

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 983****[Docket No. AO-F&V-983-2; FV02-983-01]****Pistachios Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order No. 983****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes the issuance of a marketing agreement and order (order) for pistachios grown in California. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. An eleven-member committee, consisting of eight producers, two handlers, and one public member, would locally administer the program. The program would be financed by assessments on handlers of pistachios grown in the production area. The objective of the program would be to enhance grower returns through the delivery of higher-quality pistachios to consumers. This rule also announces the Agricultural Marketing Service's intention to request approval by the Office of Management and Budget of new information collection requirements to implement this program.

DATES: Written exceptions must be filed by September 3, 2003. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by October 3, 2003.

ADDRESS: Four copies of all written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081-S, Washington, DC 20250-9200, Facsimile number (202) 720-9776. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural

Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259-7988, fax: (435) 259-4945; or Anne M. Dec, 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 this proceeding 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.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 19, 2002, and published in the June 26, 2002, issue of the **Federal Register** (67 FR 43045).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed marketing agreement and order regulating the handling of pistachios grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed marketing agreement and order are based on the record of a public hearing held July 23-25, 2002, in Fresno, California. The hearing was held to receive evidence on the proposed marketing order from producers, handlers, and other interested parties located throughout the proposed production area. Notice of this hearing was published in the **Federal Register** on June 26, 2002.

This proposal is the result of nearly three years of efforts undertaken by the Proponents Committee (proponents), a group representing the majority of producers and handlers of pistachios in California. The Proponents Committee was established in 2000 as a result of renewed industry interest in a Federal marketing order.

An earlier attempt to establish a Federal marketing order in 1996 on behalf of the pistachio industry by the California Pistachio Commission (CPC or Commission) and the Western Pistachio Association (Association) was terminated in 2000 due to a lack of industry support for certain proposed provisions. The current proposal is different from that which was previously proposed since many controversial issues have either been removed or resolved through more exacting specifications in the proposed order. The Proponents Committee is independent of the Commission and the Association.

Witnesses at the hearing explained that the provisions of this proposal aim to provide the California pistachio industry with a tool to regulate the quality of pistachios handled in California. This would include preventing pistachios containing aflatoxin above the proposed permitted maximum tolerance level of 15 parts per billion (ppb) from entering the market place. The proposed order would also preclude defective and small pistachios from being sold. Under the proposed order, testing and certification of pistachios for quality (including aflatoxin) would be mandatory. A mandatory regulatory program would provide the industry with an effective means of ensuring product quality, thereby enhancing customer satisfaction.

At the conclusion of the hearing, the Administrative Law Judge fixed September 23, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. One brief was filed on behalf of the Proponents Committee in support of the proposed program and its provisions. The brief also recommended certain changes in the regulatory text of the proposed order as a result of the public hearing held in Fresno, California from July 25 through July 27, 2002. These changes are discussed as appropriate later in this document.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether the handling of pistachios produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend