

clear of debris, hulled and measured at 5 percent moisture, that are received for processing by a handler within each production year. Calculation of the assessed weight would be based on the weight of the pistachios received from the field. As the handler receives pistachios, a delivery sample would be taken, and the nuts in that sample cleaned, hulled and dried to 5 percent moisture content. The actual weight of the pistachios received would then be adjusted to reflect the characteristics of the delivery sample and its final weight when dried to 5 percent moisture content. According to the record, the 5 percent moisture content is an industry standard used by all handlers.

In calculating the "assessed weight" for loose kernels, witnesses explained that the calculation method proposed in the order reflects current industry practices. To determine the weight of the kernels without shells, the weight of the kernel would be multiplied by two as it is generally accepted that the shell accounts for approximately half of the weight of a whole pistachio nut.

Witnesses also explained that assessments placed on pistachio handlers would be based on the volume of pistachios received by each handler for processing during a production year. Hence, the term "assessed weight" is essential to the committee's assessment collection. This term is further discussed in connection with proposed § 983.53, "Assessments."

The definition contained in the Notice of Hearing defined assessed weight as "* * * edible inshell pistachios received for processing by a handler * * * ." USDA recommends deleting the word "edible" from the definition. This would correct a conflict between the Notice of Hearing definition of "assessed weight" and the proposed definition of "edible pistachios," § 983.13. The definition proposed under § 983.13, discussed later in this document, states that edible pistachios are pistachios that do not exceed aflatoxin and other quality provisions of the order described under §§ 983.38 and 983.39. Pistachios received from the field for processing by the handler have yet to be tested and certified as having met the proposed provisions of §§ 983.38 and 983.39. Therefore, USDA recommends the modified definition described above.

According to the hearing record, the definition of assessed weight could be modified based on a recommendation of the committee and approval by the Department through the public rulemaking process. Witnesses supported this authority so the industry would be able to take advantage of any

better standard developed to determine the assessable weight of pistachios received by handlers.

"Certified pistachios" should be defined to mean those pistachios for which aflatoxin inspection certificates and minimum quality certificates have been issued. Under the provisions of the proposed order, California pistachios shipped for domestic human consumption would be required to be certified. The definition of "certified pistachios" is further discussed under material issue 5(d) related to proposed quality (including aflatoxin) requirements.

"Committee" should be defined to mean the administrative committee, which would be established pursuant to the proposed provisions of § 983.32. The Act authorizes USDA to appoint an agency or agencies to assist in the administration of a marketing order program. This definition would identify the agency to locally administer the proposed pistachio order. The committee would be comprised of eight pistachio producers, two handlers, and one public member. The establishment of a committee would be important to ensure representation of the industry and consumers to USDA.

"Confidential data or information" should be defined to mean reports and records furnished or submitted by handlers to the committee which include data or information constituting trade secrets or disclosing the trade position, financial condition, or business operations of a particular handler or its customers. This term is relevant to proposed § 983.48 pertaining to disclosure of handler information. The confidentiality requirements in that provision of the order, discussed under material issue 5(e) are consistent with those contained in the Act.

"Department" or "USDA" should be defined to mean the United States Department of Agriculture, which is the governmental body responsible for oversight of Federal marketing orders and agreements. This definition allows the usage of the USDA acronym, or reference to the USDA as the Department throughout the language of the proposed order.

"District" should be defined to mean each geographic subdivision of the proposed production area described in the marketing order. The district delineations defined would be important for the purposes of committee nominations and producer representation of the regional areas of the production area.

The record supports dividing the production area into three districts. District 1 would consist of 11 counties

in Southern California (Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties). District 2 would be comprised of four counties in Central California where pistachio production is most highly concentrated (Kings, Fresno, Madera, and Merced Counties). District 3 would consist of the remaining 43 California counties, primarily in the Northern portion of the State. The record shows that dividing the production area into these three districts would provide for adequate producer representation on the committee.

Allocation of producer membership among the districts would be based, in large part, on the relative levels of acreage and production among the districts, as well as the number of producers in each of the districts. Allocation of producer membership among the districts is discussed further under material issue 5(b).

Testimony indicated that authority should be provided to allow the committee to recommend to USDA the re-establishment of district boundaries and reapportionment of producer membership among the districts. This would allow changes in producer representation on the committee to reflect any future shifts in pistachio acreage and production within the production area.

Witnesses also stated that district changes under the California Pistachio Commission should be a criterion used in adjusting the district boundaries under the proposed order. It may be reasonable to assume that changes in the distribution of pistachio producers, acreage and production would justify district reestablishment under both the State and Federal programs. However, any recommended change in the district boundaries under the order would be evaluated on its own merits.

The definition of "district" contains authority to reestablish district boundaries. Redistricting would require a recommendation of the committee and approval by USDA through the rulemaking process. Authority for reallocation of producer membership among the districts is contained in proposed § 983.32 and is discussed later in this document.

"Domestic shipments" should be defined to mean shipments to the 50 United States and to the territories of the United States. This term is important as the proposed quality requirements (including those pertaining to aflatoxin and size) would only apply to domestic shipments. The proposed quality requirements would