

Testimony offered by the Chief Executive Officer of the CPC further clarifies the potential efficiencies to be gained through cooperation of the CPC and the committee. As stated by the witness, the industry is already familiar with the structure and protocols of the Commission. Joint management of the two programs could reduce added paperwork, costs and duplication of efforts.

In terms of proposed regulation, witnesses stated that the two programs would be complimentary, as the provisions of each program would not overlap. The proposed provisions of the Federal program pertain to mandatory testing and certification for aflatoxin, quality and size. The CPC does not administer such regulation but rather focuses on promotion and research activities. The CPC does oversee the California Pistachio Marketing Agreement, but this is a voluntary agreement among handlers, and the quality parameters under the agreement do not include those addressed in the proposed order.

Witnesses speaking in support of § 983.71 explained that, when the Agreement was formulated, it was the intention of the participants to pattern the administrative and organizational structure of the Agreement after the Commission for the purpose of minimizing administrative costs and avoiding the duplication of efforts as much as possible. According to record testimony, this goal has been obtained and has allowed the Agreement signatories the ability to maintain a very low administrative overhead with a minimum of added paperwork. Witnesses stated that, if the Federal program is approved, it is their intention to capture similar benefits.

Material Issue Number 5(j)—Common Terms

The provisions of proposed §§ 983.59 through 983.69 and §§ 983.90 through 983.92 are common to marketing agreements and orders now operating. All such provisions are necessary to effectuate the other provisions of the marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each provision. These provisions, which are applicable to both the marketing agreement and the marketing order, are identified by section number and heading as follows: § 983.59 Rights of the Secretary; § 983.60 Personal Liability; § 983.61 Separability; § 983.62 Derogation; § 983.63 Duration of immunities; § 983.64 Agents; § 983.65 Effective time; § 983.66 Suspension or termination;

§ 983.67 Termination; § 983.68 Procedure upon termination; and § 983.69 Effect of termination or amendment. Those provisions applicable to the marketing agreement only are: § 983.90 Counterparts; § 983.91 Additional parties; and, § 983.92 Order with marketing agreement.

Material Issue Number 6—Implementation of Proposed Order

Based on a review of the hearing record, USDA recommends that if California pistachio producers were to vote in favor of promulgating the proposed marketing order, the provisions of this program be implemented in two phases. This recommendation addresses the need to establish administrative procedures, guidelines and forms, some of which would require USDA rulemaking and OMB approval, for the mandatory inspection and certification provisions of the proposed program to function effectively.

The first phase would allow for the nomination and seating of an initial administrative committee, and the recommendation and implementation of administrative rules, including reporting and recordkeeping requirements, under which the program would operate. These activities include, but are not limited to, nominations of producer and handler members and alternate members of the committee, the selection of that committee by the Department, and holding committee meetings to select a staff, draft operating procedures, recommend a budget and assessment rate for the first fiscal period under the proposed order, and make other recommendations necessary to implement order authorities. Some of the committee recommendations would require rulemaking by the Department and approval of new information collection requirements by the Office of Management and Budget (OMB).

The second phase would allow for the implementation of the regulatory provisions proposed under this program and necessary procedures to effectively administer them. This would include the mandatory testing and certification provisions for maximum aflatoxin and minimum quality levels of California pistachios, and failed lot rework provisions under §§ 983.38 through 983.46 of the proposed order. USDA recommends that these provisions become effective on August 1, 2004.

This recommendation reflects the fact that, if the order were to be approved through a producer referendum and implemented in its entirety, the immediate effectiveness of regulatory provisions without adequate

administrative procedures to support them could obstruct the flow of California pistachios to the marketplace. USDA believes that while the intended effect of the proposed order is to ensure the delivery of high quality California pistachios to consumers, implementation of the regulatory provisions proposed herein without adequate implementation of industry administrative procedures could result in the unintended disruption of California pistachio shipments.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pistachio order, are defined as those with annual receipts of less than \$5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pistachio marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U. S. pistachio industry.

The record indicates that there are approximately 647 pistachio producers, which includes the members of the one existing pistachio producer cooperative. There are about 19 handlers who process pistachios in the production area proposed to be regulated.

Statistics prepared by the California Pistachio Commission and submitted as evidence at the hearing show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 producers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds.

Using an average grower price of \$1.10 per pound, 9 percent of the