

nominations. USDA is suggesting that proposed § 983.33(b) be modified accordingly.

The record shows that the committee should have authority (with USDA approval) to establish additional rules and regulations governing the nomination process, if deemed necessary. This authority would apply to both producer and handler member nominations.

#### *Producer Members*

Witnesses explained that individuals seeking candidacy for nomination to a producer seat would be required to designate the district in which they seek election and substantiate their qualification as a producer, or designated representative of a producer, in that district. However, testimony also clarified that the order would not require that the candidate be a resident of that district. Witnesses explained that it would not be reasonable to impose such a requirement since not all producers live in the same district in which they produce pistachios. Such a residency requirement would, therefore, preclude a number of pistachio producers from being able to serve on the committee.

Record evidence states that only producers would be qualified to serve as producer members and to participate in the nomination of producer members and their alternates. Producers can be corporations, partnerships, limited liability companies, trusts or other legal entities, as well as a sole proprietorship owned by an individual. The owners of the pistachio groves could designate an officer or employee to seek membership and to cast the votes on their behalf. As proposed, officers and employees would not include professional farm managers who perform farm management services for a number of different producers without being an employee or an officer of the producer. The intent is to limit those eligible to serve as producer members to persons who are involved, either as a producer with a proprietary interest in the pistachio industry or an employee working in the industry for a producer.

Each producer would be entitled to cast one vote, either in person or through an authorized officer or employee, for each producer member position to be filled in his or her district. Witnesses suggested that rules and regulations could be recommended by the committee and approved by the Department that would require such authorization to be in writing and to be addressed to the committee. A producer would only be able to cast his or her vote in the district in which that

producer produces pistachios. If the producer were engaged in producing pistachios in more than one district, then the producer would need to select a district in which to participate as a nominee and/or as a voter. A producer would not be allowed to vote for candidates in more than one district.

Producers receiving the highest number of votes in each district would be designated nominees for their respective districts. Alternates for each nominee would be the candidates receiving the second highest number of votes in the same district. In the case of a tie, witnesses recommended that final nominees and their alternates be selected by a drawing.

#### *Handler Members*

Handler nominees would be selected for the production area as a whole, and final candidates would be determined based on those two individuals receiving (1) The most votes representing handlers by number, and (2) the most votes representing handlers by volume. Alternates would be designated as those individuals receiving the second highest vote in each respective category. Handler voting procedures are further described below.

Record evidence specifies that only handlers could participate in the nomination of the handler members and their alternates. Handlers would include the duly authorized officers or employees of handlers. Since many of the handlers are incorporated, a corporation or other business entity would be required to designate its representative. Individuals could also designate an employee to act on behalf of the proprietorship through a written designation signed by the owner.

As indicated above, handler representation would be divided into two categories, with one member nominated by a number vote and the other member nominated by a volume vote. The former would be nominated by receiving the highest number of votes placed by voting handlers, with each handler having one vote. That member's alternate would be the candidate receiving the second highest number of votes.

The provisions of the proposed order provide that if a person were both a producer and a handler of pistachios, that person would be able to participate in both the producer and handler nominations. While a single individual may not hold more than one seat on the committee, a producer who is also a handler could designate an officer or employee as a handler nominee, and another representative as a producer

nominee. The affiliation provisions described above would apply.

Members of the committee, at the time of their selection and during their term of office, must be pistachio producers or handlers, or officers or employees of a producer or handler. If that relationship should terminate during their term as a committee member or alternate, that person would become disqualified to serve further, and the position would be deemed vacant.

#### *Public Member*

The provisions proposed under § 983.32(c) would govern nomination and selection of the public member and alternate member. According to the record, the public member, who would be neither a pistachio producer nor a handler, would have all the rights and responsibilities of any other member of the committee. The record evidence is that the producer and handler members of the committee should nominate the public member. Witnesses explained that industry committee members would be in the best position to identify individuals who are qualified and willing to serve. Once the committee identified possible public member and alternate public member candidates, the committee would make a recommendation to USDA for final approval and selection by the Department.

#### *Alternate Members*

The order should provide for the nomination and selection of an alternate member for each committee member. Alternates would be subject to the same eligibility requirements as committee members. They would act in the place and stead of the committee members they are alternates for when the committee members cannot fulfill their committee obligations. Alternates would provide continuity and stability to committee operations by ensuring full representation of the industry, including their particular district and group (producers or handlers).

Alternate members would be nominated in the same manner as committee members, except that the recommended alternate(s) would be the individual(s) receiving the next highest votes to the nominee(s) receiving the highest number of votes. If a person were selected as an alternate from the same district as a member and both are employed by or connected in a proprietary capacity with the same business entity, the alternate would serve as the alternate to that member.

When serving in the place and stead of their committee members, alternate members would be able to exercise all