

to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be;

5. What the specific terms and provisions of the order should be, including:

(a) The definitions of terms used therein which are necessary and incidental to attain the declared objectives and policy of the Act and order;

(b) The establishment, composition, maintenance, procedures, powers and duties of an administrative committee for pistachios that would be the local administrative agency for assisting USDA in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The establishment of mandatory inspection and certification for aflatoxin, quality and size requirements for California pistachios;

(e) The establishment of requirements for handler reporting and recordkeeping;

(f) The requirement for compliance with all provisions of the order and with any regulations issued under it;

(g) The requirement for periodic continuance referenda;

(h) An exemption for handlers of non-commercial quantities of pistachios;

(i) Coordination of administration with the California Pistachio Commission program;

(j) Additional terms and conditions as set forth in § 983.59 through § 983.69 of the Notice of Hearing published in the **Federal Register** of June 26, 2002, which are common to all marketing agreements and orders, and other terms and conditions published at § 983.90 through § 983.92 that are common to marketing agreements only; and

6. Whether the proposed marketing order and its provisions, if approved in grower referendum, should be implemented in two phases.

### Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

#### Material Issue Number 1—Whether the Handling of California Pistachios is in the Current of Interstate or Foreign Commerce

The record indicates that the handling of pistachios grown in California is in

the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

Witnesses testifying at the hearing stated that over 97 percent of the pistachios produced in the United States are grown in California orchards. There are minor amounts of commercial plantings in eastern Arizona and New Mexico. However, it is estimated that these States account for only 2 and less than 1 percent of national production, respectively.

The record shows that domestic consumption of California pistachios is well established, with the U.S. market representing an estimated 70 percent of total production distributed in 1999–2000. Pistachios grown in the proposed production area are shipped throughout the United States, and the California industry, through the Commission, conducts a national promotion program for its product.

The record also shows that export markets are increasingly important to California producers and handlers. About 30 percent of the crop is sold in foreign markets in more than 40 countries. According to the 2000–2001 CPC Annual Report, Germany, Japan, Canada and Hong Kong are California's largest pistachio export destinations. Exports to Germany alone accounted for 20 percent of total inshell pistachio exports in 1999–2000.

Evidence presented at the hearing confirmed that any handling of California pistachios in market channels, including intrastate shipments, exerts an influence on all other handling of such pistachios. Thus, it is concluded that the handling of pistachios grown in the proposed production area is in the current of interstate and foreign commerce and directly affects such commerce.

#### Material Issue Number 2—The Need for a Pistachio Marketing Order

The record evidence demonstrates that there is a need for a marketing order for California pistachios.

Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield. Increasing yields have led to an increasing overall value of California pistachio production. However, to remain economically viable, producers must maintain a level of return per pound harvested that covers their cost of production. Witnesses of the proposed order assert that maintaining a high level of quality product in the market will lead to increasing consumer demand and stability in producer returns.

Poor quality pistachios impact demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as “poor quality” by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and references to customer comment databases presented by witnesses at the hearing demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

According to record evidence, minimizing the level of aflatoxin in California pistachios is another significant quality factor, since aflatoxin is a known carcinogenic. Consumer concerns over aflatoxin can impact their perception of the quality of pistachios, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin tolerated in pistachios would be useful to bolster consumer confidence in the quality of California pistachios.

Pistachio acreage has consistently increased in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.*, acres less than 7 years old, not yet in full production) has also shown consistent growth, increasing from 17,062 acres in 1997 to 23,500 acres in 2001. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,097 pounds; by 1996–2000, this average increased to 2,418 pounds.

Higher yields and increasing acreage have resulted in increasing production. According to information submitted by the California Pistachio Commission, production in 2000 totaled 242 million pounds, a 64 percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60 percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is