

have a shelf life of approximately nine months.

The record shows that all of these activities, from initial receipt of the pistachios at the handling facility, to final packaging of the product, should be included in the definition of "handle." These activities were identified as those necessary to prepare pistachios for entering the stream of commerce and, as such, should be included in the definition of the process which makes a person a "handler," and, thus, subject to regulation under the proposed order.

In addition, the hearing record indicates that placing California pistachios into the current of commerce from within the production area to points outside thereof for the purpose of hulling and drying, or further processing would also constitute handling. In such cases, the individual responsible for placing California pistachios into the current of commerce would be considered a handler and would be subject to the provisions of the proposed order.

USDA recommends adding a paragraph (d) to § 983.14 of the proposed order as it appeared in the Notice of Hearing. To clarify the definition of "handle," the following language is proposed to be added: "Placing California pistachios into the current of commerce from within the production area to points outside thereof."

According to the record, the acts of transporting pistachios from a producer's orchard to a processing plant within the production area and of transporting pistachios between handlers within the production area should be excluded from the definition of "handle."

The transportation of pistachios from the orchard to the handling facility is typically either performed by the producer him or her self, or contracted out to third parties. Given that neither the producer nor the contract hauler would be engaged in the process of preparing pistachios for market in this capacity, their activities should be excluded from those considered as part of "handling."

Similarly, witnesses stated that pistachios are customarily traded among handlers, and that this activity should not be considered part of the definition of "handling." Trade among handlers predominantly occurs as a means for individual handlers to buy or sell surplus pistachios and to meet the demands of their respective customers. Witnesses also explained that some handlers are better equipped to handle pistachios that present processing

problems. For example, pistachios requiring re-working to meet industry quality standards may be transferred from one handler to another for more efficient processing.

The record evidence is that most producers do not handle their own pistachios. However, a producer would become a handler if the producer performs any handling functions. For example, a producer that hulls and dries pistachios before shipment for further preparation for marketing would be considered a handler. Once a producer becomes a handler, he or she would be subject to the proposed order provisions.

Material Issue Number 5(a)—Other Definitions

(a) Certain terms should be defined for the purpose of specifically designating their applicability and limitations whenever they are used in the order.

"Accredited laboratory" should be defined to mean a USDA laboratory or any other laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin in pistachios. Witnesses testified that the aflatoxin testing and certification provisions of the proposed order are key components of the quality control program deemed necessary by the California pistachio industry. In order for the testing and certification process to be credible, the order should provide that the laboratories performing these functions must be accredited or approved by USDA.

"Act" should be defined as the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

According to record evidence, "affiliation" should be defined, as it is important within the context of proposed eligibility requirements for committee members and their alternates. Witnesses testified that "affiliation" should be defined to mean a person who is: (1) A producer or handler that directly or indirectly, through one or more intermediaries, owns or controls, or is controlled by or is under common control with the producer or handler specified; or, (2) a producer or handler who directly or indirectly through one or more intermediaries, is connected in a proprietary capacity or shares the ownership or control of the specified producer or handler with one or more other producers or handlers.

According to the hearing record, the term "control" should be further defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a handler or a producer whether through voting securities, membership in a cooperative, by contract or otherwise."

Witnesses explained that this definition of "affiliation" is proposed to ensure that persons who are in business together as handlers or producers are limited in their representation on the administrative committee. Further discussion of affiliation and its intended use under the provisions of the proposed order appears under material issue 5(b), the establishment of an agency to locally administer the order.

"Aflatoxin" should be defined as one of the several carcinogenic mycotoxins produced by naturally occurring molds. Aflatoxin can be found, and can spread, in improperly processed and stored nuts, dried fruits and grains. According to information presented at the hearing, this group of fungal toxins is produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxin is a known carcinogen and potential contaminant for pistachios.

Proposed § 983.38 sets forth a maximum aflatoxin level of 15 parts per billion (ppb) for California pistachios. This threshold was substantiated by testimony from experts in the field of aflatoxin and food contaminants, and is further discussed under material issue 5(d).

"Aflatoxin inspection certificate" should be defined to mean a certificate issued by a laboratory that is accredited or approved by USDA to indicate that a lot of pistachios was tested for and met the aflatoxin quality requirements proposed in this order. In particular, an "aflatoxin inspection certificate" would indicate that the pistachios have been tested for aflatoxin and the aflatoxin in the nuts, if any, did not exceed a level of 15 ppb. Under the provisions of this proposed order, no handler could ship pistachios for domestic human consumption that exceed an aflatoxin level of 15 ppb. Witnesses explained that any handler placing California pistachios into the stream of domestic commerce for the purpose of human consumption would be required to obtain an aflatoxin inspection certificate for each lot of pistachios handled. Aflatoxin certificates would also be important for committee record-keeping and auditing responsibilities with regard to local administration of the order.

"Assessed weight" should be defined to mean the weight of all pistachios,