

version of the guidance, submit written comments on the draft guidance by August 12, 2011.

**ADDRESSES:** Submit written requests for hard copies of these draft guidance documents to Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may comment on these four draft guidance documents using the following procedures:

*Internet:* <http://www.regulations.gov>.

*Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268.

Written comments responding to this request should be identified with the document number AMS-NOP-11-0002; NOP-11-02. You should clearly indicate your position and the reasons for your position. You should clearly indicate which guidance document you are commenting on, especially if you choose to comment on more than one draft guidance document. If you are suggesting changes to a draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on <http://www.regulations.gov> and at USDA, AMS, NOP, Room 2646-South building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720-3252.

**FOR FURTHER INFORMATION CONTACT:** Melissa R. Bailey, PhD, Director, Standards Division, National Organic Program (NOP), USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268, Telephone: (202) 720-3252, E-mail: [NOP.guidance@ams.usda.gov](mailto:NOP.guidance@ams.usda.gov), or visit the NOP Web site at: <http://www.ams.usda.gov/nop>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The NOP selected the topics for the four draft guidance documents announced through this notice in response to recommendations issued by the National Organic Standards Board (NOSB) and the need to improve consistency in how certifying agents and certified operations are implementing the NOP regulations at 7 CFR part 205. The NOP developed “Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029)”, and “Evaluating Allowed Ingredients and Sources of Vitamins and Minerals For Organic Livestock Feed, Feed Supplements, and Feed Additives (NOP 5030)” in response to outstanding NOSB recommendations from May 2002, February 2005, and November 2008. The NOP developed “The Use of Kelp in Organic Livestock Feed (NOP 5027)” in response to requests by certifying agents and certified operations for clarifications on this issue. The NOP developed “Responding to Results from Pesticide Residue Testing (NOP 5028)” to describe the reporting scheme and actions that certifying agents should be instituting to meet the requirements at § 205.670 of the NOP regulations.

**II. Significance of Guidance**

These draft guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed

alternative approach complies with the Act and its implementing regulations.

*Electronic Access*

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at <http://www.ams.usda.gov/nop> or <http://www.regulations.gov>. Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

**Authority:** 7 U.S.C. 6501-6522.

Dated: June 7, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 983**

[Doc. No. AMS-FV-10-0099; FV11-983-1 PR]

**Pistachios Grown in California, Arizona, and New Mexico; Proposed Amendments to Marketing Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** Four amendments to Marketing Agreement and Order No. 983, which regulates the handling of pistachios grown in California, Arizona, and New Mexico, were proposed by the Administrative Committee for Pistachios (Committee), which is responsible for local administration of the order. The proposed amendments would provide authority to establish aflatoxin and quality regulations for pistachios shipped to export markets, including authority to establish different regulations for different markets. The order currently provides authority for aflatoxin and quality regulations only for pistachios shipped to domestic markets. These proposed amendments are intended to provide authority to ensure uniform and consistent aflatoxin and quality regulations in the domestic and various export markets.

**DATES:** Comments must be received by July 13, 2011.

**ADDRESSES:** Written comments should be submitted 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 document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record 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>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

To the extent practicable, all documents filed with the Docket Clerk should also be submitted electronically to Martin Engeler at the email address noted for him in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 2202 Monterey Street, Fresno, California, 93721; Telephone: (559)487-5110, Fax: (559) 487-5906, or Kathleen M. Finn, 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: [Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov) or [Kathy.Finn@ams.usda.gov](mailto:Kathy.Finn@ams.usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios produced in California, Arizona, and New Mexico, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action. A producer referendum may be held in the future to determine support for the proposed order amendments, if deemed appropriate.

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.

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.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) made changes to section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August, 21, 2008). The changes to section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend federal fruit, vegetable, and nut marketing agreements and orders if certain criteria are met.

