

**PART 983—PISTACHIOS GROWN IN CALIFORNIA**

**Subpart—Order Regulating Handling**

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AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 69 FR 17850, Apr. 4, 2004, unless otherwise noted.

DEFINITIONS

**§ 983.1 Accredited laboratory.**

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

**§ 983.2 Act.**

*Act* means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

**§ 983.3 Affiliation.**

*Affiliation.* This term normally appears as “affiliate of”, or “affiliated with”, and means a person such as a

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producer or handler who is: A producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term “control” (including the terms “controlling”, “controlled by”, and “under the common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

### § 983.4 Aflatoxin.

*Aflatoxin* is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

### § 983.5 Aflatoxin inspection certificate.

*Aflatoxin inspection certificate* is a certificate issued by an accredited laboratory or by a USDA laboratory.

### § 983.6 Assessed weight.

*Assessed weight* means pounds of inshell pistachios, free of internal defects as defined in § 983.39(b)(4) and (5), with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided*, That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in § 983.6, the words “free of internal defects as defined in § 983.39(b)(4) and (5)” were suspended, effective December 10, 2007.

### § 983.7 Certified pistachios.

*Certified pistachios* are those for which aflatoxin inspection and minimum quality certificates have been issued.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in § 983.7, the words “and minimum quality” were suspended, effective December 10, 2007.

### § 983.8 Committee.

*Committee* means the administrative committee for pistachios established pursuant to § 983.32.

### § 983.9 Confidential data or information.

*Confidential data or information* submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

### § 983.10 Department or USDA.

*Department or USDA* means the United States Department of Agriculture.

### § 983.11 Districts.

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by the committee to ensure proper representation. The boundaries need not coincide with county lines.

[69 FR 17850, Apr. 4, 2004, as amended at 72 FR 69141, Dec. 7, 2007]

### § 983.12 Domestic shipments.

*Domestic shipments* means shipments to the fifty states of the United States or to territories of the United States and the District of Columbia.

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**§ 983.14 Handle.**

*Handle* means to engage in:

- (a) Receiving pistachios;
- (b) Hulling and drying pistachios;
- (c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce; and/or
- (d) Placing pistachios into the current of commerce from within the production area to points outside thereof: *Provided*, however, that transportation within the production area between handlers and from the orchard to the processing facility is not handling.

**§ 983.15 Handler.**

*Handler* means any person who handles pistachios.

**§ 983.16 Inshell pistachios.**

*Inshell pistachios* means pistachios that have a shell that has not been removed.

**§ 983.17 Inspector.**

*Inspector* means any inspector authorized by the USDA to inspect pistachios.

**§ 983.18 Lot.**

*Lot* means any quantity of pistachios that is submitted for testing purposes under this part.

**§ 983.19 Minimum quality requirements.**

*Minimum quality requirements* are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, § 983.19 was suspended, effective December 10, 2007.

**§ 983.20 Minimum quality certificate.**

*Minimum quality certificate* is a certificate issued by the USDA or Federal/State Inspection Service.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, § 983.20 was suspended, effective December 10, 2007.

**§ 983.21 Part and subpart.**

*Part* means the order regulating the handling of pistachios grown in the

State of California, and all rules, regulations and supplementary orders issued there under. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

**§ 983.22 Person.**

*Person* means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

**§ 983.23 Pistachios.**

*Pistachios* means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

**§ 983.24 Processing.**

*Processing* means hulling and drying pistachios in preparation for market.

**§ 983.25 Producer.**

*Producer* means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

**§ 983.26 Production area.**

*Production area* means the State of California.

**§ 983.27 Production year.**

*Production year* is synonymous with “fiscal period” and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary. Pistachios harvested and received in August of any year shall be applied to the subsequent production year for marketing order purposes.

**§ 983.28 Proprietary capacity.**

*Proprietary capacity* means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

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### § 983.29 Secretary.

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

### § 983.30 Shelled pistachios.

*Shelled pistachios* means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

### § 983.31 Substandard pistachios.

*Substandard pistachios* means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.31, the words "and/or minimum quality" were suspended, effective December 10, 2007.

