

(which defines the three districts) should contain authority for the reestablishment of those districts. This would enable producer representation on the committee to reflect any future shifts in pistachio production among the districts.

The record also supports authority for reapportionment of producer membership among the districts. This authority would complement the authority to reestablish districts, and would serve to allow for changes in representation in producer membership on the committee. Producer membership could be reapportioned whether or not the districts were reestablished. The record supports allowing producer membership to be reapportioned among the districts upon a two-thirds recommendation of the committee and approval of the Department (through the rulemaking process).

While the record supports the ability to reapportion producer membership, the proposed order as it appeared in the Notice of Hearing did not contain such a provision. USDA recommends adding language to § 983.32(b) of the proposed order to provide authority to reapportion producer membership among the districts.

#### *Allocation of Handler Membership*

While the record shows that producer representation on the committee should be allocated among geographic districts, such allocation is not needed for the two handler members on the committee. The two handler members would represent the production area-at-large. For one of the handler members, each pistachio handler would be entitled to cast one vote in the nomination process. For the second handler member, each pistachio handler would be entitled to cast one vote for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the year in which nominations are made.

The record shows that there are 19 pistachio handlers in California, and that 1 of these handlers accounts for more than half of the volume of pistachios processed in California each year. Under the proposed provisions of the order, one of the handler members would likely represent the largest handler in the industry, since voting in the nomination process for that member would be weighted by volume. All remaining handlers would then nominate the other handler member, since any one handling entity would not be eligible to fill both handler member positions. (This limitation is discussed below.) Witnesses supported this

method of allocating handler membership as adequate to ensure appropriate representation of the interests of California pistachio handlers in committee deliberations.

In weighting the nomination votes for one of the handler members, the record shows that each handler would be entitled to cast one vote for each ton (or portion thereof) of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which nominations are made. Calculating the assessed weight based on two years of production is intended to take into account the alternate bearing nature of pistachio trees. Furthermore, the assessed weight of pistachios would be credited to the handler responsible under the order for the payment of the assessments. This provision would address the fact that pistachios are often traded or sold by one handler to another after they are harvested. Attributing the volume of pistachios to the first handler of those pistachios would preclude double counting of nuts that are transferred from one handler to another. It would also provide the most accurate measure of the relative volumes of pistachios handled by each handler.

Witnesses at the hearing testified that all handlers currently process (hull and dry) pistachios. Thus, all handlers would be able to participate in the nomination of both handler members on the committee.

The record supports authority in the proposed order to revise handler representation on the committee to ensure that industry representation remains appropriate. This provision would allow for flexibility in the order to accommodate for future changes in industry structure. For example, if a significant number of handlers in the industry ceased to process pistachios, it could be appropriate to weight their votes in the nomination process on some other basis than the assessed weight of pistachios. Any change in handler representation would require a recommendation by the committee and approval by USDA through the rulemaking process.

#### *Committee Member Affiliations*

The order should provide that not more than two members of the committee, and not more than two alternate members, could be employed by or affiliated with the same handler and/or producer. Additionally, only one producer member and alternate in any one district and only one handler member and alternate could be affiliated.

The record evidence is that the membership of the committee should be representative of the industry as a whole. No one group of people who share common business interests should be able to gain control of committee decision making. To accomplish this goal, the order should limit the number of positions the members of any one affiliated group could hold.

As previously mentioned, one handler in the industry accounts for more than half of the California pistachios handled annually. The record shows that the two-member limitation is in large part intended to prevent any entity, and its many affiliates, from dominating committee actions. The limitation is designed to assure fair representation on the committee, given the current nature and structure of the California pistachio industry.

As discussed under Material Issue 5(a), the term "affiliation" should be defined broadly so that it encompasses the many different relationships through which people have common business interests.

Witnesses at the hearing gave several examples to illustrate their view of how this limitation on committee membership should work. In the case of a corporate handler, all of its shareholders should be considered an affiliated group because they would be connected in a proprietary capacity and share in the ownership and control of the corporate handler. In this scenario, the shareholders and employees of the corporation would be limited to one handler member on the committee; they could not hold both handler member positions. If the corporation was also a pistachio producer, a producer member could also represent the affiliated group. In no case could more than two committee members represent that affiliated group.

Another example offered by witnesses described one corporation owned by one set of shareholders and a second corporation with a separate set of shareholders that jointly own a handling entity. In this case, the employees of the handling entity and both of the corporations, and both sets of shareholders, would be considered as one affiliated group. As such, this combination of two corporations and one handler would be limited to a maximum of two committee positions.

A third scenario described by witnesses entailed a corporation, owned by its shareholders, and a producer cooperative that jointly own a handling entity. The cooperative was comprised of producer members who grow pistachios and share in the proceeds of the sale of all of the pistachios of the