secretary, prescribe rules and regulations to waive the inspection requirements of this section where it is determined that it is not practicable to provide inspection at the time and place designated: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(d) The Committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspections required by this section must be performed.

(e) The Committee may enter into an agreement with the Federal and Federal-State Inspection Services or other approved inspection services, with respect to the costs of the inspection required by paragraphs (a) and (b) of this section, and may collect from handlers their respective pro rata shares of such costs.

(f) The Committee, with the approval of the Secretary, may prescribe rules and regulations to administer this section.

#### **§ 983.65 Substandard pistachios.**

The Committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the effective incoming and/or outgoing minimum standards do not enter normal market outlets for merchantable pistachios.

#### **§ 983.66 Exemptions.**

The Committee, with the approval of the Secretary, may prescribe exemptions based on minimum quantity or other factors for certain shipments of pistachios from the provisions specified in §§ 983.51 and 983.64. The Committee, with the approval of the Secretary, may prescribe safeguards to prevent pistachios handled pursuant to this section from entering the channels of trade for other than the purpose authorized.

#### **Reports**

#### **§ 983.70 Reports and recordkeeping.**

(a) Upon request of the Committee, made with the approval of the Secretary,

each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties under this part.

(b) Such reports may include, but are not necessarily limited to, the following:

(1) The name, address, telephone number of the handler, and other identifying information as appropriate;

(2) The quantities of pistachios, shelled and inshell, received by such handler;

(3) The quantities of pistachios, shelled and inshell, disposed of by such handler;

(4) The manner of disposition and disposition dates of such pistachios;

(5) The quantity of pistachios, shelled and inshell, held in inventory by such handler;

(6) The quantity of merchantable pistachios processed;

(7) A listing of such handler's growers including name, address, telephone number and location of grower acreage; and

(8) Identification of the inspection certificate or waiver pursuant to which the pistachios were processed.

(c) Each handler shall maintain for at least four succeeding years such records of the pistachios received and disposed of by such handler as may be necessary to verify reports submitted to the Committee pursuant to this section.

#### **§ 983.71 Confidential information.**

All reports and records furnished or submitted by handlers to the Committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers or growers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the Committee, who shall disclose such information to no person except the Secretary. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler identity or operations.

#### **§ 983.72 Other reports.**

Upon the request of the Committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the Committee to perform its functions under this part.

#### **Miscellaneous Provisions**

#### **§ 983.80 Compliance.**

(a) Except as provided in this part, no person shall handle pistachios, the

shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle pistachios except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the Committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any pistachios held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of pistachios. Each handler shall furnish all labor and equipment necessary to make such inspections.

#### **§ 983.81 Right of the Secretary.**

The members of the Committee (including successors and alternates) and any agents, employees or representatives appointed or employed by the Committee thereof, shall be subject to removal or suspension by the Secretary, in his or her discretion, at any time. Each and every regulation, decision, determination, or other act of the Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, the disapproved action of the Committee shall be deemed void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

#### **§ 983.82 Termination or suspension of order.**

(a) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall conduct a referendum within the month of November of every fifth year after the effective date of this part (but not during the same year as the California Pistachio Commission's referendum), to ascertain whether continuance of this part is favored by the growers. The Secretary shall continue the operation of this part if either one of the following is found:

(1) Sixty-five percent or more of the growers who vote in the referendum vote in favor of continuation, and the growers so voting marketed at least 50 percent or more of the total quantity of pistachios marketed in the preceding production year by all of the growers who vote in the referendum; or

(2) That a majority of growers who vote in the referendum vote in favor of continuation, and that the growers so voting marketed 65 percent or more of the total quantity of pistachios marketed in the preceding production year by all of the growers who vote in the referendum.

(c) The Committee shall consider all petitions from growers submitted to it for termination of this part. It may recommend that the Secretary conduct a special referendum upon receipt of a petition signed by 15 percent of the growers by number who produced not less than 15 percent of the volume in the immediately preceding season. If a referendum meets the preceding criteria, then procedures would follow paragraph (b) of this section.

(d) The Secretary shall terminate the provisions of this part at the end of any production year whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers of pistachios in the production area: *Provided*, That such majority have, during the production year, produced more than 50 percent of the volume of the pistachios produced for market within the production area. Such termination shall become effective only if announced by the Secretary on or before June 1.

(e) The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in this section.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

#### **§ 983.83 Procedure upon termination.**

(a) Upon the termination of this part, the members of the Committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Committee, continue as trustee of all funds, and property then in its possession, and under its control, including claims for any funds unpaid or property not delivered at the time of such termination. Action by such trustees shall require the concurrence of a majority of said trustees.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and the joint trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other

instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the Committee or the joint trustees, pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said Committee and upon said joint trustees.

#### **§ 983.84 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provision of this part or any regulation issued thereunder;

(b) Release or extinguish any violation of this part or any regulation issued thereunder; and

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to any such violations.

#### **§ 983.85 Personal liability.**

No member or alternate member of the Committee, nor any employee, representative, or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

#### **§ 983.86 Separability.**

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

#### **§ 983.87 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b), in accordance with such powers, to act in the premise whenever such action is deemed advisable.

#### **§ 983.88 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

#### **§ 983.89 Agents.**

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any, division or agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

#### **\* § 983.90 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for the marketing order. This agreement may be executed in multiple counterparts by each handler. If fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order.

#### **\* § 983.91 Additional parties.**

After the marketing order becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by him or her and delivered to the Secretary.

#### **\* § 983.92 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of pistachios in the same manner as is provided for in this agreement.

Dated: July 26, 1996.

Lon Hatamiya,

Administrator.

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Chapter I**

#### **[Summary Notice No. PR-96-3]**

#### **Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued**

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

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.