#### ADMINISTRATIVE COMMITTEE

### § 983.32 Establishment and membership.

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers*. Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton (or portion thereof) of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers*. Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3. The Secretary, upon recommendation of the committee, may reapportion producer membership among the districts to ensure proper representation.

(c) *Public member*. One member shall be a public member who is neither a

producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

### § 983.33 Initial members and nomination of successor members.

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) *Initial members*. Nominations for initial grower and handler members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) *Successor members*. Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer or handler members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided, That:*

(1) Any qualified individuals who seek nomination as a producer member shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all producers who are on record with the committee within the respective districts; the person(s) receiving the highest number of votes shall be the member nominee(s) for that district, and the person(s) receiving the second highest number of votes shall be the alternate member nominee(s). In case of a tie vote, the nominee shall be selected by a drawing.

(2) Any qualified individuals who seek nomination as a handler member shall submit to the committee an intent to seek office with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for

write-in candidates, together with voting instructions, shall be mailed to all handlers who are on record with the committee. For the first handler member seat, the person receiving the highest number of votes shall be the handler member nominee for that seat, and the person receiving the second highest number of votes shall be the alternate member nominee. For the second handler member seat, the person receiving the highest number of votes representing handler volume shall be the handler member nominee for that seat, and the person receiving the second highest number of votes representing handler volume shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) *Handlers.* Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) *Producers.* Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer pro-

duces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) *Member's affiliation.* Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) *Cooperative affiliation.* In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) *Alternate members.* Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on

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the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) *Selection by Secretary.* Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten producer and handler members of the committee and an alternate for each member.

(i) *Acceptance.* Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) *Term of office.* Selected members and alternate members of the committee shall serve for terms of two years: *Provided*, That four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the committee. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms

shall begin following any period of at least twelve consecutive months out of office.

(1) *Qualifications.* (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer or employee of a handler.

(3) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

(n) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.32, 983.33 and 983.34.

### § 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided*, That actions of the committee with respect to the following issues

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shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

- (1) Minimum quality levels;
- (2) Aflatoxin levels;
- (3) Inspection programs;
- (4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided*, That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further*, That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

**§ 983.35 Powers.**

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;
- (c) To receive, investigate, and report to the Secretary complaints of violations of this part; and
- (d) To recommend to the Secretary amendments to this part.

**§ 983.36 Duties.**

The committee shall have, among others, the following duties:

- (a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson

and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rate of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall 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 offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

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(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

### MARKETING POLICY

#### § 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

### REGULATIONS

#### § 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such

manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing ("lot samples") in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (d)(2) ("test samples"). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2 of this paragraph.

TABLE 1—IN-SHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
221–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest) or other methods as recommended by not less than seven members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots “negative” as to aflatoxin.* Lots will be certified as “negative” on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §983.40. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler’s discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue

an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 10 ppb. If the averaged aflatoxin level of the Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §983.40. If the averaged aflatoxin level of Test Sample #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler’s discretion, analyze Test Sample #3 and the results of Test Samples #1, #2 and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, re-work the lot, and re-submit it for testing after a re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2 and #3 is at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2 and #3 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §983.40. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot’s owner within 10

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working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in §983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the crop year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.38, the words “and divided between those pistachios for aflatoxin testing and those for minimum quality testing” in paragraph (d)(1), and the word “, grade” in the penultimate sentence of paragraph (d)(4) were suspended, effective December 10, 2007.

**§983.39 Minimum quality levels.**

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3 of this paragraph.

TABLE 3—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
<b>External (Shell) Defects:</b>		
1. Non-splits & not split on suture .....	10.0	.....
(i) Maximum non-splits allowed .....	4.0	.....
2. Adhering hull material .....	2.0	.....
3. Dark stain .....	3.0	.....
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot.		
<b>Internal (Kernel) Defects:</b>		
1. Damage .....	6.0	3.0
Immature kernel (Fills <75%—>50% of the shell)		
Kernel spotting (Affects 1/6 aggregate surface)		
2. Serious damage .....	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay.		
(i) Maximum inset damage allowed .....	2.0	0.5
Total internal defects allowed .....	9.0	.....
<b>Other Defects:</b>		
1. Shell pieces and blanks (Fills <50% of the shell) .....	2.0	.....
(i) Maximum blanks allowed .....	1.0	.....
2. Foreign material .....	0.25	0.1
No glass, metal or live insects permitted		
3. Particles and dust .....	0.25	.....
4. Loose kernels .....	6.0	.....
Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hold screen .....	5.0	.....

