

regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase, September 25, 2005, will coincide with the first billing period in FY 2006.

### List of Subjects

#### 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

#### 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

### PART 56—GRADING OF SHELL EGGS

- 1. The authority citation for part 56 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 2. Section 56.46 is revised to read as follows:

#### § 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$65.00 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$75.12 per hour. Information on legal holidays is available from the Supervisor.

- 3. In § 56.52, paragraph (a)(4) is revised to read as follows:

#### § 56.52 Continuous grading performed on resident basis.

\* \* \* \* \*

(a) \* \* \*

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by \$0.051, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,875. The minimum charge also applies where an approved application is in effect and no product is handled.

### PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

- 4. The authority citation for part 70 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 5. Section 70.71 is revised to read as follows:

#### § 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be \$65.00 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$75.12 per hour. Information on legal holidays is available from the Supervisor.

- 6. In § 70.77, paragraph (a)(4) is revised to read as follows:

#### § 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

\* \* \* \* \*

(a) \* \* \*

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook

poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by \$0.00039, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,875. The minimum charge also applies where an approved application is in effect and no product is handled.

\* \* \* \* \*

Dated: July 19, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–14514 Filed 7–21–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. FV05–983–4 IFR]

### Pistachios Grown in California; Establishment of Procedures for Exempting Handlers From Minimum Quality Testing

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

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

**SUMMARY:** This rule establishes procedures for exempting handlers from quality requirements, including maximum limits for quality defects and minimum size, 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). These procedures will be used by the Committee in considering handler requests for exemptions from minimum quality testing requirements and when considering revocations of such exemptions. Additionally, this rule establishes an appeals process for handlers who have been denied an exemption or had an approved exemption revoked.

**DATES:** Effective July 23, 2005; comments received by September 20, 2005 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 E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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 rule establishes procedures for use by the Committee in exempting handlers from minimum quality (maximum limits for quality defects and minimum size) testing requirements prescribed under the order. These procedures also will be used by the Committee, or its duly authorized agents, when considering the revocation of exemptions for good cause, and when considering appeals of handlers who have had exemptions denied or revoked.

Section 983.46 of the pistachio order authorizes the Committee to recommend that the Secretary modify or suspend the order provisions contained in §§ 983.38 through 983.45. These sections are scheduled to be implemented on August 1, 2005.

Section 983.41 of the pistachio order authorizes handler exemptions from minimum quality testing requirements for handlers handling less than 1 million pounds of assessed weight pistachios per production year (September 1-August 31) and specifies that the Committee may grant handler exemptions. For the purposes, of this document, the term "production year" is synonymous with "marketing year".

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight (assessed weight) pistachios (dried to 5 percent moisture) during any marketing year from all assessment, aflatoxin, and minimum quality requirements.

Section 983.147 of the pistachio order establishes handler reporting requirements (ACP Forms 2-7) and exempts handlers who handle 1,000 pounds or less of dried weight pistachios from all reporting requirements with the exception of ACP Form-4. Handlers who have handled or intend to handle 1,000 pounds or less of dried weight pistachios during the marketing period (September 1-August 31) must submit ACP Form-4 by November 15 each year to the Committee.

The recommended decision, published on August 4, 2003, (68 FR 45990) indicates that implementing regulations should be effectuated to establish the specific procedures for exempting handlers who handle more than 1,000 pounds and less than 1 million pounds of assessed weight

pistachios per production year (September 1-August 31) from minimum quality testing requirements.

Under these authorities, the Committee at its April 12, 2005, meeting, unanimously recommended establishing a new section entitled, "§ 983.141—Procedures for Exempting Handlers from Minimum Quality Testing" to specify appropriate exemption, revocation, and appeal procedures. The Committee believes that standardized procedures would ensure that handler requests for exemptions and revocations of such exemptions are treated similarly by the Committee, and ensure that all applicants are treated equitably.

The Committee also recommended that handler exemptions under § 983.41(b) not be granted if a handler failed to file required reports, shipped substandard pistachios, or failed to comply with the requirements specified in § 983.41 on exemptions for minimum quality testing. Revocations of approved exemptions could be implemented by the Committee, or its authorized agents, for the same reasons.

