

members pooled together. In this case, the corporation (owned by its shareholders) and the cooperative (owned by its members) would be affiliated through their common control of the handler. Therefore, this combination of corporate employees and shareholders, cooperative employees and members, and handler employees, would constitute a single affiliated group. The entire group would be entitled to no more than two representatives on the committee.

Witnesses also testified about a producer who sells pistachios to a handler for cash or a fixed price plus bonuses but has no ownership or proprietary interest in that handler. In such a case, the producer would not be affiliated with that handler for purposes of committee membership.

In a final illustration, if a producer is a shareholder or a member of, or directly or indirectly owns a handler, that producer would be considered a part of the handler's affiliated group. This would be true even if that producer sells part of his or her crop to another handler that is not part of the affiliated group.

Cooperative Affiliation

As discussed above, members of a producer cooperative would constitute an affiliated group for purposes of committee membership. The record shows that the order should contain a provision to clarify when a person ceases to be affiliated with a cooperative for those purposes.

As explained for the record, cooperatives usually retain from their profits, which would otherwise be paid pro rata to its members, such amount as is needed for its capital needs and reserves. These "retains" are allocated and then paid pro rata to each member whenever the capital needs change or are replaced by new retains in subsequent years. This is known as "revolving capital."

Paragraph (f) of proposed § 983.33 should provide that a producer who has not marketed pistachios through a cooperative during the current and one preceding production year would no longer be considered "affiliated" with that cooperative. This would be true even if the cooperative continued to hold that producer's retains. If the cooperative holds none of the producer's retains, that producer would become unaffiliated with that cooperative at the time his or her membership is terminated.

The record supports an additional clarification concerning producer cooperatives. There may be an occasion where a producer cooperative has, as a

member, another producer cooperative that handles pistachios. While the members of both cooperatives would be considered affiliated, the producer cooperatives would still qualify as producers for purposes of voting for producer members on the committee.

Qualifications of the Public Member

At the hearing, witnesses supported having a public member on the committee. The appointment of a public member would offer many advantages. One such advantage would be that the committee would have an impartial individual, having no economic interest in the pistachio industry, with whom to discuss industry problems and concerns. Such a person could offer a unique perspective in committee deliberations.

As such, witnesses recommended that the public member and alternate public member should not be permitted to have a financial interest in the production, processing, financing, buying, packing, or marketing of pistachios, except as a consumer. This member and his or her alternate would also be precluded from being a director, officer, employee or affiliate of any firm or business entity engaged in the pistachio industry. The public member should be willing to devote sufficient time to regularly attend committee meetings and become familiar with the background and economics of the industry, as well as the provisions of the proposed order. Testimony indicated that the committee could be able to establish (with the approval of USDA) further qualifications the public member and alternate member should possess, if deemed necessary.

Nominations

For the proposed committee to function, a mechanism is required by which members and alternate members would be nominated by their peers, and selected and appointed by the Department. Nomination procedures are set forth in the proposed provisions of §§ 983.32 and 983.33.

The order should provide that USDA would conduct nominations for initial producer and handler members of the committee. Such nominations could be made either at industry meetings, or by mail. The provisions also state that the first nominees must meet the same qualifications as required for their successors. While the Department would have discretion in determining a reasonable process to conduct initial committee nominations, the committee should be established as provided in § 983.22 of the proposed order.

A revision in paragraph (a) of § 983.33 is recommended. This revision would clarify that USDA would conduct the initial nominations of producer and handler members and alternates only. The initial public member and alternate would be nominated by the industry members of the committee, as described later in this document.

Successor Producer and Handler Members

The record evidence is that the committee staff should conduct subsequent nominations for producer and handler members of the committee. To facilitate maximum participation in the process, nominations would be conducted by mail ballot.

The record evidence shows that producer and handler member nominations would entail several steps. First, individuals seeking nomination would be required to establish their qualifications to serve as a California pistachio producer or handler, and to identify the district (for producer seats) they are seeking to represent. Candidates would also be required to identify whether they intend to seek nomination as a producer or handler member. Considering that many pistachio handlers are also producers, witnesses recommended that individuals be limited to seeking nomination as one or the other. In other words, the same individual would not be allowed to simultaneously seek a producer and a handler seat; his or her name could only appear on the producer or the handler ballot, not both.

The record shows that individuals seeking to fill member seats would need to submit notice of their intent to run as a nominee to the committee in advance of nominations. This would allow the committee staff adequate time to determine a candidate's eligibility in advance of issuing nomination ballots, and would allow for any questions or informational needs to be addressed in advance of voting for nominees.

Once qualified candidates are identified, ballots containing the names of those individuals and additional space for write-in candidates would be prepared. The ballots, together with voting instructions, would be mailed to all producers and handlers who are on record with the committee. The committee staff would tally the votes and submit its nomination report to USDA for selection.

The hearing record supports the same general approach for nominations of both producer and handler members. However, the language contained in the Notice of Hearing did not include provisions specific to successor handler