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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-98-304]

United States Standards for Grades of Pistachio Nuts in the Shell, and United States Standards for Grades of Shelled Pistachio Nuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts. The revisions will modify the standards to more closely align grade names with other tree-nut commodities and current industry-recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance, relax tolerances of the level of light stain on the shell in the various grade levels based on consumer preferences, more objectively define when nuts are damaged by various factors, and include two in-shell grade specifications which reflect the industry's byproduct. These standards are issued under the Agricultural Marketing Act of 1946. These changes will promote greater uniformity and consistency in the standards, as well as provide consistency with current marketing practices.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: David L. Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661, South Building, STOP 0240, Washington, DC

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SUPPLEMENTARY INFORMATION:

Executive Orders 12988 and 12866

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule. The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Available information provided by the California Pistachio Commission (CPC) show that there are 647 California pistachio producers and 19 California handlers of pistachio nuts, most of which are also growers or have grower members. Additional information provided by CPC show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 growers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds. U.S. grade standards for pistachios would normally be used at the sales level of marketing, which is ordinarily carried out at the processor/packer level or after processing has been completed. Pistachio nuts may be marketed by multiple commodity marketing firms.

The California Department of Food and Agriculture Resource Directory 2002, reports that California accounted

for more than 99 percent of domestic pistachio production. More current information available to the Department indicates that California has 97 percent of domestic production with Arizona at 2 percent and New Mexico with less than 1 percent.

Small agricultural service firms, which include handlers (packers, brokers, distributors, importers, etc.), have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. The pistachio industry is characterized by growers that produce from .1 to more than 500 acres. Approximately 9 percent of the California pistachio growers receive more than \$550,000 annually. Only a portion of these producers would meet SBA's definition of a small agricultural producer. At least 12 of the California pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition. We would expect that similar size determinations would hold for the remainder of domestic production.

This rule will: More closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities.

This action will make the standards more consistent and uniform with current industry terms and practices. This action would not impose substantial direct economic cost, record keeping, or personnel workload changes on small entities, and it would not alter the market share or competitive position of these entities relative to large businesses. USDA has not identified any Federal rules that currently duplicate, overlap, or conflict with this rule. In addition, under the Agricultural