

charges would help to ensure stability in the flow of committee funds collected through assessments.

The record evidence is that the committee should have the authority to recommend other rates for late payment and interest charges, as may be appropriate. Section 983.55 is being modified to clarify this point. Any change in these rates would require approval of the Department through the informal rulemaking process.

The Department is recommending several additional modifications in proposed § 983.55. The language contained in the hearing notice provided that in addition to delinquent assessments, late charges and interest would be imposed on handlers who fail to file required reports under the order. Since (in the case of unfilled reports) there would be no monetary value upon which to impose these charges, this provision is found unworkable and is therefore deleted.

Witnesses also supported a provision that if a handler is delinquent in paying his or her assessments for more than 60 days, the committee could request that the USDA stop providing aflatoxin and grade and size inspections to the delinquent handler. Witnesses also suggested that the committee could require any handler who fails to pay an assessment or related charge to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the committee. These provisions are not typical in relation to delinquent assessments under a marketing order program. Thus, these provisions are being deleted from § 983.55 of the proposed order. The Department would work with the committee staff in determining an appropriate course of action relating to violations of the proposed order, including nonpayment of assessments.

Under the proposed order, the committee would be allowed to accept voluntary contributions. Contributions could only be used to pay for authorized committee expenses. The committee may accept contributions, for example, to fund the operations of the order during the first part of a production year, before sufficient income is available from assessments on the current year's pistachios.

A section on accounting is necessary to assure handlers and the industry that funds would only be used for the purposes intended, that there would be a proper disposition of excess funds, and that a detailed accounting would be made of such disposition. Under the order, the committee would only be authorized to incur such expenses as USDA finds are reasonable and likely to

be incurred by it during each production year for its maintenance and functioning, and for such other purposes as the Department may determine to be appropriate.

Paragraph (a) of proposed § 983.56 provides for situations where, at the end of the fiscal period, the assessments collected may be in excess of expenses incurred. According to record evidence, the provisions under this section would allow the committee, with the approval of the Department, to establish an operating monetary reserve. This would allow the committee to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately two years' expenses. If reserve funds do exceed that amount, the assessment rate should be reduced to bring the reserves to a more reasonable level. These reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses; to cover deficits incurred during any fiscal period when assessment income is less than expenses; to defray expenses incurred during any period when any or all provisions of the order were suspended or inoperative; and, to cover necessary expenses of liquidation in the event of termination of the program.

If any excess funds were not retained in a reserve, each handler who paid assessments would be entitled to a proportionate refund of the excess assessments collected. If excess assessments remained at the end of a given production year, the committee could apply each handler's excess as a credit for handlers towards the next production year's operating costs, or the committee could refund such funds to the handlers.

Testimony states that all funds received by the committee pursuant to the provisions of the proposed order would be used solely for the purposes specified in the order. Moreover, § 983.56 would authorize the Department at any time to require the committee and its members to account for all receipts, disbursements, funds, property or records for which they are responsible. This authority is necessary to ensure that proper accounting procedures are followed at all times.

Whenever any person ceases to be a member of the committee, that individual should be required to account for all receipts and disbursements for which he or she was responsible. That person should also be required to deliver all property and funds in such person's possession to the committee. Finally, that person would

execute such assignments and other instruments as might be necessary or appropriate to vest in the committee full title of all committee property and funds.

In the event the proposed order were to be terminated or become inoperative, the committee, with the approval of USDA, would appoint one or more trustees for holding records, funds or other property of the committee. Any funds not required to defray the necessary expenses of liquidation would be returned, to the extent practicable, pro rata to the handlers from whom such funds were collected. Distribution of those funds would be carried out in a way that the Department deems appropriate.

Material Issue Number 5(d)—Quality and Inspection Requirements

According to record evidence, provisions regarding maximum aflatoxin levels, minimum quality levels (including size requirements), and testing and certification procedures should be included in the proposed order. These provisions are captured under the proposed §§ 983.38 through 983.46.

Presently, certain pistachio quality controls are in place under the California Pistachio Marketing Agreement (agreement). The agreement is effective under the California Marketing Act (Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California). The regulations in effect under the agreement prohibit the blending of naturally and artificially opened pistachios; ban the practice of bleaching pistachios; and require mandatory aflatoxin testing for shipments to specified export markets. These regulations are voluntary in that they apply only to handlers who choose to sign the agreement. The record evidence is that signatories to the agreement current account for 82 percent of the pistachios produced in California.

The proposed Federal order would establish mandatory testing and certification requirements for California pistachios distributed for domestic human consumption. The order would include requirements that set maximum tolerance levels for aflatoxin and defects, and a minimum allowable size. The requirements under the proposed order would not duplicate or contradict the regulations under the State agreement.

According to the record, in preparation for this proposal, the California pistachio industry initiated a study group on pistachio quality assurance issues in May 2000. The