

The new report is needed by the Committee to compile information that is essential for the collection of handler assessments and to provide statistical information to the industry. The Committee previously used monthly reports from the FSIP to obtain this information; reports that will no longer be available due to the suspension of the russet potato handling regulation. This new report will help to ensure compliance with the order's provisions and assist the Committee and the USDA with oversight and planning.

The information collected will be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS the secondary user.

The request for approval of the new information collection under the order is as follows:

Monthly Russet Fresh Potato Report. Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Washington russet potato handlers.

Estimated Number of Respondents: 33.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 33 hours.

Comments: Comments are invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Washington potato order (Marketing Order No. 946), and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will

become a matter of public record. 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.

This rule invites comments on a temporary change to the handling regulations and reporting requirements for russet potatoes under the Washington potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Washington russet potato shipping season begins in July; (2) the Committee discussed and unanimously recommended these changes at a public meeting and all interested parties had an opportunity to provide input; (3) potato handlers are aware of this action and want to take advantage of relaxation of the handling regulations as soon as possible; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 946.143 is added to read as follows:

§ 946.143 Assessment reports.

During the period that russet type potatoes are exempt from handling requirements under § 946.336, each

person handling russet type potatoes shall submit a monthly report to the committee by the 10th day of the month following the month such potatoes are handled: *Provided*, That the first report shall include all required information from July 26, 2010 through the end of the month in which the assessment report and its collection of information is approved by the Office of Management and Budget. Each assessment report shall contain the following information:

(a) The name and address of the handler;

(b) The date and quantity of russet type potatoes handled;

(c) The assessment payment due; and

(d) Other information as may be requested by the Committee.

■ 3. Section 946.336 is revised to read as follows:

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41: *Provided*, That from July 24, 2010, through June 30, 2011, russet type potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (d), (e), and (g) of this section.

Dated: July 20, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010-18091 Filed 7-22-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS-FV-10-0031; FV10-983-1 IR]

Pistachios Grown in California, Arizona, and New Mexico; Modification of the Aflatoxin Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule modifies the aflatoxin sampling and testing regulations currently prescribed under the California, Arizona, and New

Mexico pistachio marketing order (order). The order regulates the handling of pistachios grown in California, Arizona, and New Mexico and is administered locally by the Administrative Committee for Pistachios (Committee). This rule streamlines the aflatoxin sampling and testing procedures under the order's rules and regulations for pistachios to be shipped for domestic human consumption while maintaining sufficient aflatoxin controls. It is expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for pistachios shipped to all market destinations.

DATES: Effective July 24, 2010; comments received by September 21, 2010 will be considered prior to confirmation as a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent 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** 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>. All comments submitted in response to this rule will be included in the record and will be made available to the public. 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.

FOR FURTHER INFORMATION CONTACT: Maria Stobbe, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Maria.Stobbe@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 983, as amended (7 CFR part 983), regulating the handling of pistachios grown 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 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.

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 rule modifies the aflatoxin sampling and testing regulations currently prescribed under the order. It streamlines the aflatoxin sampling and testing procedures under the order's rules and regulations for pistachios to be shipped for domestic human consumption, while maintaining sufficient aflatoxin controls. It is expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for pistachios shipped to all market destinations. The Committee unanimously approved the recommended modifications at its meeting on April 6, 2010.

Section 983.50 of the pistachio marketing order provides authority for aflatoxin regulations that require pistachios to be sampled and tested for

aflatoxin prior to being shipped for domestic human consumption.

Section 983.150 of the order's rules and regulations contains specific aflatoxin sampling and testing requirements and currently specifies that three test samples be drawn and prepared for all lots of inshell and shelled pistachios, regardless of lot size. The samples are then sent to USDA approved laboratories for analysis of aflatoxin content. Depending upon the analytical results of the first sample, up to two additional tests and averaging the results of all tests may be required to determine whether any lot may be certified as "negative" for aflatoxin. Handlers have the option to rework the lot prior to subsequent testing in order to meet the aflatoxin requirements.

When the order was promulgated in 2004, the aflatoxin sampling and testing regulations provided sufficient sampling and testing procedures for determining aflatoxin controls for pistachios shipped for domestic human consumption. These aflatoxin sampling and testing procedures allowed handlers to use similar operating procedures for both domestic and export shipments.