AMS has considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and has determined that amending the order as proposed by the committee could appropriately be accomplished through informal rulemaking. AMS will analyze any comments received on the amendments proposed in this rule, and if warranted, will conduct a producer referendum to determine grower support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers participating in the referendum.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting on July 9, 2010. The Committee's proposed amendments would: (1) Provide authority to establish aflatoxin sampling, analysis, and

inspection requirements for shipments of pistachios to export markets, including authority to establish different regulations for different markets. (2) Provide authority to establish quality and inspection requirements for shipments of pistachios to export markets, including authority to establish different regulations for different markets. (3) Change a related section of the order concerning substandard pistachios to conform to the proposed addition of export authority. (4) Correct an erroneous cross-reference to another section of the order.

**Proposal Number 1—Aflatoxin Regulation Authority**

Section 983.50 of the order provides authority to establish aflatoxin sampling, analysis, and inspection requirements applicable to pistachios shipped for domestic human consumption. Section 983.150 of the order's administrative rules and regulations establish such requirements. These regulations prohibit the shipment of pistachios for domestic human consumption unless they have been sampled and tested according to specific procedures and protocols, and certified that they do not contain traces of aflatoxin exceeding a tolerance level of 15 parts per billion (ppb). The aflatoxin regulations under the order are intended to help assure consumers of a good quality product and to reduce the risk of potential aflatoxin contamination. While authority exists to establish aflatoxin regulations for domestic shipments of pistachios, no such authority exists under the order for export shipments. This proposed amendment would add authority to establish aflatoxin regulations for shipments of pistachios to export markets.

When the order was promulgated in 2004, a State of California marketing agreement was in effect that provided aflatoxin testing and certification for export shipments to designated markets. Under that program, handlers tested and certified export shipments according to the methods and protocols acceptable to the export destination. Thus, the authority to regulate export shipments was not included in the order to avoid duplication. The State program served the needs of the industry for several years, but was terminated in 2010. Although handlers continue to test and certify product prior to shipping into export markets, there is currently no program in place to establish uniform and consistent procedures.

The export market is becoming increasingly important to the U.S. pistachio industry to market its

continually increasing production. Pistachio acreage and production in the U.S. has been increasing steadily since the crop became commercially significant in the 1970's. This upward trend has continued since the order was promulgated, and is expected to continue into the foreseeable future. According to information reported by the Committee, in 2004 pistachio bearing acreage in California was 93,000 acres and non-bearing acreage was 24,733 acres, for a total of 117,733 acres. In 2010, bearing acreage was 137,102 acres and non-bearing acreage was 78,234, for a total of 215,336 acres. This represents an 83 percent increase in total acreage in just six years. The increased plantings are a response to the growing demand for U.S. pistachios, especially in export markets. A review of Committee shipment data indicates a substantial increase in shipments to export markets has occurred in recent years. Export shipments of open inshell pistachios increased from 95,761,666 pounds in the 2004–05 shipping season to 192,436,136 pounds in the 2009–10 season. Exports represented approximately 63 percent of total U.S. pistachio shipments during the 2009–10 season, underscoring the importance of the export market to the industry.

In view of the new plantings of pistachios as represented by the non-bearing acreage data, it is readily apparent that the production of U.S. pistachios will increase significantly in coming years. Successful marketing of the crop in the future will be dependent not only on sustaining current markets, but increasing the global demand to absorb the increased production. In order to accomplish this, it is important to reduce the risk of an aflatoxin incident involving U.S. pistachios.

In the mid-1990's, heightened consumer concern about aflatoxin occurred in Europe which resulted in a significant drop in pistachio consumption in those markets. Issues involving other commodities have also occurred in recent years, with adverse impacts. The pistachio industry thus believes it would be prudent to avail itself of an additional tool that could be used to reduce the risk of potential aflatoxin incidence in U.S. pistachios and the associated negative impacts.

Although pistachios destined for export markets are currently being tested and certified based on the requirements in those markets and customer's needs, there is currently no program in place with government oversight to ensure all handlers are following specific established protocols and procedures. Adding authority to the order to allow issuance of rules and

regulations for aflatoxin testing and certification for export shipments would provide a mechanism to establish uniform and consistent aflatoxin sampling, analysis, and inspection requirements for shipments of domestically produced pistachios to export markets. A program with consistent and uniform procedures, with Federal oversight, would help instill confidence with foreign customers and government officials that the U.S. pistachio industry is committed to providing a good quality product to its markets that match or exceed the standards of the importing country.

The intent of the proposed amendments authorizing aflatoxin regulation for exports is to provide an additional tool under the order to aid in successful marketing of future crops.

The various export markets to which pistachios are shipped often have different requirements, such as allowable aflatoxin tolerance levels. Thus, the Committee also recommended adding authority to the order to establish different aflatoxin regulations for different markets. The proposed amendment would therefore authorize different regulations for different markets.

If the order is amended to include authority to establish aflatoxin regulations for shipments to export markets, specific regulations would need to be added to the order's rules and regulations through the informal rulemaking process. If the industry chooses to pursue such regulations, the Committee would meet to consider and analyze the available information in developing any recommendation to AMS. Any recommendation of the Committee concerning potential aflatoxin regulations would require a unanimous vote of 12 Committee members or alternate members acting in their stead according to the voting requirements in § 983.43 of the order.

For the reasons stated above, it is proposed that § 983.50, Aflatoxin regulations, be amended to authorize the Committee, with approval of the Secretary, to establish aflatoxin sampling, analysis, and inspection requirements for pistachios to be shipped for human consumption in export markets. It is also proposed that § 983.50 of the order be amended to authorize the Committee, with approval of the Secretary, to establish different aflatoxin requirements for different markets.

#### **Proposal Number 2—Quality Regulation Authority**

Section 983.51 of the order provides authority for the Committee, with

approval of the Secretary, to establish quality and inspection requirements for pistachios shipped for domestic human consumption. There are currently no such requirements in effect under the order.

When the order was promulgated in 2004, specific requirements pertaining to quality levels were contained in the provisions of the order. These provisions were in effect from 2004 through 2007. In December 2007, the requirements were suspended because they were no longer meeting the industry's needs. In November 2009, the order was amended and the suspended quality requirements were removed from the order and replaced with broad authority for quality regulation. At that time, there was no desire by the industry to reinstate the specific quality regulations previously in effect or any intent to recommend any form of quality regulation. However, the industry desired to retain authority to implement some form of quality regulation in the future if circumstances warrant. Informal rulemaking would be required to reinstate quality regulations.

Applying similar logic, the Committee recommended at its July 2010 meeting to amend the broad quality authority under the order to include the authority to establish requirements for export shipments, in addition to domestic shipments. No quality regulations are currently being contemplated by the industry; however, the Committee believes it would be prudent to expand the current authority for quality regulations to include export shipments. Adding broad authority for quality regulations for exports would provide flexibility in the order by increasing the industry's ability to respond to quality issues related to exports, if they arise. Exports are becoming an increasingly important market for the industry and currently account for nearly two-thirds of domestically produced pistachios.

The Committee also recommended adding authority to the order to establish different quality requirements for different markets. Similar to the discussion under Proposal Number 1, different markets to which pistachios are shipped may have different quality requirements or concerns. The proposed amendment would therefore authorize different quality regulations for different markets. This would provide additional flexibility to the order to address different market needs.

If the order is amended to include authority to establish quality regulations for shipments to export markets, specific regulations would need to be added to the order's rules and regulations through the informal

rulemaking process. If the industry chooses to pursue such regulations, the Committee would meet to consider and analyze the available information in developing a recommendation to AMS. Any recommendation of the Committee concerning potential quality regulations would require a unanimous vote of 12 Committee members or alternate members acting in their stead according to the voting requirements in § 983.43 of the order.