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) *Loose kernels* means kernels or kernel portions that are out of the

shell and which cannot be considered particles and dust.

(2) *External (shell) defects* means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to,

non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an  $\frac{18}{1000}$  (.018) inch thick by  $\frac{1}{4}$  (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an  $\frac{18}{1000}$  (.018) inch thick by  $\frac{1}{4}$  (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth ( $\frac{1}{8}$ ) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration that affects more than one-eighth of the total shell surface. Pistachios that are dyed or color-coated to improve their marketing quality are not subject to the maximum permissible defects for dark stain. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cav-

ity. "Immature kernels" in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* that is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means  $\frac{1}{16}$ th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through  $\frac{5}{64}$  inch round opening.

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(v) *Undersized* means inshell pistachios that fall through a <sup>30</sup>/<sub>64</sub>-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in §983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certifi-

cate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in Table 4 of this paragraph (e)(1). These samples shall be drawn from the lot that is to be certified pursuant to §983.38(d)(1) under the supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less .....	10	500	500
221–440 .....	15	500	500
441–1100 .....	20	600	500
1101–2200 .....	30	900	500
2201–4400 .....	40	1200	500
4401–11,000 .....	60	1800	500
11,001–22,000 .....	80	2400	1000
22,001–150,000 .....	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for internal kernel analysis. The USDA protocol currently appears in USDA inspection instruction manual “Pistachios in the Shell, Shipping Point and Market Inspection Instructions,” June 1994; revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at <http://www.ams.usda.gov/fv/fvstand.htm>.

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting

and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years following the production year in which the pistachios were shipped, and are subject to audit by the committee at any time.

[69 FR 17850, Apr. 4, 2004, as amended at 70 FR 40186, July 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, §983.39 was suspended, effective December 10, 2007.

**§983.40 Failed lots/rework procedure.**

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report

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shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in §983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of §983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted prod-

uct and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in §983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of §983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of §983.39.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.40, paragraph (a), in paragraph (b), the words “and/or the minimum quality” in the first sentence, the words “either” and “or the minimum quality” in the second sentence, and the words “, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee” in the third sentence, in paragraph (c), the fifth sentence, and paragraph (e) were suspended, effective December 10, 2007.

**§983.41 Testing of minimal quantities.**

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler’s discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in §983.38.

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(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exemption from minimum quality testing. If the committee grants an exemption, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.41, paragraph (b) was suspended, effective December 10, 2007.

### § 983.42 Commingling.

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.42, the words “and minimum quality certificate” were suspended, effective December 10, 2007.

### § 983.43 Reinspection.

The Secretary, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

### § 983.44 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler.

### § 983.45 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by §§983.38 and 983.39 shall not be shipped for domestic human consumption.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.45, the words “and minimum quality requirements,” the first “§,” and

“and 983.39” were suspended, effective December 10, 2007.

### § 983.46 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that the order provisions contained in §§983.38 through 983.45 should be modified or suspended, it shall by vote of at least seven concurring members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality provisions in §§983.38 and 983.39 should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§983.38 through 983.45.

EFFECTIVE DATE NOTE: At 69 FR 17850, Apr. 4, 2004, part 983 was added, effective April 6, 2004, except for §§983.38 through 983.46, which are effective Aug. 1, 2004. At 69 FR 44460, July 26, 2004, the effective date was delayed to February 1, 2005. At 70 FR 661, Jan. 5, 2005, the effective date was further delayed to August 12, 2005. At 70 FR 4191, Jan. 28, 2005, the effective date was corrected to August 1, 2005.

## REPORTS, BOOKS AND RECORDS

### § 983.47 Reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

### § 983.48 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include confidential data

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or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

**§ 983.49 Records.**

Records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part will be maintained by each handler for at least three years beyond the crop year of their applicability.

