

Proposed Rules

Federal Register

Vol. 72, No. 173

Friday, September 7, 2007

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 59

[Docket No. AMS-LS-07-0106; LS-07-01]

RIN 0581-AC67

Livestock Mandatory Reporting; Reestablishment and Revision of the Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of comment period.

SUMMARY: Notice is hereby given that the comment period on the reestablishment and revision of the Livestock Mandatory Reporting (LMR) program is extended until September 24, 2007.

DATES: Comments must be submitted on or before September 24, 2007, to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments can be submitted on the Internet at: <http://www.regulations.gov>. Written comments can be sent to Warren P. Preston, Chief, Livestock and Grain Market News Branch, Docket No. LS-07-01, 1400 Independence Ave., SW., Room 2619-S, Washington, DC 20250-0252, or by facsimile to (202) 690-3732. All comments should reference the docket number and the date and page number of this issue. All comments will be available for public inspection at the above location, or on the Internet at <http://www.regulations.gov>. Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Warren P. Preston, Chief, Livestock and Grain Market News Branch at (202) 720-6231, fax (202) 690-3732, or e-mail Warren.Preston@usda.gov.

SUPPLEMENTARY INFORMATION: On April 2, 2001, AMS implemented the LMR program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The statutory authority for the program lapsed on Sept. 30, 2005. In October 2006, Congress enacted legislation to reauthorize the 1999 Act through Sept. 30, 2010 (Reauthorization Act), and to amend the swine reporting requirements of the 1999 Act.

As such, a proposed rule was published in the **Federal Register** on August 8, 2007, (72 FR 44671) to re-establish the regulatory authority for the program's continued operation and incorporate the swine reporting changes contained within the Reauthorization Act. In addition, the rule proposed changes to the LMR program that seek to enhance the program's overall effectiveness and efficiency based on AMS' experience in the administration of the program over the past six years.

The comment period was originally scheduled to end on September 7, 2007. However, several industry organizations have requested additional time to provide more thorough comments. AMS believes it is beneficial to extend the comment period until September 5, 2007, in order to receive input from all interested parties.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: September 5, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07-4405 Filed 9-5-07; 10:51 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS-FV-07-0095; FV07-983-2 PR]

Pistachios Grown in California; Change in Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the reporting requirements established 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 changes would modify one existing committee form and add a new form to a currently-approved information collection. The information collected would require handlers to report production and producer data, enabling the committee to obtain better information for preparing its annual marketing policy statement and conducting committee nominations and periodic referenda under the marketing order for California pistachios. This proposal announces the Agricultural Marketing Service's (AMS) intention to request revisions to a currently-approved information collection issued under the order. These changes are intended to enhance the efficient operation of the program.

DATES: Comments must be received by November 6, 2007. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by November 6, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. 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.regulations.gov>.

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, or E-mail:

Terry.Vawter@usda.gov or
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*.

SUPPLEMENTARY INFORMATION: This proposal 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 invites comments on changes to the reporting requirements authorized under the order. These changes would modify one committee form and add a new reporting form to the currently-approved information collection. The new form would require handlers to report production and producer data. This new data would enable the committee to obtain better information for preparing its annual marketing policy statement and for

conducting committee nominations and periodic referenda for pistachio producers.

The information collected on the new form would provide the committee with information that was previously available from the California Pistachio Commission (CPC), a California State marketing program.

As a result of a producer referendum, the CPC is to be terminated, and data historically collected by it and shared with the committee will no longer be available, beginning no later than August 31, 2007. Thus, information necessary for the effective administration of the order would need to be collected by the committee in the CPC's stead. Requiring handlers to report such data would allow the committee to collect information on the total available supply of pistachios grown in California and on the producers who produced the pistachios.

Under § 983.47 handlers are required to furnish such reports as the committee, with the approval of the Secretary, needs to enable the Secretary and the committee to perform their functions.

The committee met on April 2, 2007 to consider changes to their current reporting requirements. With the demise of their State counterpart, the CPC, the committee will need to collect information on producers and voting entities, the acreage of pistachios, and on receipts, inventory, and shipments of pistachios. This information is necessary for the effective administration of the order.

Requiring handlers to report such data would enable the committee to obtain better information on the total available supply of pistachios grown in California and to contact pistachio producers. The marketing order requires the committee to prepare the annual marketing policy statement. Several elements are required for an acceptable marketing policy statement: Production, harvesting, processing, and storage conditions data. The committee is also required to hold annual nominations for seats on the committee, and USDA is required to conduct periodic continuance referenda. Thus, the committee needs producer and production data to fulfill order requirements.

