

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. FV05-983-1 FR]

#### Pistachios Grown in California; Establishment of Reporting Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes reporting requirements authorized 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 additional reporting requirements will enable the committee to collect information on: Pistachios failing to meet quality and aflatoxin requirements; failing pistachios that are reworked or disposed of in accordance with applicable requirements; handlers applying for exemptions; transfers of uninspected pistachios between regulated handlers; and inventories and shipments of pistachios.

**EFFECTIVE DATE:** July 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; 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 final rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes reporting requirements authorized under the California pistachio order. The additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed under the marketing order;

(3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios.

Sections 983.38, 983.39, and 983.40 of the pistachio order specify maximum aflatoxin requirements, minimum quality requirements, and failed lot rework and disposition procedures, respectively.

Sections 983.41 of the pistachio order provides exemptions for certain aflatoxin and quality testing requirements for handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1-August 31).

Section 983.47 of the pistachio order provides authority to require handlers to furnish such reports and information on such forms as are needed to enable USDA and the committee to perform their functions and enforce order provisions.

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

Under these authorities, the committee, at its November 3, 2004, meeting unanimously recommended establishing a new subpart "Rules and Regulations," and a new section entitled "\$ 983.147—Reports" to delineate and define six new forms, ACP-2 through ACP-7. The committee further clarified this recommendation at its December 15, 2004, meeting.

Detailed information on the burdens created by these new forms is discussed later in this document.

The recommended forms, ACP-2 through ACP-7, will be used by the committee to track pistachios that fail to meet minimum quality and maximum aflatoxin requirements (ACP-2); track lots which have been reworked or disposed of in accordance with marketing order requirements (ACP-3); identify handlers who handle 1,000 dried pounds or less of pistachios per production year (September 1-August 31) (ACP-4) and properly apply marketing order exemptions; identify handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1-August 31) (ACP-5) and properly apply marketing order exemptions; track uninspected

pistachios that are transferred between regulated handlers (ACP-6); and track monthly shipments and handler inventories (ACP-7).

The majority of the forms recommended by the committee (ACP-2 through APC-6) are new reporting requirements, and do not duplicate information collected by any other Federal agency. One form, ACP-7 is similar to a report required by the California Pistachio Commission (commission), a program overseen by the State of California, under which California pistachio research and promotion activities are implemented. Because the commission is prohibited from sharing confidential handler information, the committee recommended the ACP-7 be implemented for committee use to provide information necessary to administer the order. Because shipment and inventory data is already compiled by handlers for the commission, handlers may attach the commission report to the committee form to meet this new reporting requirement. Thus, handlers will not be duplicating their efforts and both agencies would receive necessary data for respective program purposes. Further, the information collection does not duplicate that collected by any other Federal agency.

The committee estimates that this action will impact no more than 24 handlers of pistachios, and further estimates that, on average, a handler will expend no more than an average of 11.8 minutes in completing each form. The total estimated annual burden for all six forms is estimated to be 92.4 hours.

The committee believes that these forms are easy to prepare and file, and place as small a reporting burden as possible on handlers. These forms and their respective burdens were discussed at public meetings at which all affected entities were encouraged to comment on the effect of requiring these forms to be completed and filed by pistachio handlers. The committee vote was unanimous, with 8 in favor and none opposed or abstaining.

#### Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 24 handlers of California pistachios subject to regulation under the order and approximately 741 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000. Seven of the 24 handlers subject to regulation have annual pistachio receipts of at least \$6,000,000. In addition, 722 producers have annual receipts less than \$750,000. Thus, the majority of handlers and producers of California pistachios may be classified as small entities. There are an estimated nine USDA approved testing laboratories that may participate in this program. Five of these laboratories are handler in-house operations and already included in the estimated respondents. Other testing laboratories are government agencies. There are two other existing laboratories. One is part of the Dried Fruit Association of California and the other is a private laboratory operated by Am Cal Analytical Laboratories. We believe that this association and private laboratory would be considered small entities.

This final rule establishes reporting requirements authorized under the California pistachio order. These additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed of in marketing order requirements; (3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios.

Sections 983.38, 983.39, and 983.40 of the pistachio order provide maximum aflatoxin requirements, and minimum quality requirements, and failed lot rework and disposition procedures, respectively.

Sections 983.41 of the pistachio order provides exemptions for certain aflatoxin and quality testing requirements for handlers who handle less than 1,000,000 pounds of assessed weight pistachios per marketing year (September 1–August 31).

Section 983.47 of the pistachio order provides authority for the committee to

require handlers to furnish such reports and information on such forms as are needed to enable the Secretary of Agriculture and the committee to perform their functions and enforce order provisions.

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

Under these authorities, the committee, at its November 3, 2004, meeting, unanimously recommended establishing a new subpart “Rules and Regulations,” and a new section entitled “§ 983.147—Reports” to delineate and define six new forms, ACP-2 through ACP-7. The committee further clarified this recommendation at its December 15, 2004, meeting.

The majority of the reports recommended by the committee are new reporting requirements (ACP-2 through ACP-6). One form, ACP-7 is similar to a report required by the commission, a program overseen by the State of California, under which California pistachio research and promotion activities are implemented.

The committee debated the overall merits of the forms at its meetings, deliberating over the value of the information to be collected relative to the burden which each form would impose on the regulated handlers. In the end, the committee concluded that the information that will be collected is necessary to properly administer the marketing order. It further concluded that the burden was relatively small compared to the benefits that will be accrued by the committee and industry from the information obtained.

