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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV05-983-3 FR]

Pistachios Grown in the State of California; Termination of Language in Table 3 “Maximum Defect and Minimum Size Levels”

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates language in Table 3, “Maximum Defect and Minimum Size Levels,” of the marketing order regulating pistachios produced in the State of California. This language was erroneously included in Table 3 at the time of promulgation of the order. Removal of the language in the table was unanimously recommended by the Administrative Committee for Pistachios, the committee responsible for local administration of the order.

DATES: Effective July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah 84532; telephone: (435) 259-7988, Fax: 259-4945; or 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.

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 rule is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

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

This rule terminates language in Table 3, “Defect and Minimum Size Levels,” of the marketing order regulating pistachios produced in the State of California (69 FR 17844, April 5, 2004). The termination applies to language in two portions of the table: (1) In the “Internal (Kernel) Defects” section, the words “external or” will be removed from the heading “Total external or internal defects allowed” because this section of the table only covers internal defects allowed, and (2) the sub-heading “Minimum permissible defects (percent by weight)” will be removed so that all information in the table will be captured under the table heading “Maximum permissible defects (percent by weight).” This language was erroneously included in Table 3 at the time of promulgation of the order.

Termination of this language removes this language and allows Table 3 to read as originally intended by the proponents of the order.

Suspension of this language was unanimously recommended by the Administrative Committee for Pistachios (ACP), the group responsible for local administration of the order, at a December 15, 2004, committee meeting. However, because this is a permanent change, USDA is removing and terminating the language.

The federal marketing order regulating the handling of pistachios produced in the State of California was promulgated in 2004. Provisions to establish the ACP became effective on April 6, 2004 (69 FR 17844, April 5, 2004). The regulatory provisions of the order will become effective on August 1, 2005 (70 FR 661, January 5, 2005; 70 FR 4191, January 28, 2005).

Section 983.39, Minimum quality levels, of the order establishes maximum defect and minimum size tolerances for pistachios produced and handled in California. Table 3 of the order, which is included in § 983.39, describes the maximum thresholds for defects, as well as the maximum tolerance for minimum-sized pistachios, in table format. Table 3 also serves as a reference tool for handlers regulated by the order to easily interpret the written quality and size provisions of the order under § 983.39.

ACP preparations for implementing the regulatory provisions of the order brought to light that two sub-headings in Table 3, “Maximum Defect and Minimum Size Levels,” were erroneously included at the time of promulgation. As earlier mentioned, termination of this language will remove this language and allow Table 3 to read as originally intended by the proponents of the order.

This final rule removes the words “external or” from the heading “Total external or internal defects allowed” in the “Internal (Kernel) Defects” section because this section of the table only applies to internal defects, not external defects. Additionally, the sub-heading “Minimum permissible defects (percent by weight)” is removed from the table so that all information in the table will be captured under the table heading “Maximum Permissible Defects (percent by weight).” This language should be removed prior to the effective date of

the regulatory provisions of the order (August 1, 2005).

Final Regulatory Flexibility Analysis

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

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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California pistachios subject to regulation under the marketing order and approximately 741 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000 and small agricultural producers have been defined by the Small Business Administration as those having annual receipts less than \$750,000 (13 CFR 121.201). Eight of the 20 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 pistachio producers and handlers regulated under the marketing order may be classified as small entities.

This action terminates language in Table 3, "Maximum Defect and Minimum Size Levels" in § 983.39 of the order. The termination applies to language in two portions of the table: (1) In the "Internal (Kernel) Defects" section, the words "external or" will be removed from the heading "Total external or internal defects allowed" because this section of the table only pertains to internal defects, and (2) the sub-heading "Minimum permissible defects (percent by weight)" is removed so that all information in the table will be captured under the table heading "Maximum permissible defects (percent by weight)." Neither the thresholds contained in the table nor the regulatory

provisions outlined in § 983.39 of the order will be impacted by this termination. The termination will serve to facilitate a more accurate interpretation of the information presented in Table 3. Thus, no significant impact on large or small entities is anticipated as a result of this proposal.

One alternative to this action would be to not remove and terminate the identified language in Table 3. However, at the December 15, 2004, meeting of the ACP, it was determined that if this language were not removed from the table, handlers regulated under the order may not correctly interpret the thresholds outlined in Table 3. Thus, the ACP unanimously recommended that the table be corrected. Like all committee meetings, this meeting was a public meeting and all entities, both large and small, were able to express views on this issue. No comments or recommendations against the recommendation were voiced at the meeting.

In compliance with Office and Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB No. 0581-0215. This rule imposes no additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on May 4, 2005 (70 FR 23065). Copies of the proposed rule were also mailed to all pistachio handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending May 19, 2005, was provided for 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 the following website: <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 ACP's recommendation, and other information, it is found that the provisions being removed and terminated by this final rule do not tend to effectuate the declared policy of the Act and that this action is appropriate. Accordingly, this action is appropriate under the order.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Termination of language in Table 3 should be made as soon as possible prior to the effective date of the regulatory provisions of the order, August 1, 2005; (2) this action has been discussed at open meetings of the ACP and is fully supported; and (3) comments on the removal and termination of this language were solicited and no comments were received.

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 § 983.39, Table 3 to paragraph (a) is revised to read as follows:

§ 983.39 Minimum quality levels.

(a) * * *

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
External (Shell) Defects:		
1. Non-splits & not split on suture	10.0

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS—Continued

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
(i) Maximum non-splits allowed	4.0
2. Adhering hull material	2.0
3. Dark stain	3.0
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot.		
Internal (Kernel) Defects:		
1. Damage	6.0	3.0
Immature kernel (Fills <75%—>50% of the shell)		
Kernel spotting (Affects 1/8 aggregate surface)		
2. Serious damage	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay.		
(i) Maximum inset damage allowed	2.0	0.5
Total internal defects allowed	9.0
Other Defects:		
1. Shell pieces and blanks (Fills <50% of the shell)	2.0
(i) Maximum blanks allowed	1.0
2. Foreign material	0.25	0.1
No glass, metal or live insects permitted		
3. Particles and dust	0.25
4. Loose kernels	6.0
Maximum allowable inshell pistachios that will pass through a ³⁰ / ₆₄ ths inch round hold screen	5.0

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Dated: July 8, 2005.

Kenneth C. Clayton,*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–13756 Filed 7–12–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39****[Docket No. 2003–NE–53–AD; Amendment 39–14188; AD 2005–14–11]****RIN 2120–AA64****Airworthiness Directives; Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. Propellers****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propellers. This AD requires maintenance actions amounting to an overhaul of the affected propellers. This AD results from the investigation of a failed propeller blade and subsequent inspections of various propeller models

returned to service by Southern California Propeller Service, of Inglewood, CA. We are issuing this AD to prevent blade failure that could result in separation of a propeller blade and loss of control of the airplane.

DATES: This AD becomes effective August 17, 2005.

ADDRESSES: You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7132, fax (847) 294–7834 for Hartzell Propellers.

Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4107 for McCauley Propellers.

Contact James Delisio, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7321, fax (516) 794–5531 for Sensenich Propellers.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD).

The proposed AD applies to certain Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propellers returned to service by Southern California Propeller Service. We published the proposed AD in the **Federal Register** on May 20, 2004 (69 FR 29111). That action proposed to require maintenance actions that amount to an overhaul of Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propellers returned to service by Southern California Propeller Service.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Question of Why the FAA Is Changing the Rules

One commenter asks “Why change the rules just because one repair station, Southern California Propeller Service, of Inglewood, CA didn’t follow the existing rules?” The commenter feels that the existing rules have worked for well over 50 years, and asks how