Section 983.37 of the order requires the committee to prepare a marketing policy statement annually when quality regulations are in effect under the order.

Section 983.47 of the order requires that handlers provide such reports and information as are needed to enable the committee to perform its functions and enforce the regulations under the order.

Under the authority of those sections, the committee unanimously recommended a revision to the current ACP Form 7, "Monthly Report of Inventory/Shipments;" and establishment of a new form, ACP Form 8, "Producer Delivery Report," for the purpose of collecting production, producer, inventory, and shipment data from handlers.

This action would also slightly modify the handler reporting requirements in ACP Form 7. Currently, all handlers must report their beginning inventory, grower deliveries, shipments of pistachios to domestic and export markets, interhandler transfers, non-handler purchases of California product, inventory adjustments on split and shelled pistachios, and ending inventory on a monthly basis on the form. This rule would remove the requirement to report inventory adjustments to split and shelled pistachios, as the committee believes that this information is no longer needed. This form is part of a currently-approved information collection, OMB No. 0581-0215, "Pistachios Grown in California."

The new form, ACP Form 8, "Producer Delivery Report," would require handlers to annually provide the names of the producers who deliver pistachios to them, the producers' mailing addresses and other contact information (telephone and facsimile numbers and e-mail addresses), the producers' employer identification numbers, total receipts of pistachios from each producer, and the counties in which the pistachios were grown. These reports would allow the committee to identify all authorized voters for committee selections and referenda in which each business entity is entitled to cast one vote. Individual producers may produce and deliver pistachios under more than one business entity. The information collected on this report would also allow the committee to determine whether individual producers are eligible to represent more than one business entity, based upon Federal Tax Identification numbers.

The information on producer deliveries would also allow the committee to track deliveries to handlers and verify that handlers pay the appropriate assessments on pistachios they receive. This information would also streamline handler audits for committee staff.

Handlers who handle less than 5,000 pounds annually would be exempt from filing ACP Form 8. These small handlers tend to be producers who handle their own production only and are known to the committee in their producer, as well

as their handler, capacity. Therefore, the committee already has business entity, production, and contact information on the producers that are also exempt handlers.

Upon OMB approval, the revised ACP Form 7 and the new ACP Form 8 will be merged into OMB No. 0581-0215, "Pistachios Grown in California." Specific burden information is detailed later in this document in the section entitled, "Paperwork Reduction Act."

Such information would provide the committee with production and producer data to enhance the administration of the order. An electronic version of the form would be available to those handlers who file electronically.

Since the addition of ACP Form 8 would require changes to the order's rules and regulations, § 983.147 would be modified to add a new paragraph (g), and to redesignate current paragraphs (g) and (h) as paragraphs (h) and (i).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 would not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 50 handlers of California pistachios subject to regulation under the order and approximately 740 producers in the production area. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than \$750,000, and defines small agricultural service firms as those whose annual receipts are less than \$6,500,000. Of the 740 producers, approximately 722 have annual receipts of less than \$750,000. Eight of the 50 handlers subject to regulation have annual pistachio receipts of at least \$6,500,000. Thus, the majority of handlers and producers of California pistachios may be classified as small entities.

This proposed rule invites comments on changes to the regulations authorized under the California pistachio marketing order (order), which would revise a currently-approved information collection.

The committee discussed data collection at its meeting on April 2, 2007. It determined that production data the CPC previously collected and made available to the committee was still necessary for the efficient operations of the program. Therefore, the committee agreed that it should require handlers to report production data directly to the committee. In order to receive this data, the committee unanimously recommended that current ACP Form 7, "Monthly Report of Inventory/Shipments," be revised and that a new form, ACP Form 8, "Producer Delivery Report," be developed.

The committee deliberated the value of revising the current form and requiring the new form, and discussed alternatives. In their discussion, the committee determined that the only alternative would be to not collect such industry data. However, the marketing order requires the committee to prepare the annual marketing policy statement. Several elements are required for an acceptable marketing policy statement: Production, harvesting, processing, and storage conditions data. The committee is also required to hold annual nominations for seats on the committee, and USDA is required to conduct periodic continuance referenda. Thus, the committee needs this data to fulfill order requirements.

The revised ACP Form 7 and the new ACP Form 8 are being submitted to the OMB as a revision to a currently-approved information collection and upon approval these forms will be merged into OMB No. 0581-0215, "Pistachios Grown in California." As with other marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

This proposal would impose additional reporting and recordkeeping burdens on handlers. However, any additional burden is expected to be offset by the efficient operation of the order. Handlers would continue to file the ACP Form 7 monthly and would file the ACP Form 8 annually, but the data collected would serve multiple purposes and streamline committee operations. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A detailed discussion of the amended form follows.

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.

Further, the committee's meetings were widely publicized throughout the pistachio industry and all interested persons were encouraged to attend the meetings and participate in the committee's deliberations. Like all committee meetings, the April 2, 2007, meeting was a public meeting, and entities of all sizes were encouraged 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.

A 60-day comment period is provided for interested persons to comment on this proposal. All written comments received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to submit a revision to a currently-approved information collection. This proposed rule creates a new form and revises an existing form. Upon approval of this revision by OMB, the forms will be merged with the forms approved under OMB No. 0581-0215, "Pistachios Grown in California."

Title: Pistachios Grown in California; Marketing Order No. 983.

OMB Number: 0581-0215.

Type of Request: Revision.

Abstract: The information collection requirement in this request is essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California pistachio marketing order program, which has been operating since 2004.

On April, 2, 2007, the committee unanimously recommended revising the current ACP Form 7 and developing a new ACP Form 8 on which handlers report to the committee the receipts of pistachios grown in California. This notice concerns those reports, in addition to the accompanying regulation previously discussed regarding requiring the reports to be submitted by handlers to the committee.

The committee delegated the task of developing the final versions of the forms to their Technical Subcommittee, which met on May 7, 2007.

Due to the pending termination of the CPC, the committee will need to begin collecting production, producer, and inventory data directly from handlers. The committee would use this information in its marketing policy deliberations each year when it reviews the production, harvesting, processing, and storage of the California crop. They would also use it to conduct committee nominations, and USDA would use it to conduct periodic producer referenda. The committee needs accurate information to effectively administer the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized employees of the committee. Authorized committee staff are the primary users of the information, and AMS is the secondary user. Such information would be kept confidential in accordance with the Act and the order.

Estimated Annual Burden for Each Form

The proposed request for revision of a currently-approved information collection under the order is as follows:

ACP-7, Monthly Report of Inventory/ Shipments Form

Handlers would use this form to report their monthly inventory, receipts, domestic and export shipments of pistachios, interhandler transfers, non-handler purchases of California product, inventory adjustments, and the ending inventory. Because small handlers are exempt from filing all forms other than the ACP-4, there are only an estimated 20 huller/dryer handlers who would be required to file this form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: Persons who handle California pistachios.

Estimated Number of Respondents: 20.

Estimated Number of Total Annual Responses: 240.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 48 hours.

ACP-8, Producer Delivery Report Form

Handlers would use this form annually to notify the committee of the receipts of pistachios and to report information on producers who own the acreage upon which the pistachios are grown. There are only an estimated 14 producers/handlers who receive

pistachios for processing from other producers, thus, there would be fewer handlers filing this form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: California pistachio handlers who receive pistachios grown in California.

Estimated Number of Respondents: 14.

Estimated Number of Total Annual Responses: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.8 hours.

Comments: Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0215 and the Marketing Order for Pistachios Grown in California, and should be sent to the USDA in care of the Docket Clerk at the previous-mentioned address or at <http://www.regulations.gov>.

All responses to this notice will be summarized and included in the request for OMB approval. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the same address or at <http://www.regulations.gov>.

In summary, this proposal would modify one reporting form and establish a new reporting requirement under the order.

Requiring handlers to file the new reports would allow the committee to obtain accurate information for preparation of the mandatory annual marketing policy statement, and for the conduct of committee nominations and periodic referenda. Since the addition of ACP Form 8 would require changes to the order's rules and regulations, § 983.147 would be modified to add a new paragraph (g), and to redesignate current paragraphs (g) and (h) as paragraphs (h) and (i).

All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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.

Subpart—Rules and Regulations

2. In § 983.147, current paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), and a new paragraph (g) is added to read as follows:

§ 983.147 Reports.

* * * * *

(g) *ACP-8, Producer Delivery Report.* Each handler of pistachios shall file this report with the committee by the 15th day of December of each production year to report his/her receipts of pistachios during the current production year, the names of the handlers' producing entities, business type, and the following information concerning each producing entity: Federal Tax Identification number; mailing and e-mail address; telephone and fax number; total bearing acres; county of production; and for the current production year, the total receipts of open inshell, closed shell, shelling stock of each producing entity; and total pounds of processed pistachios produced by each producing entity.

* * * * *

Dated: August 30, 2007.

Lloyd C. Day,
Administrator, Agricultural Marketing Service.

[FR Doc. 07-4370 Filed 9-6-07; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. AMS-FV-07-0103; FV07-993-1 PR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.