Additionally, the Committee recommended that any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked by the Committee should be allowed to appeal the Committee's action to USDA. The Committee recommended that the USDA review any appeals and determine their merit. All appeals must be submitted in writing and the Committee would provide USDA the complete file on each appeal.

The recommended exemption procedures require the Committee, or its authorized agents, to timely notify all handlers of the opportunity to apply to be exempted from minimum quality testing so that all interested handlers can submit applications on forms provided by the Committee by the August 1 deadline; promptly review all requests for exemption; verify that the quantity of assessed weight pistachios handled by any applicants during the prior production year was less than 1 million pounds of assessed weight and that applicants are in compliance with the order's inspection, quality, and reporting requirements; approve or disapprove requests for exemptions by August 20 of each year; maintain complete files concerning the approval or disapproval of each handler's application; and notify handlers by August 30 of approval or disapproval.

A handler's exemption would be revoked by the Committee, or its duly authorized agents, if the handler fails to provide reports required under this part

or has not complied with the provisions on minimal quantity testing in § 983.41. Additionally, the Committee, or its duly authorized agents, would revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the applicable production year. The revocation of a handler's exemption would be made in writing to the handler and specify the reason(s) for and the effective date.

Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked, may appeal to USDA for reconsideration within 20 days after notification of the Committee's findings. All appeals must be in writing.

The Committee, or its duly authorized agents, shall forward a file with all pertinent information related to the handler's appeal to USDA. USDA shall inform the handler and all interested persons of the Secretary's decision.

As previously mentioned, under § 983.70 of the order, this rule applies to handlers handling more than 1,000 pounds and less than 1 million pounds, because handlers who handle 1,000 pounds or less of dried weight pistachios are exempt from assessment, aflatoxin, and minimum quality requirements and from all reporting requirements under § 983.147 of the order's administrative rules and regulations, with the exception of ACP Form-4.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 24 handlers of California pistachios who are subject to regulation under the order and about 741 producers of pistachios in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$6,000,000 and small

agricultural producers are defined as those having annual receipts of less than \$750,000. Seventeen of the 24 handlers subject to regulation have annual pistachio receipts of less than \$6,000,000. In addition, 722 of the 741 producers have annual receipts less than \$750,000. Therefore, a majority of handlers and producers may be classified as small entities under the SBA standards.

This rule establishes procedures for exempting handlers from minimum quality (maximum limits for quality defects and minimum size) testing requirements prescribed under the order. These procedures will be used by the Committee when considering handler requests for exemptions from minimum quality testing requirements and when considering revocations of such exemptions. Additionally, this rule establishes an appeals process for handlers who have been denied an exemption or had an approved exemption revoked.

Section 983.41(a) of the pistachio order allows handlers handling less than 1 million pounds of assessed weight pistachios each production year (September 1–August 31) to use optional aflatoxin testing methods. The optional methods permit the sampling and testing of a handler's entire inventory before further processing, and allow handlers to segregate their receipts into various lots for sampling and testing.

Section 983.41(b) of the pistachio order authorizes handler exemptions from minimum quality testing for handlers handling less than 1 million pounds of assessed weight pistachios per production year and specifies that the Committee may grant such handler exemptions.

Section 983.70 of the pistachio order exempts handlers who handle 1,000 pounds or less of dried weight (assessed weight) pistachios (dried to 5 percent moisture) during any marketing year from all assessment, aflatoxin, and minimum quality requirements. For the purposes of this document, the term "marketing year" is synonymous with the term "production year" and covers the period September 1 through August 31.

The recommended decision, published on August 4, 2003, (68 FR 45990) indicated that implementing regulations should be effectuated to establish the specific procedures for exempting handlers who handle more than 1,000 pounds and less than 1 million pounds of assessed weight pistachios per production year (September 1–August 31) from minimum quality testing requirements.