In March 2010, the European Commission (EC), the regulatory body of the European Union (EU), adopted a revised Codex Alimentarius Commission's (Codex) sampling plan as its regulation for the importation of tree nuts. Over the past few years, the percentage of U.S. pistachio crop being exported has increased significantly. Currently, more than 60 percent of the annual crop is exported, with slightly more than half of exports being shipped to the EU and requiring special testing and handling procedures. As a result, handlers face inconsistent operating procedures and increased operating costs as it has become necessary to use two different sampling and testing procedures: One for pistachios shipped for domestic human consumption and another for pistachios shipped to the EU.

In an effort to streamline operating procedures, while maintaining sufficient aflatoxin level controls, the Committee, at its April 6, 2010, meeting recommended decreasing the total weight of lot samples and increasing the weight of the test samples as specified in Table 1 for inshell pistachios and Table 2 for shelled pistachios under the order's administrative rules and regulations:

TABLE 1—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	2.0	2.0
221–440	15	3.0	3.0
441–1,100	20	4.0	4.0
1,101–2,200	30	6.0	6.0
2,201–4,400	40	8.0	8.0
4,401–11,000	60	12.0	6.0
11,001–22,000	80	16.0	8.0
22,001–150,000	100	20.0	10.0

TABLE 2—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.0	1.0
221–440	15	1.5	1.5
441–1,100	20	2.0	2.0
1,101–2,200	30	3.0	3.0
2,201–4,400	40	4.0	4.0
4,401–11,000	60	6.0	3.0
11,001–22,000	80	8.0	4.0
22,001–150,000	100	10.0	5.0

The Committee also recommended changing § 983.150 to specify that for pistachio lots of up to 4,400 pounds, one test sample will be created from a minimum number of incremental samples and analyzed. For lots exceeding 4,400 pounds, two test samples will be created from a minimum number of incremental samples and analyzed. If the aflatoxin level in the first sample is 10 parts per billion (ppb) or less, the lot may be certified “negative” for aflatoxin and may be shipped. If the aflatoxin level is 20 ppb or less, the handler may either rework the lot and draw new samples for analysis, or direct that the second sample be analyzed. If the averaged results of the two analyses are 15 ppb or less, the lot may be certified “negative” for aflatoxin and may be shipped. Any lots exceeding the specified aflatoxin levels fail, and must be reported to the Committee. Failing lots may be reworked or destroyed or disposed of as described in § 983.152.

Further, the Committee recommended removing unnecessary language from § 983.150(a). In addition, the Committee also recommended changing the term Chromatograph in § 983.150(d)(3) to correctly read as Chromatography.

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 the 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 29 handlers and 875 producers of pistachios in California, Arizona and New Mexico. Small business firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. Small agricultural producers have been defined as those with annual receipts of less than \$750,000.

Currently, about 72 percent of the California handlers ship less than \$7,000,000 worth of pistachios on an annual basis and would therefore be considered small business firms under the SBA definition. Based on acreage, production, and grower prices reported by the Committee, the average annual revenue for small handlers is approximately \$1,721,911. The industry has estimated that one of the Arizona

handlers and all three New Mexico handlers would also be considered small businesses.

Data provided by the Committee regarding the size of the 2009 California crop indicates that approximately 630 California growers had 350,000 pounds or less of assessable dry weight of pistachios. Using the most recent grower price of \$2.04 per pound for pistachios, it is estimated that 81 percent of California producers had receipts of approximately \$714,000, which is less than \$750,000, and thus would be considered small business according to the SBA definition. Although there is no official data available to date, as these states were recently added to the order and have not completed one full crop year for reporting purposes, the industry estimates that the majority of producers in Arizona and New Mexico would also be considered small businesses.

This rule modifies the aflatoxin sampling and testing regulations currently prescribed under the California, Arizona and New Mexico pistachio order. It streamlines the aflatoxin sampling and testing procedures under the order’s rules and regulations for pistachios to be shipped for domestic human consumption while maintaining sufficient aflatoxin controls. It is expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for

pistachios shipped to all market destinations.

