

be modified, suspended or terminated, the committee should have the authority to make those recommendations. All such recommendations would require seven concurring votes by the committee and would be subject to review and approval of USDA through the rulemaking process.

Additionally, the record shows that the committee should have the authority to recommend any rules necessary for the implementation of the provisions of §§ 983.38 through 983.45 of the proposed order. Again, any such recommendation would require USDA approval. It is recommended that a new paragraph (c) be added to proposed § 983.46 to add this authority to the order.

Material Issue Number 5(e)—Reporting and Recordkeeping

The record evidence is that the committee should have the authority, with the approval of the Department, to require handlers to submit such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. The committee would need to collect information for such purposes as collecting assessments, compiling statistical data for use in market evaluation, and determining whether handlers are complying with order requirements. The types of information that could be collected to fill these reporting needs include but are not limited to production, sales and inventory data, and information pertaining to transfers of pistachios between handlers.

Additionally, under proposed § 983.49, each handler would be required to maintain records with respect to pistachios acquired, processed, further handled, sold, or otherwise disposed of, as would be necessary to verify the reports that the handler submits to the committee. All such records would be required to be maintained for at least 3 years after the end of the fiscal year in which the transaction occurred.

Witnesses also stated that the order should provide the authority for USDA and authorized employees of the committee to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the proposed order.

All reports and records submitted to the committee by handlers would be required to remain confidential and be disclosed only as authorized by USDA in accordance with the Act. However, the committee would be authorized to

release composite information from any or all reports. Such composite information could not disclose the identity of the persons furnishing the information or any person's individual operation.

The record shows that industry handlers already collect and maintain much of the information contemplated to be reported and retained under the proposed order provisions. Thus, compliance with the provisions of the order with regard to reporting and recordkeeping would entail minimal handler costs.

Material Issue Number 5(f)—Compliance

No handler should be permitted to handle pistachios except in conformity with the provisions of the order, as set forth in proposed § 983.58. If the program is to be effective, compliance with its requirements is essential.

Material Issue Number 5(g)—Continuance Referenda

In accordance with proposed § 983.67(d), the order should provide that the Department conduct periodic continuance referenda every 6 years. The initial continuance referendum should be conducted within 6 years of the effective date of the marketing order.

USDA has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. As such, the proposed marketed order should include a provision for continuance referenda.

The Act provides that in the promulgation of a marketing order, at least two-thirds of the producers voting, by number or by volume represented in the referendum, must favor the issuance if the order. Continuance referenda should be based on the same standard of industry support. This requirement is considered adequate to measure producers' support to continue the marketing order.

The Department would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of pistachios represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA would not only consider the results of the referendum. The Department would also consider all other relevant information concerning the operation of the order and its relative benefits and disadvantages in order to determine whether continued operation of the

order would tend to effectuate the declared policy of the Act.

The Department's "Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

In any event, section 608(C)(16)(B) of the Act requires the Department to terminate the order whenever the Department finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market.

Material Issue Number 5(h)—Exemption for Small Quantities

Proposed § 983.69, "Exemption," states that any handler who handles 1,000 dried pounds of pistachios or less during any year may handle pistachios free of the regulatory and assessment provisions of the proposed order.

The record shows that the purpose of this provision is to provide an exemption from the proposed requirements of the order for small quantities of pistachios, such as those that are grown for home or personal use. This section may be changed, as recommended by the committee and approved by the Department. For example, the committee may recommend that the 1,000-pound threshold be revised.

Additionally, implementing rules and regulations may be deemed necessary to ensure that handlers claiming this minimum exemption are not selling pistachios in domestic human consumption outlets that are not in compliance with the minimum quality requirements of the order. Such rules and regulations could be implemented under the authority in proposed § 983.45 of the order.

Material Issue Number 5(i)—California Pistachio Commission

Proposed § 983.70, "Relationship with the California Pistachio Commission," is supported by witness testimony that the committee have authority to deliberate, consult, cooperate and exchange information with the California Pistachio Commission (CPC). Any sharing of information between the two organizations would be kept confidential in accordance with the provisions of section 10(i) of the Act.