

of the rights, duties and powers of those members as though they were serving as full members of the committee.

Alternate members would only be allowed to vote in the absence of those members for whom they are alternates, or when they succeed to those members' positions.

Record evidence also shows that an alternate member should succeed his or her member in the event of that member's death, removal, resignation or disqualification. The alternate would then serve until a successor was selected and qualified.

#### *Selection by USDA*

Record evidence states that once the nomination process for producer and handler members is completed, and the industry has voted on committee member and alternate candidates, nomination reports or committee minutes would be prepared by the committee staff and sent to the USDA. This should be done at least 60 days prior to the beginning of each two-year term of office (or by May 1). The Department, after determining that the conditions and qualifications of each nominee have been met, would then select the 10 producer and handler members of the committee and an alternate for each of those members based upon the nominations.

As previously mentioned, the newly appointed industry members of the committee would nominate the public member and alternate member. USDA would also be responsible for selecting the public member and alternate.

Nominees would be required to indicate in advance of their selection that they are willing to accept the position for which they were nominated. Agreeing in advance to serve as a committee member or alternate would avoid possible delays in the appointment of the committee.

In the event that nominations are not made within the time and manner specified in the order, the USDA could appoint members and alternates without regard to nominations. Those appointments would be made on the basis of representation provided in proposed §§ 983.32 and 983.33.

#### *Term of Office*

Record evidence suggests that the term of office should begin on July 1 and last for 2 years. The month of July represents a natural break in the California pistachio production cycle, with each new harvest beginning typically in September, or at the earliest in August. Moreover, witnesses indicated that this time frame would allow adequate time for committee

members and staff to prepare an annual budget, develop a marketing policy for the upcoming production year, and make any recommendations to the Department for any needed regulatory changes prior to harvest activities.

In addition, witnesses at the hearing indicated that terms should be staggered so that approximately half of the committee members' positions would be filled each year. This provision would ensure that continuity in experience among committee members was maintained, yet provide for new members with new ideas and fresh perspectives to participate in the administration of the order. To initiate this process, witnesses recommended that the first committee members nominated would be divided into two groups by a drawing to determine whether they would be seated for initial terms of one year or two years. Four producer members, one handler member and their alternates would serve an initial term of about one year. Remaining industry members and the public member (and their alternates) would serve an initial term of about 2 years.

The regulatory text contained in the Notice of Hearing failed to specify that the term of office should apply to all committee members and their alternates. Paragraph (k) of proposed § 983.33 has been revised to correct this.

#### *Term Limits*

Record evidence supports term limits to spread the involvement of the pistachio producers and handlers, and increase industry participation in administering the marketing order. Term limits should apply to all committee members and alternates, including those representing the public. The maximum number of terms that an individual would be allowed to serve for would be four consecutive two-year terms of office, or a maximum of eight consecutive years on the committee. The tenure requirements would apply to both committee members and alternate members. Once a person has served as a member and/or alternate for 8 years, that person would not be eligible for renomination. He or she would be eligible to serve again after 12 consecutive months out of office.

#### *Vacancies*

Any vacancy on the committee would be filled by a majority vote of the committee members remaining for the remaining unexpired term of the vacant position. This authority appears in paragraph (j) of proposed § 983.33. The replacement must fulfill all of the qualifications set forth as required for

any other nominee for the position, and that person's qualifications would have to be certified to USDA. The Department could then appoint the nominee to serve the balance of the term.

This procedure would eliminate the need to conduct a special nomination to fill a vacancy for the balance of a term, which would be less than two years in any case. It would also serve to address situations in which a member's position is vacant and the alternate declines the position or is not available to fill the vacancy, as provided in proposed § 983.33(g). The authority could also be used to fill a vacancy for an alternate member.

#### *Proposed Quorum and Voting Provisions*

The record evidence is that once the committee is appointed, a quorum of the committee would consist of seven committee members. This would include handlers, producers and the public member. Except as discussed below, any action of the committee would require the concurring vote of a majority of the committee members present. An alternate could serve as a member for purposes of constituting a quorum and voting if the member is absent.

Record evidence indicated, however, that certain issues are of sufficient significance to the industry that action should require a greater degree of consensus than a simple majority vote would demonstrate. Witnesses testified that there are four areas that should require at least seven concurring votes, prior to any recommendation being made to the USDA. The first involves any modifications of the minimum quality levels set forth in proposed § 983.39. The second entails any change in the aflatoxin levels prescribed in § 983.38 of the proposed order. Adjustments in the sampling and inspection requirements included in the order with respect to minimum quality (including aflatoxin) requirements is another area that should require seven concurring votes. And, finally, the record indicates that recommendations related to changes in committee representation (including qualifications and affiliation issues) should require a higher level of committee member agreement.

As such, this proposal provides that any recommended change or modification to the issues outlined above would require at least seven concurring votes. Any other actions by the committee could be determined by a simple majority of those voting.

The record shows that at committee meetings, members could cast their vote