For the reasons stated above, it is proposed that § 983.51, Quality regulations, be amended to authorize the Committee, with approval of the Secretary, to establish quality and inspection requirements for pistachios to be shipped for human consumption in export markets. It is also proposed that § 983.51 of the order be amended to authorize the Committee, with approval of the Secretary, to establish different quality requirements for different markets.

#### **Proposal Number 3—Conforming Change**

Section 983.57 of the order provides authority to establish reporting and disposition procedures for pistachios that do not meet aflatoxin or quality requirements (substandard product) to ensure they are not shipped for domestic human consumption. Since the order currently authorizes regulation of the domestic market only, § 983.57 does not reference the utilization of reporting and disposition procedures to ensure that substandard pistachios are not shipped to other markets besides the domestic market. Therefore, if Proposal Numbers 1 and 2 are adopted to include authority to regulate other markets, a conforming change should be made to § 983.57 to reference the utilization of reporting and disposition procedures to ensure substandard pistachios are not shipped to any market for which regulations exist.

It is therefore proposed that § 983.57, Substandard pistachios, be amended to authorize reporting and disposition procedures for substandard pistachios to ensure they are not shipped for human consumption in any market for which aflatoxin and/or quality requirements exist pursuant to § 983.50 and/or § 983.51.

#### **Proposal Number 4—Correction**

Section 983.53 of the order pertains to aflatoxin testing of minimal quantities of pistachios and provides, in part, that lots of pistachios exceeding the maximum tolerance level for aflatoxin may be tested again after being reworked as specified in § 983.50. The reference to § 983.50 is incorrect. The

correct section, which pertains to rework procedures, is § 983.52. This proposed amendment recommended by the Committee would correct the erroneous reference.

It is therefore proposed to amend § 983.53 by removing the reference to § 983.50 in paragraph (a) (2) and replacing it with the correct reference to § 983.52.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 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 850 producers and 29 handlers of pistachios in the production area encompassing California, Arizona, and New Mexico. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

Based on Committee data, it is estimated that over 70 percent of the handlers ship less than \$7,000,000 worth of pistachios and would thus be considered small business under the SBA definition. It is also estimated that over 80 percent of the growers in the production area produce less than \$750,000 worth of pistachios and would thus be considered small businesses under the SBA definition.

The amendments proposed by the Committee would provide authority to establish aflatoxin sampling, analysis, and inspection requirements for shipments of pistachios to export markets, including authority to establish different regulations for different markets; provide authority to establish quality and inspection requirements for shipments of pistachios to export markets, including authority to establish different regulations for different markets; change a related section of the order concerning substandard pistachios to conform to the proposed addition of export authority; and correct an

erroneous cross-reference to another section of the order.

These proposed amendments were unanimously recommended at a public meeting of the Committee held on July 10, 2010. None of the proposed amendments would have an immediate impact on handlers or producers if they are approved because they would not establish any requirements or regulations on handlers. However, the proposed amendments that would add authority to the order to regulate exports could impact growers and handlers in the industry if the authority is implemented. Therefore, the potential costs that may be associated with future regulation of exports is discussed below. In the event implementing regulations are subsequently recommended by the Committee if the proposed amendments are approved, additional analysis of the potential costs and benefits would be conducted as part of the informal rulemaking process.

Under § 983.50 of the order and § 983.150 of the administrative rules and regulations, sampling, analysis, and inspection of pistachios for aflatoxin is required prior to shipment to domestic markets. Specific procedures and requirements for handlers to follow are prescribed. It is anticipated that any requirements recommended for export shipments would be similar to those in effect for domestic shipments. Thus, the associated costs would be similar.

The costs of complying with aflatoxin regulations can be broken into three basic elements: Sampling of the product, the market value of the product samples that are used in testing, and the cost of the aflatoxin analysis performed by laboratories. These costs can vary among handlers depending on their particular operations. In recognition of this, the Committee provided estimates of the various cost elements for purposes of this discussion.

