

Material Issue Number 5(c)—Expenses and Assessments

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to USDA sufficiently in advance of each fiscal period to provide for USDA's review and approval. The budget should also include a recommendation to USDA of a rate of assessment designed to secure income required for such fiscal year.

The committee should be authorized under § 983.52 of the proposed order to incur such expenses as the Department finds are reasonable and likely to be incurred during each fiscal, or production, year. Such a provision is necessary to assure the maintenance and functioning of the committee, and to enable the committee to perform its duties in accordance with the provisions of the order.

The record states that funds to cover the committee's expenses would be obtained through the collection of assessments from handlers who process pistachios in the proposed production area. These assessments are intended to reflect each handler's proportional share of the committee's expenses. As such, assessments would be based on the total amount of pistachios processed by each handler relative to the total amount of pistachios processed by the industry as a whole during a given production year.

Witnesses explained that since pistachios are often transferred between handlers for further preparation or packaging for market, it would be appropriate to apply assessment calculations to the handler who first handles a particular lot of pistachios. By assessing the handler who initially receives a lot of pistachios, the industry intends to prevent having assessments paid more than once for the same pistachios. The previous discussion of the definition of "assessed weight" further clarifies this calculation.

Testimony in support of proposed § 983.52 covering committee expenses indicates that prior to the beginning of each production year, and as may be necessary thereafter, the committee should prepare an estimated budget of expenses necessary for its effective administration of the order. Based upon this estimate, the committee would calculate and recommend to the Department a rate of assessment that would provide adequate funds to cover the cost of projected expenditures. Preparing a budget for the committee

prior to the beginning of each fiscal period is reasonable. A budget is necessary to provide the committee and the Department with a basis for determining the assessment necessary to cover the cost of operation.

The committee would present its annual budget to USDA for review and approval. Accompanying the budget would be a report showing the basis for its calculations, an explanation of each line item, and any proposed year-over-year increases or decreases. Assessments would be levied at the rates established by USDA. Establishment of such assessment rates would be accomplished through the informal rulemaking process. Such rates would be established on the basis of the committee's recommendations or other available information.

Witnesses stated that any assessment rate recommended to the Department should be limited to a maximum rate of one half of 1 percent of the industry's previous production year's average producer price. The average producer price would be calculated by the committee and would be based on the previous year's average grower receipt per pound of pistachios.

The record shows that recent producer prices for pistachios were around \$1.10 per pound. If the average producer price calculated by the committee for the previous year was \$1.10 per pound, the maximum assessment rate for the current year's crop would be \$0.0055, or approximately one half a cent per pound. Applying this rate to 2001 production of about 160 million pounds would yield a maximum assessment income of \$880,000. Witnesses testified that this should be sufficient to operate the proposed program.

The intent of the maximum limit on the assessment rate is to assure pistachio producers and handlers that program expenses would be kept within specified limits, and that no projects requiring extraordinary expenditures would be undertaken. The proposed limit appears reasonable for the administration of a program of this nature.

Witnesses reasoned that there could be times during a fiscal period when it would become necessary to revise the budget and/or increase the assessment. Such instances could include situations where actual harvest is lower than anticipated or the committee incurs unforeseen expenses. In this regard, witnesses stated that the assessment rate should not be increased without the committee first making a recommendation and securing approval of the Department to do so. Such

recommendation would also need to be made prior the issuance of that production year's final handler assessment bill. Any assessment increase would be applicable to all pistachios received and processed by handlers within the proposed production area for that production year.

During the hearing, questions were raised regarding proposed order language contained in the Notice of Hearing. Language in the Notice provided that any change to the assessment rate would be required to be recommended and approved before October 1 of any production year and before the date established for payment of the assessment. Discussion at the hearing resulted in witnesses acknowledging that situations could arise where these deadlines would be too restrictive, and would prevent the committee from being able to address unforeseen shortfalls in assessment income.

Accordingly, witnesses recommended that the committee, as necessary, be permitted to adjust the rate of assessment (with USDA's approval) at any time before the final billing is made for the assessment. Section 983.53(b) should therefore be modified by removing the October 1 deadline and clarifying language that would allow the committee to recommend changes to the assessment rate before the issuance of the last handler assessment billing statement.

Record evidence in support of proposed § 983.55 indicates that if assessments are not paid within the time prescribed by the committee, the handler would be required to pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of 1½ percent per month. Late payment charges and interest on unpaid balances are reasonable in encouraging timely payment of assessments and compensating the committee for expenses incurred in collecting unpaid assessments.

While supporters of this proposal indicated that any assessments imposed under the program would be quite modest, timely collection of those assessments would be important in order to efficiently and effectively administer the provisions of this proposed program. Moreover, they indicated that if one handler were to become delinquent in paying his or her assessments, this could serve as an incentive for others to also become delinquent. Witnesses felt that the proposed late payment and interest