

and utilizing the U.S. Postal Service, or such other means as the Secretary may determine.

Proposed § 930.29 establishes the eligibility criteria for membership on the Board. Each of the grower members and alternate grower members of the Board should be tart cherry growers or officers or employees of tart cherry growers. Likewise, each of the handler members and alternate handler members of the Board should be tart cherry handlers or officers or employees of tart cherry handlers. The proposed order further maintains that, to be eligible to serve on the Board, each of these handlers, or officers or employees of handlers, must own or lease, and operate a tart cherry processing facility in the district for which nominated to serve. A person who is a grower and handler in the industry (grower/handler) could serve as either a grower or handler member or alternate grower or handler member on the Board.

To be eligible to participate in the nomination and election process, the order should provide that an individual be a grower or a handler of tart cherries or a duly authorized officer or employee of a tart cherry grower or handler. To discourage potential duplication, eligible growers and handlers would only participate in the nomination and election process in the district where they produce or handle tart cherries. Since it is possible for a tart cherry grower to have production in more than one district and a handler to have handling facilities in more than one district, the proposed order provides that such growers and handlers must choose which district they wish to participate in. The record indicates that neither growers nor handlers would be allowed to participate in the nomination and election process in more than one district during a single fiscal period.

Furthermore, the order should restrict growers and handlers from participating in the nomination process in one district and the election process in a second district during the same election cycle. However, if growers or handlers with operations in more than one district do not participate in the nomination process but do participate in the election process, they should be authorized to select the district in which they wish to vote. To help ensure that proper administration of the nomination and election process is maintained, it is reasonable for the order to require such growers and handlers to notify the Secretary or the Board of their choice of districts prior to participation in the process.

In order that a grower's name appear on an election ballot, the individual's

name must first be submitted to the Board on a nomination petition form. Such petition form would contain the signatures of at least five eligible growers other than the nominee in order to be accepted. The order should provide that petitions for Board membership by growers from District 8 (Washington State) must be signed by two eligible growers other than the nominee. This differs from the procedure used in other districts because there are relatively few tart cherry growers in Washington. It would be reasonable to conclude that should the number of tart cherry growers in Washington significantly increase in the future, this provision could be revised, through informal rulemaking, to more closely approximate requirements in the other districts.

Similarly, in order that a handler's name appear on an election ballot in any district, the nominee's name should be submitted on a petition form signed by at least one other eligible handler. In districts where either a grower or a handler may be elected to the single position (initially Districts 5, 6, 8, and 9), both growers and handlers may be nominated for the single seat.

Testimony supported the inclusion of an order provision that would restrict individuals who are growers, but who may be regulated as handlers while having some or all of their tart cherries custom packed, to participating in the nomination and election process as growers rather than as handlers. Hearing evidence supports the provision that, for purposes of nominations and elections, such grower-handlers not owning or leasing and operating their own packing facilities be identified as growers.

At the hearing, witnesses supported adding a public member to the Board. While the influence of consumers would be implicitly present in the deliberations of the grower and handler Board members, and all meetings would be public, the appointment of a public member would offer many advantages. One such advantage would afford the industry an opportunity to discuss its problems and concerns with someone without an economic interest in the tart cherry industry.

The public member and alternate public member should not be permitted to have a direct financial interest in the production, processing, financing, buying, packing, or marketing of tart cherries except as a consumer; nor be a director, officer, or employee of any firm so engaged. Such public members should be willing to devote sufficient time to regularly attend Board activities and to familiarize themselves with the background and economics of the

industry, as well as with the provisions of the proposed order. Testimony indicated that the public member and alternate public member could, for example, be individuals who are retired food industry executives or are associated with an academic institution. The Board, once formed, could decide what further qualifications, if any, the public member and alternate public member should possess.

During the nomination process, tart cherry growers and handlers in each district would have an opportunity to nominate eligible individuals for the public member and alternate public member positions on the Board. Record evidence indicates that this would be accomplished in the same manner that grower and handler members are nominated. All eligible growers and handlers in each district would have the opportunity to submit the name of a nominee for both the public member and the alternate public member on a petition form provided by the Board or the Secretary. At one of its first meetings following initial appointment and every three years thereafter, Board members would elect, by at least a two-thirds majority of the entire Board, the public member and alternate public member. The Board members would vote for the public member and alternate public member from the list of nominees received from tart cherry growers and handlers. If such nominations are not made, the Board should have the authority to nominate qualified individuals for subsequent election. The persons elected by the Board to fill the public member and alternate public member positions would then be subject to appointment by the Secretary.

A procedure should be in place that provides adequate time for the nomination and election process to be completed and appointments made by the Secretary prior to the beginning of the next term of office. Thus it is reasonable that the Board should announce and solicit nominations at least 180 days before the expiration of the current term of office. Furthermore, a requirement that the nomination petition form be returned to the Board not less than 120 days prior to the then current term's expiration would provide adequate time to complete the election of industry members. Such a procedure would help ensure that appointments by the Secretary are made in time to seat the new Board by the beginning of the next term.

Once the completed petition forms are returned, the Board would distribute ballots containing the names of all eligible grower and handler nominees by district via the U.S. Postal Service, or