The committee discussed alternatives to establishing these reporting requirements including not adopting ACP-4, as it was believed that this information might be obtained by staff during compliance audits. Upon reviewing the auditing procedure, committee members determined that utilization of the ACP-4 will be a more feasible means of obtaining information on identifying exempt handlers. Thus, the committee unanimously recommended all six forms for implementation. It believes that the information to be provided on each of the recommended forms will be important to the administration of the order and will enhance committee operations.

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 November 3 and December 15, 2004, meetings were public meetings and entities of all sizes were invited to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on March 28, 2005 (70 FR 15602). The proposal also announced AMS's intent to request an approval of a new information collection for the marketing order regulating pistachios grown in California. Copies of the proposal were also mailed or sent via facsimile to all pistachio handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 27, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee is required to furnish handlers with one of the forms by July 15. Further, handlers are aware of this rule, which was unanimously recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule, and no comments were received.

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, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. A detailed discussion of the six new forms follows.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection

requirements that are contained in this rule were approved by the Office of Management and Budget (OMB), under OMB No. 0581-0230. The information collection has been merged into OMB No. 0581-0215 Pistachios Grown in California, which expires May 31, 2008.

Since publication of the proposed rule on March 28, 2005 (70 FR 15602), the committee has found that the number of respondents (handlers and approved aflatoxin laboratories) has increased from 20 to 25. However, 5 of these 25 respondents will be exempt from filing 5 of the 6 forms, as they handle 1,000 pounds or less and are exempt from handling requirements and most reporting requirements.

In summary, this final rule establishes reporting requirements authorized under the California pistachio order. These additional reporting requirements will enable the committee to collect information on: (1) Pistachios failing to meet quality and aflatoxin requirements; (2) failing pistachios that are reworked or disposed of in accordance with marketing order requirements; (3) handlers applying for exemptions; (4) transfers of uninspected pistachios between regulated handlers; and (5) inventories and shipments of pistachios. Additionally, it will allow the committee to obtain accurate information for preparation of the annual marketing policy statement, as required under the order.

Another form, ACP 1, was not included with this approval request because that form was part of a previous request, published in the **Federal Register** on March 1, 2005 (70 FR 9843).

#### **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, a new Subpart—Rules and Regulations and § 983.147—Reports are added to read as follows:

#### **Subpart—Rules and Regulations**

##### **§ 983.147 Reports.**

(a) *ACP–2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots which fail to meet the order's minimum quality

requirements by completing sections A and B of this form. Handlers shall furnish this report to the committee no later than 10 days after test completion. Each USDA approved aflatoxin testing laboratory shall complete section C of this report and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

(b) *ACP–3, Failed Lot Disposition and Rework Report.* Each handler who reworks a failing lot of pistachios shall complete this report and shall forward it to the committee no later than 10 days after the rework is completed. If rework is not selected as a remedy, the handler shall submit the form to the committee office within 10 days of disposition of the lot.

(c) *ACP–4, Federal Marketing Order Exempt Handler Notification.* Each handler who handles 1,000 pounds or less of dried weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

(d) *ACP–5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request an exemption under the minimal quantities provisions (Section 983.41) of the order shall furnish this report to the committee office no later than August 1 of each production year.

(e) *ACP–6, Inter-handler Transfer.* Each handler who transfers uninspected pistachios to another handler within the production area shall complete the ACP–6 and sign Part A. The transferring handler shall forward the original ACP–6 and one copy to the handler who receives the uninspected pistachios. The transferring handler shall furnish one copy of ACP–6 to the committee within 30 days of the transfer. The handler receiving the uninspected pistachios (receiving handler) shall sign Part B of the original ACP–6 and shall file it with the committee within 30 days of the transfer.

(f) *ACP–7 Monthly Report of Inventory/Shipments.* Each handler of pistachios shall file this report with the committee by the 10th day of each month for the previous month's inventory and shipment information.

(g) *Exemptions.* Handlers, who handle 1,000 pounds or less of dried pistachios during any marketing year, are exempt from filing all forms with the exception of the ACP–4.

(h) *Records.* Each handler shall maintain all records of pistachios received, held, shipped, and disposed of for at least 3 years following each crop

year to show compliance with the marketing order provisions.

Dated: July 8, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-13755 Filed 7-11-05; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM311; Special Conditions No. 25-291-SC]

#### **Special Conditions: Raytheon Model BH.125 Series 400A, DH.125 Series 400A, and HS.125 Series 400B Airplanes; High-Intensity Radiated Fields (HIRF)**

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes modified by Envoy Aerospace. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates digital air data computers and displays that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 1, 2005. Comments must be received on or before August 11, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM311, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM311.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2799; facsimile (425) 227-1320.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

##### **Background**

On March 28, 2005, Envoy Aerospace, 5027 Switch Grass Lane, Naperville, Illinois 60564-5368, applied for a supplemental type certificate (STC) to modify Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes. Raytheon Model

BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes are currently approved under Type Certificate No. A3EU. The Raytheon Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes are transport category airplanes powered by two turbofan engines, with maximum takeoff weights of up to 23,600 pounds. These airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification includes the incorporation of dual Innovative Solutions and Support Air Data Systems. The avionics installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

##### **Type Certification Basis**

Under the provisions of 14 CFR 21.101, Envoy Aerospace must show that the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes includes CAR.4b dated December 1953, Amendment 4b-1 through 4b-11, exclusive of CAR 4b.350(e), and includes Special Regulation SR.422B. In addition, the certification basis includes later amended sections of 14 CFR part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Aircraft Company Model BH.125 series 400A, DH.125 series 400A, and HS.125 series 400B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.