**§ 983.50 Random verification audits.**

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

**§ 983.51 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or

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which may have been shipped by him/her.

**EXPENSES AND ASSESSMENTS**

**§ 983.52 Expenses.**

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

**§ 983.53 Assessments.**

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the *pro rata* share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

**§ 983.54 Contributions.**

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

**§ 983.55 Delinquent assessments.**

Any handler who fails to pay any assessment within the time required by the committee, shall pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. The late payment and interest

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charges may be modified by the Secretary upon recommendation of the committee.

### § 983.56 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided*, That any sum paid by a person in excess of his/her *pro rata* share of the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned *pro rata* to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

### § 983.57 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying §§ 983.47 through 983.56, inclusive.

#### MISCELLANEOUS PROVISIONS

### § 983.58 Compliance.

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

### § 983.59 Right of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

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### § 983.60 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

### § 983.61 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

### § 983.62 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

### § 983.63 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

### § 983.64 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

### § 983.65 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may

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declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

### § 983.66 Suspension or termination.

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the Act.

### § 983.67 Termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds ( $\frac{2}{3}$ ) majority of voting producers, or a two thirds ( $\frac{2}{3}$ ) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the

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provisions of the Act authorizing them cease.

### § 983.68 Procedure upon termination.

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

### § 983.69 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued there under,

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

### § 983.70 Exemption.

Any handler may handle pistachios within the production area free of the

requirements in §§ 983.38 through 983.45 and 983.53 if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

## Subpart—Rules and Regulations

### § 983.138 Samples for testing.

Prior to testing, a sample shall be drawn from each lot to be used to test pistachios for aflatoxin. The lot sample shall be of sufficient weight to comply with Tables 1 and 2 of § 983.38.

[72 FR 69141, Dec. 7, 2007]

### § 983.141 Procedures for exempting handlers from minimum quality testing.

(a) *Exemption procedures.* The Committee, or its duly authorized agents, shall notify all handlers each year of the opportunity to apply to be exempted from minimum quality testing and handlers shall submit such requests on forms furnished by the Committee. The deadline for submission shall be August 1. The Committee, or its duly authorized agents, shall:

(1) Promptly review all exemption applications received. In reviewing applications for exemption, the Committee, or its duly authorized agents, shall determine that the quantity of assessed weight pistachios handled during the prior production year was less than 1 million assessed weight pounds and that the applicants are in compliance with the order's reporting requirements and the provisions of § 983.41. Handler compliance will be determined through handler audits;

(2) Complete the review and approve or disapprove requests for exemptions by August 20;

(3) Maintain complete files detailing the reason(s) for the approval or disapproval of each application for at least three years beyond the crop year of applicability; and

(4) Notify in writing all applicants by August 30 of the approval or disapproval of their requests together with the reason(s) for disapproval, if applicable.

(b) *Revocation of exemptions.* A handler's exemption shall be revoked by

### § 983.143

the Committee, or its duly authorized agents, if the handler fails to provide reports required under § 983.147, or has not complied with the provisions on minimal quality testing in § 983.41, of this part. Additionally, the Committee, or its duly authorized agents, shall revoke an approved exemption when a handler audit reveals that a handler has handled a million pounds or more of assessed weight pistachios during the current production year. The revocation of a handler's exemption shall be made in writing to the handler and shall specify the reason(s) for and the effective date.

(c) *Appeals.* (1) Any handler who believes that he/she has been improperly denied an exemption or improperly had an exemption revoked, may appeal to the Secretary, within 20 days after notification of the Committee's, or agents of the Committee's, decisions. All appeals shall be in writing. When requested by the Secretary, the Committee, or its duly authorized agents, shall forward a file with all pertinent information related to any handler appeal. The Secretary shall inform the handler and all interested persons of the Secretary's decision.

(2) If handlers do not file an appeal or if their appeal is denied by the Secretary, they shall present all remaining lots of pistachios in inventory for minimum quality testing before moving the pistachios into the channels of commerce.

[70 FR 42259, July 23, 2005]

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, § 983.141 was suspended, effective December 10, 2007.

### § 983.143 Reinspection.

(a) Any lot of inshell pistachios that is pin-picked, hand-sorted, color-sorted, and/or resized is considered to be "materially changed." Pistachios which are roasted, salted, flavored, air-legged, dyed, color-coated, cleaned, and otherwise subjected to similar processes are not considered to be materially changed.

(b) Each handler who handles pistachios shall cause any lot or portion of a lot initially certified for aflatoxin, and subsequently materially changed, to be reinspected for aflatoxin and certified as a new lot or new lots: *Pro-*

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*vided.* That, handlers exempted from order requirements under § 983.170 are exempt from all reinspection requirements.

[70 FR 61226, Oct. 21, 2005, as amended at 71 FR 51987, Sept. 1, 2006; 72 FR 69141, Dec. 7, 2007]

### § 983.147 Reports.

(a) *ACP-2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots that fail to meet the order's maximum aflatoxin requirements by completing section A of this form. Handlers shall furnish this report to the committee no later than 10 days after completion of the aflatoxin test. Each USDA-approved aflatoxin testing laboratory shall complete section C of this report, and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

(b) *ACP-3, Failed Lot Disposition and Rework Report.* Each handler who reworks a failing lot of pistachios shall complete this report and shall forward it to the committee no later than 10 days after the rework is completed. If rework is not selected as a remedy, the handler shall submit the form to the committee office within 10 days of disposition of the lot.

(c) *ACP-4, Federal Marketing Order Exempt Handler Notification.* Each handler who handles less than 5,000 pounds of assessed weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

(d) *ACP-5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request an exemption under the minimal quantities provisions (Section 983.41) of the order shall furnish this report to the committee office no later than August 1 of each production year.

(e) *ACP-6, Inter-handler Transfer.* Each handler who transfers uninspected pistachios to another handler within the production area shall complete the ACP-6 and sign Part A. The transferring handler shall forward the original ACP-6 and one copy to the handler who receives the uninspected

pistachios. The transferring handler shall furnish one copy of ACP-6 to the committee within 30 days of the transfer. The handler receiving the uninspected pistachios (receiving handler) shall sign Part B of the original ACP-6 and shall file it with the committee within 30 days of the transfer.

(f) *ACP-7 Monthly Report of Inventory/Shipments.* Each handler of pistachios shall file this report with the committee by the 10th day of each month for the previous month's inventory and shipment information.

(g) *Exemptions.* Handlers who handle less than 5,000 pounds of assessed weight pistachios during any production year are exempt from filing all forms, with the exception of the ACP-4.

(h) *Records.* Each handler shall maintain all records of pistachios received, held, shipped, and disposed of for at least 3 years following each crop year to show compliance with the marketing order provisions.

[70 FR 39907, July 12, 2005, as amended at 71 FR 51987, Sept. 1, 2006; 72 FR 69141, Dec. 7, 2007]

EFFECTIVE DATE NOTE: At 72 FR 69142, Dec. 7, 2007, in §983.147, paragraph (d) was suspended, effective December 10, 2007.

**§ 983.170 Handler exemption.**

Pursuant to §983.70, any handler may handle pistachios within the production area free of the requirements in §§983.38 through 983.45 and §983.53 if such pistachios are handled in quantities of less than 5,000 pounds of assessed weight in any production year.

[71 FR 51987, Sept. 1, 2006]

**Subpart—Assessment Rate**

**§ 983.253 Assessment rate.**

(a) On and after September 1, 2006, a continuing assessment rate of \$0.0007 per pound of assessed-weight pistachios is established for California pistachios. The assessment obligation of each handler shall be computed by applying the assessment rate to the assessed weight computed pursuant to §983.6.

(b) For the 2004-05 fiscal period each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report to the Committee

and pay all due assessments to the Committee by March 15, 2005. For subsequent fiscal periods, each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report and pay all due assessments to the Committee by December 15 of the applicable fiscal period.

[70 FR 9846, Mar. 1, 2005, as amended at 71 FR 66645, Nov. 16, 2006]

**PART 984—WALNUTS GROWN IN CALIFORNIA**

**Subpart—Order Regulating Handling**

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