

not apply to exports. The regulatory text of proposed § 983.12 is recommended to be modified from what appeared in the Notice of Hearing to include shipments to the District of Columbia as domestic shipments. Omission of Washington, DC as a domestic market was an oversight on the part of the proponent group, and its inclusion in the order is consistent with the record evidence.

"Edible pistachios" should be defined to mean pistachios that meet the quality requirements (including those pertaining to aflatoxin and size) set forth under the proposed provisions of § 983.38, "Aflatoxin levels," and § 983.39, "Minimum quality and size levels." In particular, edible pistachios are pistachios that have been certified that they do not exceed the maximum level for aflatoxin and that they meet the minimum requirements for shell and kernel quality (including those relating to size).

"Inshell pistachios" should be defined to mean pistachios that have a shell that has not been removed. This is to distinguish an inshell pistachio from a pistachio kernel or shelled pistachio. This term is further discussed in the context of proposed order provisions relating to quality standards under material issue 5(d).

"Inspector" should be defined to mean any inspector authorized or approved by the USDA to inspect pistachios. This term is used in connection with the quality requirements proposed to be included in the order. An inspector, for example, would pull samples for aflatoxin testing by accredited laboratories. Inspectors would also be responsible for inspecting and certifying that pistachios meet the other quality requirements of the order.

The record shows that the Federal or Federal-State Inspection Service would be designated as the agency responsible for conducting these activities. To provide maximum flexibility, however, the order should provide that any inspector so authorized or approved by the Department may perform these functions.

"Lot" should be defined to mean any quantity of pistachios that is submitted for testing for certification under the minimum quality requirements (including aflatoxin and size) of this proposed order. Specifically, a "lot" would be an identifiable quantity of pistachios handled by a handler at one time. A lot could have common characteristics, such as origin, type of packing, packer, consignor, or markings.

The record shows that the definition of lot is important in the context of traceability, as each lot tested would be issued a unique identification number.

Traceability would allow handlers to respond to any sub-quality or aflatoxin issues that would necessitate preventing pistachios from entering the stream of commerce. The definition of "lot" is further discussed under material issue 5(d) in connection with the testing and certification provisions contained in proposed §§ 983.38 and 983.39.

"Minimum quality requirements" should be defined to mean those requirements specified under the proposed provisions of § 983.39, which prescribe the permissible maximum defects and minimum size for inshell pistachios and pistachio kernels handled and shipped from and within the proposed production area. Regulation of quality is central to the proposed marketing order. This term is further discussed under material issue 5(d).

In conjunction with the definition of minimum quality requirements given above, "minimum quality certificate" should be defined to mean a certificate issued by an inspector that would indicate that a lot of pistachios was tested for the quality requirements proposed in this order and whether it met those requirements. Under the provisions of this program, no handler could ship pistachios for domestic human consumption that exceeded the percentage of defects or small-sized nuts allowed under § 983.39. 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 a minimum quality certificate to this effect. Therefore, minimum quality certificates are also important to the committee record-keeping and auditing responsibilities.

"Part" should be defined to mean the order regulating the handling of pistachios grown in the State of California, and all rules and regulations issued under the order. The order itself would be defined as a subpart of the part, as would individual rules and regulations.

According to record evidence "person" should be defined to mean an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit. This definition is consistent with the definition contained in the Act.

"Processing" should be defined to mean hulling and drying of pistachios grown in the production area in preparation for market. This term covers the first steps of the handling process that occurs after the pistachios are harvested.

Witnesses describing the assessment collection aspects of the proposed order

explained that handler assessments would be based on the volume of pistachios initially received from the field. Record evidence suggests that it is important to differentiate between processing activities and further preparing pistachios for market, as different handlers may perform these different functions. That is, one handler may perform the initial handling function of processing (hulling and drying), while another handler performs the remaining steps in the handling process.

Witnesses stated that only those handlers conducting the initial processing activities would be responsible for paying assessments to the committee. This would preclude the same pistachios from being assessed more than once. This term is included in the discussion of proposed § 983.53, "Assessments" which appears under material issue 5(c).

"Producer" should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternate members of the committee, and those who are eligible to vote in any referendum. The term should mean any person engaged within the production area in a proprietary capacity in the production or growing of pistachios for sale.

Each business unit (such as a corporation or partnership) should be considered a single grower and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of pistachios. For example, a person who rents land and produces pistachios resulting in that person's ownership of all or part of the pistachios produced on that land would be considered a producer.

Also, any person who owns land, which that person does not farm, but as rental for such land obtains ownership of a portion of the pistachios produced thereon, should be regarded as a producer for that portion of the pistachios received as rent. The tenant on such land should be regarded as a producer for the remaining portion produced on such land.

A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a pistachio crop. In such venture, one party may be the farmer who contributes one or more factors such as labor, time, production facilities or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. Any