

by voice or in writing. Participation by telephone would be permitted as long as the equipment used would allow all meeting participants to hear and communicate with each other. Telephone or similar communication equipment could include conference call equipment and/or audio-visual equipment that would allow all members to participate in a meeting simultaneously.

If for some reason an action must be taken without a meeting, record evidence indicates that such action would require a unanimous vote of the committee, and the votes would have to be in writing. Witnesses testifying at the hearing stated that the types of committee actions contemplated without a meeting would be limited to issues of routine business or those of relatively minor importance, such as approval of meeting minutes. Such matters would not merit the time and expense of holding an assembled meeting. This proposed provision is common to several existing marketing orders and would enhance the committee's decision-making abilities on simple administrative matters.

Compensation

While testimony supported reimbursement of necessary expenses incurred by committee members attending meetings, witnesses testified that no compensation should be made to pistachio producers and handlers for their service on the committee. To the extent the committee requested the attendance of alternate members, those alternates would also be entitled to reimbursement of their expenses.

Record evidence did support compensation, in addition to the necessary expenses, of the public member. In order to get the level of experience and background required to serve as a qualified, effective public member, witnesses stated that it might be necessary to compensate that person for his or her time. Compensation would need to be set at a reasonable level, and should be consistent with that person's experience and background.

Committee Powers and Duties

The committee, under proposed § 983.35, should be given those specific powers that are set forth in section 608c(7)(C) of the Act. Such powers are necessary for an administrative agency, such as the proposed committee, to carry out its proper functions. According to record evidence, the committee would have four general powers under the proposed provisions of this order:

(1) To administer the provisions of the order;

(2) To adopt by-laws, rules, and regulations for the implementation of the order with the approval of the Department;

(3) To receive, investigate, and report to the Department complaints regarding violations of the order; and

(4) To recommend marketing order amendments to the Department.

These powers are necessary to carry out the committee's functions under both the proposed order and the Act. Witnesses indicated that these powers would enable the committee to make recommendations to the Department that reflect the conditions in the industry from their knowledge and experience.

The specific duties of the committee as set forth in § 983.36 of the proposed order are necessary for the discharge of its responsibilities. These duties are similar to those typically specified for administrative agencies under other marketing order programs. They pertain to specific activities authorized under the order, such as investigating and compiling information regarding California pistachio marketing conditions, and to the general administration of the program including hiring employees, appointing officers, and keeping records of all committee transactions. The proposed order delineates the committee's duties as follows:

(1) The committee should adopt bylaws and rules for the conduct of its meetings and for such other purposes as it deems necessary. The committee should also select such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers.

(2) The committee should employ such persons as it deems necessary to effectively and efficiently operate the program. The committee could enter into contracts or agreements with such persons, determine their duties, and establish appropriate levels of compensation. Such contracts or agreements would pertain to the provision of services required by the order and for the payment of the cost of such services with funds collected under the order.

(3) The committee should select such subcommittees as may be necessary.

(4) The committee should submit to the USDA a budget for each fiscal period, prior to the beginning of such period. The budget submission should include a report explaining the budget items and the committee's

recommendation as to the rate of assessments for the fiscal period.

(5) The committee should be required to keep minutes, books, and records that reflect all of the acts and transactions of the committee. Such records would be subject to examination by the Department.

(6) The committee should prepare periodic statements of the financial operations of the committee and make copies of each statement available to producers and handlers for examination at the office of the committee.

(7) The committee should be required to have its financial statements audited by a certified public accountant at least once each fiscal year and at such times as the USDA may request. Such audits should include an examination of the receipt of assessments and the disbursement of all funds. The committee should provide USDA with a copy of all audit reports and should make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the committee's office.

(8) The committee should act as an intermediary between USDA and any pistachio producer or handler with respect to the operations of the order.

(9) The committee should investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios.

(10) The committee should be required to apprise the Department of all committee meetings in a timely manner.

(11) The committee should be required to submit to USDA such available information as the Department may request.

(12) The committee should have the duty to investigate compliance with the provisions of the order.

(13) The committee should provide, through communication to producers and handlers, information regarding the activities of the committee. The committee should also respond to industry inquiries about committee activities.

(14) The committee should oversee the collection of assessments levied under the order.

(15) Finally, the committee should have the authority to borrow such funds as may be necessary to fulfill its responsibilities and obligations. Any loan would be subject to USDA approval and could not exceed the expected expenses of one fiscal year.

Witnesses explained that the above-outlined duties are important to the efficient and functional operation of the committee.