The impact of this regulatory modification was discussed by the Committee at its April 6, 2010, meeting. It is anticipated that all producers and handlers will benefit from this action regardless of size and regardless of the market they ship into, as it streamlines handler operations and increases marketing flexibility. Reducing the number of required samples, the number of aflatoxin analyses, and the total weight of the lot samples, while increasing the weight of the test samples for each lot is expected to result in an estimated annual savings to the industry of approximately \$18,000, including reductions of \$900 for sampling, \$1,400 for testing, \$12,750 for labor, and \$3,750 in shipping costs for those small handlers that do not do testing on site.

The Committee discussed alternatives to this action at their April 6, 2010, meeting, including continuing to operate under the current aflatoxin regulations. However, the Committee unanimously agreed that operating with the current multiple sampling and testing procedures based upon shipping destination would continue to be confusing to the industry and would continue to generate higher handler operating costs. The recommended modification is expected to eliminate any confusion with regard to operating procedures, streamline handling operations, and lower handler operating costs.

This action will not impose any 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.

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.

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

Further, the Committee's meeting was widely publicized throughout the pistachio industry and all interested persons were invited to attend the meeting and participate in Committee

deliberations. Like all Committee meetings, the April 6, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=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.

This rule invites comments on modifications to the aflatoxin regulations currently prescribed under the pistachio marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) These changes are necessary to provide consistency in handler operating procedures and to reduce handler operating costs; (2) handlers are aware of these changes, which were unanimously recommended by the Committee at a public meeting where interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 983

Marketing agreements and orders, Pistachios, 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, 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. Amend § 983.150 by revising paragraphs (a), (d)(2), (d)(3), (d)(4), and (d)(6) to read as follows:

§ 983.150 Aflatoxin regulations.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

* * * * *

(d) * * *

(1) * * *

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, one sample ("test sample") shall be created from the pistachios designated for aflatoxin testing in compliance with Tables 1 and 2 of this paragraph for inshell and kernel pistachio lots that weigh up to and including 4,400 pounds. For lot sizes larger than 4,400 pounds, two samples ("test samples") shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements to Tables 1 and 2 of this paragraph. The test samples shall be prepared by, or under the supervision of an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1 and Test Sample #2. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the minimum number of incremental samples required are shown in Table 1 of this paragraph. The gross weight of the kernel lot sample for aflatoxin testing and the minimum number of incremental samples required is shown in the Table 2 of this paragraph.

TABLE 1 TO § 983.150(d)(2)—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	2.0	2.0
221–440	15	3.0	3.0
441–1,100	20	4.0	4.0
1,101–2,200	30	6.0	6.0
2,201–4,400	40	8.0	8.0
4,401–11,000	60	12.0	6.0
11,001–22,000	80	16.0	8.0
22,001–150,000	100	20.0	10.0

TABLE 2 TO § 983.150(d)(2)—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.0	1.0
221–440	15	1.5	1.5
441–1,100	20	2.0	2.0
1,101–2,200	30	3.0	3.0
2,201–4,400	40	4.0	4.0
4,401–11,000	60	6.0	3.0
11,001–22,000	80	8.0	4.0
22,001–150,000	100	10.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatography (HPLC), Vicam Method (Aflatest), or other methods as recommended by not fewer than eight members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots “negative” as to aflatoxin.* (i) Lots which require a single test sample will be certified as “negative” on the aflatoxin certificate if the sample has an aflatoxin level at or below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152.

(ii) Lots which require two test samples will be certified as “negative” on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152. If the aflatoxin level of Test Sample #1 is above 10 ppb and at or below 20 ppb, the accredited laboratory may at the handler’s discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternately, the handler may

elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 15 ppb. If the averaged aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §§ 983.52 and 983.152.

(iii) The accredited laboratory shall send a copy of the failed lot notification report to the Committee and to the failed lot’s owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade, and date. The certification expires for the lot or remainder of the lot after 12 months.

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(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Sample #2 for certification purposes, the handler may request that the laboratory return it to the handler.

Dated: July 20, 2010.

Rayne Pegg,
Administrator, Agricultural Marketing Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0733; Directorate Identifier 2010–CE–038–AD; Amendment 39–16375; AD 2010–15–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that will supersede an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: