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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

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

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

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that modified the aflatoxin sampling and testing regulations prescribed under the California, Arizona, and New Mexico pistachio marketing order (order). The interim rule streamlined 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. These changes are 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 Date:* November 10, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Andrea Ricci, 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:* [Andrea.Ricci@ams.usda.gov](mailto:Andrea.Ricci@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may obtain information on complying with this and

other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or 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](mailto: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.

The handling of pistachios grown in California, Arizona, and New Mexico is regulated by 7 CFR part 983. Prior to this change, pistachios for shipment to domestic markets were subject to different aflatoxin sampling and testing procedures than pistachios for shipment to certain export markets. This rule continues in effect an interim rule modifying the aflatoxin sampling and testing procedures to provide consistent and uniform procedures for pistachios regardless of market destination. These changes are intended to streamline handler operating procedures and reduce operating costs.

The specific changes modify the sampling procedure detailing how the samples will be created and analyzed, depending on the size of the pistachio lots. They also specify how the lots are certified based upon the aflatoxin levels found in the samples. Finally, the term "Chromatograph" is changed to "Chromatography" and unnecessary language was removed.

In an interim rule published in the **Federal Register** on July 23, 2010, and effective on July 24, 2010, (75 FR 43045, Doc. No. AMS-FV-10-0031, FV10-983-1 IR), § 983.150 (a), (d)(2), (d)(3), (d)(4), and (d)(6) were amended by removing unnecessary language from § 983.150(a), changing the creation and analysis of test samples in paragraph (d)(2),

changing the term "Chromatograph" to "Chromatography" in paragraph (d)(3), changing the certification of lots based on aflatoxin levels in the samples in paragraph (d)(5), and removing the reference to sample #3 in paragraph (d)(6).

#### Final 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 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 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 continues in effect the action that modified the aflatoxin sampling and testing regulations currently prescribed under the California, Arizona and New Mexico pistachio order, as well as removed unnecessary language and corrected terminology. The changes to § 983.150 are expected to reduce handler operating costs by providing a uniform and consistent aflatoxin sampling and testing procedure for pistachios shipped to all market destinations. Authority for the change in the order's rules and regulations is provided in § 983.50.

This action is expected to benefit producers and handlers, 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.

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. 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 meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 21, 2010. No comments were received. Therefore, for the reasons

given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov> and type the following docket number into the keyword search section: FV10-983-1 IR. Follow the link provided in the "Results" section of this page.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, Paperwork Reduction Act (44 U.S.C. chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 43045, July 23, 2010) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 983

Marketing agreements and orders, Pistachios, Reporting and recordkeeping requirements.

#### PART 983—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 983 that was published at 75 FR 43045 on July 23, 2010, is adopted as a final rule, without change.

Dated: November 3, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-28240 Filed 11-8-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0700; Directorate Identifier 2010-NM-123-AD; Amendment 39-16500; AD 2010-23-11]

RIN 2120-AA64

**Airworthiness Directives; Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results

from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective December 14, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 14, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Licata, Aerospace Engineer, Avionics and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7361; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 27, 2010 (75 FR 43882). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition