

individual, partnership, family enterprise, organization, estate, or other business unit currently engaged in the production of pistachios for market would be considered a producer under the order, and would be entitled to vote in referenda and committee nominations. Each party would have to have title to at least part of the crop produced, electing its disposition, and receiving the proceeds there from. This control would come from owning and farming land producing pistachios, payment for farming services performed, or a landlord's share of the crop for the use of the producing land. A landlord who only receives cash for the land would not be eligible to vote. A business unit would be able to cast only one vote regardless of the number and location of its orchards, but each legal entity would be entitled to vote.

"Production year" should be defined to mean the period beginning on September 1st and ending on August 31st of each year, or such other period as may be recommended by the committee and approved by the Department. This period starts with the typical beginning of the harvest season for pistachios and would prescribe a period of conduct for the committee's administrative activities, such as preparing an annual budget of expenses and accounting for receipts and expenditures of funds. Thus, the term "production year" would be synonymous with the term "fiscal period."

Witnesses at the hearing also supported the September 1 through August 31 period because it coincides with the California Pistachio Commission's accounting year. Having the same fiscal periods could facilitate the joint management of the two programs, which could yield administrative efficiencies to the industry's benefit.

As discussed under material issue 5(c), assessments would be based on the volume of pistachios received by a handler in each production year. Witnesses at the hearing stated that, although rare, there are some instances when pistachio harvest begins earlier than September 1. Record evidence suggests that this has happened in 2 out of the past 10 production years. In an effort to reconcile potential accounting differences within the context of the proposed Federal program, witnesses suggested that any pistachios harvested as much as four weeks earlier than the beginning of September be attributed to the new year's production total. Thus, this definition would also state that pistachios harvested and received in August of any year would be counted as

part of the subsequent production year for assessment and other marketing order purposes. The inclusion of pistachios harvested and received within four weeks prior to September 1 represents a modification of the order language contained in the Notice of Hearing.

"Proprietary Capacity" should be defined to mean the capacity or interest of a producer or handler that, either directly or through an intermediary, is a property owner together with the rights of an owner including the right to vote the interest in that capacity as an individual, shareholder, member of a cooperative, partner, trustee, or in any other capacity with respect to any other business unit.

Witnesses explained that this term is important to the proposed order and its provisions in that this language would make persons who are sharing ownership of a common business entity "affiliated" (see previous definition) for purposes of eligibility to serve on the committee. The term "proprietary capacity" is intended to imply ownership of a business as compared to an employee status only.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in the Secretary's stead. The term includes any other officer or employee of the United States Department of Agriculture who has been delegated or who may be delegated the authority to act on behalf of the Secretary.

"Shelled pistachio" should be defined to mean a pistachio kernel or part thereof and is distinct from an "inshell pistachio." This term is relevant to the discussion of quality requirements set forth in proposed §§ 983.38 and 983.39, "Aflatoxin levels" and "Minimum quality levels," and proposed §§ 983.40 and 983.43, "Failed lots/rework procedures" and "Reinspection."

"Substandard pistachios" should be defined to mean shelled or inshell pistachios that do not meet the proposed quality requirements (including those related to size and aflatoxin) of the proposed order. According to the record, substandard pistachios should not be marketed for domestic human consumption. The proposed order contains specific provisions regarding the disposition of substandard pistachios. These provisions appear in proposed §§ 983.40 and 983.43, "Failed lots/rework procedures" and "Reinspection," and are discussed under material issue 5(d).

#### **Material Issue Number 5(b)—Administrative Committee**

Pursuant to the Act, it is necessary to establish an agency to administer the order locally and to provide for effective and efficient operation of the order. The establishment and membership of an administrative committee is addressed in §§ 983.32 and 983.33 of the proposed order.

The hearing record shows that the committee should consist of 11 members. Eight members should be producers, two members should be handlers, and one member should be selected from the general public. Each member should have an alternate member who, possessing the same qualifications as the member, could serve in that member's place and stead in the event that the committee member could not fulfill his or her duties.

#### *Allocation of Producer Membership*

For the purpose of producer representation, the proposed order provides that the production area be divided into three districts. District 1 would consist of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial Counties. District 2 would consist of Kings, Fresno, Madera, and Merced Counties. District 3 would consist of all other Counties in California not included in Districts 1 and 2.

As mentioned previously, the record indicates that producer representation from each district should be based, in large part, on the relative number of producers, bearing acreage, and volume of production in each district. According to record evidence, District 1 had 227 producers, 38,396 acres, and production totaling 95,889,846 pounds in 2001. This represents 35 percent of the total number of California pistachio producers (647), 49 percent of the State's bearing acreage (78,000) and 60 percent of total production in 2001 (160,295,282 pounds). District 2 had 358 producers (55 percent) and 36,330 acres (47 percent), and produced a total of 57,453,864 pounds (36 percent) in 2001. District 3 had 62 producers (10 percent), 3,274 acres (4 percent) and 6,951,572 pounds of production (4 percent).

Given the relative volumes and to ensure that each district's producers are represented on the committee, witnesses testified that of the eight producer members, four should be from District 1, three should represent District 2, and one should be a pistachio grower in District 3.

As discussed under material issue 5(a), § 983.11 of the proposed order