Under these authorities, the Committee at its April 12, 2005, meeting, unanimously recommended establishing standardized procedures for granting and revoking handler exemption requests, and considering handler appeals on exemption decisions. This action will have a positive impact on small and large handlers by assuring that all exemption applications and reviews are handled following standardized procedures.

The Committee discussed alternatives to this change, including not making any changes, but determined that specific procedures were needed to facilitate: (1) Exempting handlers from minimum quality testing; (2) revoking exemptions when handlers violate the marketing order; and (3) processing appeals to the Committee's actions. These procedures are expected to ensure that all such requests are treated equitably. The Committee vote was 8 in favor, 0 opposed, and 0 abstained.

The information collection requirements for the ACP Form-5, which handlers will complete and forward to the Committee to request exemption from minimum quality requirements under the order, was previously submitted to the Office of Management and Budget (OMB) and approved under OMB No. 0581–0230. Thus, this action will not impose any additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings are widely publicized throughout the pistachio industry and all interested persons are invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the April 12, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on these issues.

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

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.

This rule invites comments on the establishment of minimum quality testing exemption procedures under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final 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) This action provides procedures to facilitate the review and approval of minimum quality testing exemption requests, denials and revocations of such exemptions, and subsequent appeals, if submitted; (2) the Committee unanimously recommended the procedures at a public meeting and interested parties had an opportunity to provide input; (3) handlers are required to file the exemption form with the Committee by August 1 of each year; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

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

Pistachios, Marketing agreements and orders, 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 part 983, § 983.141 is added to Subpart-Rules and Regulations to read as follows:

##### § 983.141 Procedures for exempting handlers from minimum quality testing.

(a) *Exemption procedures.* The Committee, or its duly authorized agents, shall notify all handlers each year of the opportunity to apply to be exempted from minimum quality testing and handlers shall submit such requests on forms furnished by the Committee. The deadline for submission shall be

August 1. The Committee, or its duly authorized agents, shall:

(1) Promptly review all exemption applications received. In reviewing applications for exemption, the Committee, or its duly authorized agents, shall determine that the quantity of assessed weight pistachios handled during the prior production year was less than 1 million assessed weight pounds and that the applicants are in compliance with the order's reporting requirements and the provisions of § 983.41. Handler compliance will be determined through handler audits;

(2) Complete the review and approve or disapprove requests for exemptions by August 20;

(3) Maintain complete files detailing the reason(s) for the approval or disapproval of each application for at least three years beyond the crop year of applicability; and

(4) Notify in writing all applicants by August 30 of the approval or disapproval of their requests together with the reason(s) for disapproval, if applicable.

(b) *Revocation of exemptions.* A handler's exemption shall be revoked by the Committee, or its duly authorized agents, if the handler fails to provide reports required under § 983.147, or has not complied with the provisions on minimal quality testing in § 983.41, of this part. Additionally, the Committee, or its duly authorized agents, shall revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the current production year. The revocation of a handler's exemption shall be made in writing to the handler and shall specify the reason(s) for and the effective date.

(c) *Appeals.* (1) Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked, may appeal to the Secretary, within 20 days after notification of the Committee's, or agents of the Committee's, decisions. All appeals shall be in writing. When requested by the Secretary, the Committee, or its duly authorized agents, shall forward a file with all pertinent information related to any handler appeal. The Secretary shall inform the handler and all interested persons of the Secretary's decision.

(2) If handlers do not file an appeal or if their appeal is denied by the Secretary, they shall present all remaining lots of pistachios in inventory for minimum quality testing before moving the pistachios into the channels of commerce.

Dated: July 18, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–14513 Filed 7–19–05; 1:38 pm]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04–068–1]

#### Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing New Mexico from the list of modified accredited advanced States, adding portions of two counties in New Mexico to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. We are taking this action based on our determination that New Mexico meets the requirements of the regulations for zone recognition and that one of the zones meets the criteria for designation as accredited-free.

**DATES:** This interim rule is effective July 22, 2005. We will consider all comments that we receive on or before September 20, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoctet> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04–068–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state your comment refers to Docket No. 04–068–1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.