The cost of drawing samples from lots is estimated to range from \$50.00 to \$75.00 per lot. The variation in this cost can be attributed to factors such as the type of inspection program utilized by handlers. For purposes of this evaluation a cost factor of \$70.00 per lot is utilized. The cost of the product used in sampling and testing varies depending upon the market price for pistachios. For purposes of this evaluation a value of \$3.00 per pound as estimated by the Committee is utilized. At \$3.00 per pound and a 44-pound sample, the cost of product used in sampling is \$132.00 per lot. Laboratory costs for analyzing aflatoxin content are estimated to be \$100.00 per test; with two tests per lot, the cost is \$200.00 per lot.

Pistachio lots tested for aflatoxin can vary in size, but for purposes of this evaluation, a lot size of 50,000 pounds is used as that is a reasonable representative size for a typical handler operation. Applying the above cost estimates to a lot size of 50,000 pounds results in the following cost estimates on a per pound basis:

1. Sampling cost: \$0.0014 per pound (\$70.00 per lot divided by 50,000 pounds).

2. Value of product used in sampling: \$0.0026 per pound (\$132.00 per lot divided by 50,000 pounds).

3. Analytical cost of aflatoxin testing: \$0.0040 per pound (\$200 per sample divided by 50,000 pounds).

This results in a total estimated per pound cost of \$0.0060 (\$0.0014 + \$0.0026 + \$0.0040), or 0.8 cents per pound.

When compared to the market price for pistachios, the direct costs associated with an aflatoxin program are proportionately small. Utilizing a market price of \$3.00 per pound as used in the above cost estimates, the costs of aflatoxin sampling and testing represent 0.27 percent of the market price. Even if the market price for pistachios was \$1.00 per pound, the aflatoxin sampling and testing costs would be well below one percent of the price.

Most handlers who shipped pistachios to export markets in the past were signatories to a state marketing agreement that required aflatoxin sampling and analysis. That program was terminated in 2010. Since then, most handlers reportedly conduct aflatoxin testing and certification on export shipments to satisfy the requirements of the various markets. Therefore, the costs discussed above are already being borne by handlers.

While difficult to quantify, one of the primary benefits of an aflatoxin program is the reduced risk of a potential food incident. For example, in the late 1990s, high aflatoxin levels were detected in pistachios in European markets. This led to a 60 percent decrease in pistachio imports in Europe, and it took several years for the market to return to more normal levels. The U.S. was not dominant in the European market at that time, but in recent years, Europe has become an increasingly significant market for U.S. pistachios. Regardless of the location of the market, this example demonstrates the devastating effect a food quality or food safety issue can have on the marketing of a product.

Another benefit of an aflatoxin testing program is the resulting reduction in the incidence of rejected shipments at their destination. Many countries test product prior to allowing its importation.

Product that does not meet the importing country's standards can be rejected and returned to the shipper. It is estimated that the cost of handling or returning a rejected lot is between \$12,000 and \$15,000 per lot. Product that has been tested prior to shipment based on the requirements of its market destination is less likely to be rejected and would not incur the associated costs.

Avoiding a disruption in the marketing of pistachios in export markets is important in maintaining the viability of the industry. Shipments of open inshell pistachios increased dramatically in recent years; from 95,761,666 pounds in the 2004–05 shipping season to 192,436,136 pounds in the 2009–10 season, according to Committee data. Exports represented approximately 63 percent of total U.S. pistachio shipments during the 2009–10 season. According to statistics reported by the Committee, total acreage increased from 117,773 acres in 2004 to 215,336 acres in 2010, representing an 83 percent increase. Much of this acreage is non-bearing and will come into production in the near future. These statistics demonstrate that domestic production of pistachios will continue to increase in the future, and export markets must be maintained to accommodate the increased supplies.

Expanding order authority to include establishing aflatoxin requirements applicable to export shipments will provide an additional tool to aid in the marketing of pistachios covered under the order. In the event the authority is implemented, the potential costs associated with a mandatory aflatoxin program for exports are expected to be more than offset by the potential benefits discussed above.

An analysis of the potential costs of adding authority to the order to establish quality regulations is not possible because no quality regulations are currently in effect under the order, and none are being contemplated. Quality regulations were in effect for domestic shipments from 2004 through 2007, but were suspended because they were no longer meeting the industry's needs. However, the order still contains broad authority for domestic quality regulations and the industry may desire to reinstate them if circumstances warrant. As a result of the increasing importance of the export market as demonstrated above, the Committee recommended adding authority to the order for quality regulation for export shipments in the event circumstances in the future warrant their implementation.

If such authority is added to the order, a unanimous action of the Committee

would be required to recommend the establishment of any export quality regulations. In addition, informal rulemaking would be required for implementation, and an analysis of the potential costs and benefits would be conducted during that process.

The remaining proposed amendments are administrative in nature and would have no economic impact on growers or handlers. One of the proposed amendments would add conforming language to another section of the order if other amendments are approved, and another proposed amendment would correct an incorrect section reference in the order.

Alternatives to these proposals include making no changes at this time. However, the Committee believes it would be beneficial to have the means necessary to apply regulations to the export markets if circumstances warrant.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0215, "Pistachios Grown in California". No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

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.

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.

The Committee's meeting, at which these proposals were discussed, was widely publicized throughout the pistachio industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals.

Finally, interested persons are invited to submit comments on the proposed amendments to the order, including

comments on the regulatory and informational impacts of this action on small businesses.

Following analysis of any comments received on the amendments proposed in this rule, AMS will determine whether to proceed, and if so, would conduct a producer referendum. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

#### General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of pistachios grown in California, Arizona, and New Mexico in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order;

3. The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing agreement and order, as amended, and as hereby proposed to be further amended,

prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios produced or packed in the production area; and

5. All handling of pistachios produced or packed in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to these proposals. Thirty days is deemed appropriate because the proposed changes have been widely publicized, and implementation of the changes, if adopted, would be desirable to benefit the industry as soon as possible. Any comments received on the amendments proposed in this rule will be analyzed, and if warranted, a producer referendum will be conducted to determine grower support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers participating in the referendum.

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

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

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

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

**Authority:** 7 U.S.C. 601–674.

2. Revise § 983.50 to read as follows:

#### § 983.50 Aflatoxin regulations.

The committee shall establish, with the approval of the Secretary, such aflatoxin sampling, analysis, and inspection requirements applicable to pistachios to be shipped for domestic human consumption as will contribute to orderly marketing or be in the public interest. The committee may also establish, with the approval of the Secretary, such requirements for pistachios to be shipped for human consumption in export markets. No handler shall ship, for human consumption in domestic, or if applicable, export markets, pistachios that exceed an aflatoxin level established by the committee and approved by the Secretary. All

shipments to markets for which requirements have been established must be covered by an aflatoxin inspection certificate. The committee may, with the approval of the Secretary, establish different sampling, analysis, and inspection requirements, and different aflatoxin level requirements, for different markets.

3. Revise § 983.51 to read as follows:

#### § 983.51 Quality regulations.

For any production year, the committee may establish, with the approval of the Secretary, such quality and inspection requirements applicable to pistachios shipped for human consumption in domestic or export markets as will contribute to orderly marketing or be in the public interest. In such production year, no handler shall ship pistachios for human consumption in domestic, or if applicable, export markets unless they meet the applicable requirements as evidenced by certification acceptable to the committee. The committee may, with the approval of the Secretary, establish different quality and inspection requirements for different markets.

#### § 983.53 [Amended]

4. Amend § 983.53 by removing the reference to “§ 983.50” and adding in its place “§ 983.52” in paragraph (a)(2).

5. Revise § 983.57 to read as follows:

#### § 983.57 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 aflatoxin and quality requirements are not shipped for human consumption in those markets for which such requirements exist pursuant to § 983.50 and § 983.51.

Dated: June 5, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

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