

above, it is concluded that covering pistachios grown in California (and not those grown in other States) under the proposed order is consistent with carrying out the declared policy of the Act and, therefore, the production area should be defined as hereinafter set forth.

Material Issue Number 4—Definition of Handler and Handle

The term “handler” should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person who handles pistachios within the production area, or places pistachios in the current of commerce within the production area, or in the current of commerce between the production area and any point outside thereof. A handler could be an individual, a joint venture, partnership, corporation, or other business entity.

The definition of “handler” identifies persons who would be responsible for meeting the requirements of the order, including paying assessments, complying with testing and certification provisions of the order, and submitting reports and other information required for the administration of the proposed program. The term is also used to identify those persons who are eligible to vote for, and serve as, handler members and alternate members on the committee.

The term “handle” should be defined in the order to establish the specific functions that would place pistachios in the current of commerce within the production area, or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under the authority of the proposed marketing order.

“Handle” should be defined to mean engaging in: (a) Receiving pistachios, (b) hulling and drying pistachios, (c) further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in interstate or foreign commerce, and (d) placing pistachios into the current of commerce between the production area and any point outside that area.

The record evidence is that the handling of pistachios is a multi-step process. Witnesses described the harvest and initial processing (hulling and drying) of pistachios as an intense period of activity, typically beginning in early September, when the pistachio nuts are mature, and lasting for a period of 20 to 30 days.

The trees are deemed ready for harvest when the “hull” slips on the

shell when pressure is applied. By this time, approximately 75 percent of the nuts have naturally “split,” meaning that the shell has naturally opened to give its characteristic “open mouth” appearance. This splitting of the shell typically will not be apparent, as the hull or outer layer remains intact, protecting the kernel from fungal infection and insect infestation. The hulls of some pistachios, however, may split, thereby revealing the tender pistachio nut inside. These pistachios, referred to as “early splits,” are more prone to mold or insect infestation.

The balance of the pistachio harvest has not naturally opened. These are referred to as “closed shell” or “non-split” pistachios.

According to record testimony, pistachios must be rapidly harvested when mature in order to prevent insect infestation and staining of the shell, and to avoid difficulty of handling an overripe product. During the harvest process, each tree is mechanically shaken to cause the pistachio nuts to fall into a catching frame. This method of harvesting allows the California pistachio industry to harvest pistachios without the nuts having to touch the ground, thereby avoiding possible contamination from soil-borne molds or insects. The nuts are then dumped from the catching frames into bins or trucks and readied for transport to the handler.

The nuts, which contain a significant amount of moisture when harvested, must arrive at the handling facility as soon as possible after harvest. If the nuts are not hulled within 24 hours of their removal from the tree, staining of the outer shell occurs, and this is considered detrimental in the marketplace. Due to the short harvest period and the significant investment in equipment at the handling facility, witnesses explained that pistachio harvest will typically take place 24 hours a day 7 days a week until harvest is complete.

At the handling facility, the nuts are weighed and emptied from the trailers. As the emptying of bins or trucks takes place, usually through bottom dump trailers into a pit, the nuts are sampled. This sampling of wet product is used to determine the quality and payable weight of the nuts being delivered.

Once the nuts have been sampled and the trash (*i.e.*, leaves, twigs, *etc.*) has been removed, the hull or the outer layer covering the shell is removed by equipment that resembles large potato peelers. Once hulled, the pistachios are then moved through various dewatering devices prior to entering a dryer. Some handlers do some initial quality sorting between hulling and drying, but this is

not universal. The nuts are then dried in high-powered dryers to about 14 percent moisture. After drying, they are placed in storage in containers that vary from 500-pound bins to 1,000,000-pound silos. During the initial phase of storage, the nuts continue to be dried by air circulation, to get them down to a safe, long-term storage moisture content of around 6 percent. At this stage, the nuts are stable and can remain in storage for up to two years.

The sample taken at delivery is processed like the rest of the nuts, *i.e.*, the trash is removed and the nuts in the sample are hulled and then dried before sorting. An assessment of the quality of the sample is then made. The assessment may include such things as a determination of the percentage of naturally split nuts, the color of the shells, and the amount of insect infestation (if any). This delivery sample may be used to determine payment to the producer, and to give the handler some idea of the characteristics of the crop he or she has to process.

The record shows that producers often commit their nuts to more than one handler. The normal practice in the industry is to have contracts between producers and handlers, many of them multi-year and often with premiums for quality. Many of the contracts also have minimum prices. Apart from this minimum price, the producer often does not know what final price he/she will receive for the pistachios. The handler makes interim payments throughout the year culminating in a final payment, usually in August following the previous September's harvest. The amount paid by the handler will depend in large part on the price that he or she obtained for the processed crop, and the costs of handling the pistachios.

When the nuts are removed from storage, the nuts are sorted, sized, graded and mechanically separated into open and closed shell product. These activities can take place in different sequences and the process varies among handling facilities. As part of this process, a considerable amount of trash, bad nuts, loose shells, *etc.*, are removed from the product stream. At this stage, the nuts may be ready for market. However, some California pistachios are then roasted and salted by the handler prior to being placed in consumer or industrial size packages to be marketed.

Once the nuts have been roasted and salted, their shelf life is reduced as they can become rancid or stale, and they need to be stored at temperatures approximating 35 degrees Fahrenheit in order to remain completely stable. If they are not placed in cold storage, they