

must cover all shipments for domestic human consumption. Further, any pistachios that fail to meet the aflatoxin requirement must be disposed of in certain ways. The inspection and substandard pistachio disposition procedures are discussed in detail later in this document.

At the hearing, witnesses recommended eliminating the decimal point and the zero from all references to "15.0" ppb. The maximum aflatoxin threshold should read "15" ppb. Witnesses explained that current testing techniques available to the industry are only accurate to one part per billion. As such, requiring testing beyond the one part per billion would not be compatible with current industry testing abilities. Similarly, references to "5.0" ppb and "10.0" ppb should be changed to "5" ppb and "10" ppb in all corresponding descriptions of aflatoxin test sampling procedures. These changes are reflected in the proposed order language contained in this Recommended Decision.

Witnesses testified that a considerable amount of concern and debate over the proposed aflatoxin and other quality requirements resulted in the details of those proposed requirements being included in the proposed order language. According to the record, industry discussions favored including specific regulatory language in the order over establishing committee authority to recommend such regulations. Witnesses explained that the former would allow industry participants to know, prior to voting on the proposed order in referendum, what specific requirements would be imposed on the industry. Thus, producers would be able to make a more informed decision as to whether they favor the program.

Witnesses testified that the committee should have the authority to make recommendations to the Department to change the specified maximum aflatoxin level of 15 ppb. Paragraph (b) of proposed § 983.38 therefore provides authority for changing the allowable level of aflatoxin in the event that industry conditions change or research shows that a change in the aflatoxin level would be appropriate. As previously discussed under Material Issue 5(b), such a recommendation would require the concurring votes of at least seven committee members.

Transfer Between Handlers

Paragraph (c) of § 983.38 would provide that transfers of pistachios between handlers within the production area are exempt from the aflatoxin requirement.

Record evidence indicates that pistachios are customarily traded among handlers. Trade among handlers predominantly occurs as a means for individual handlers to buy or sell pistachios to meet the specific needs of their respective customers. Witnesses also explained that some handlers are better equipped than others to handle pistachios that present processing problems. As such, pistachios requiring re-working to meet industry quality standards are often transferred from one handler to another for more efficient handling.

An example of an inter-handler transfer presented at the hearing described a handler who is unable to ship pistachios because they have too much dark stain on the shells, and are deemed to be unmarketable in that state. However, another handler is able to paint the shells with a red food grade colorant that covers the dark stain, making the pistachios acceptable to consumers. Transferring the pistachios from the first handler to the second handler could benefit both parties.

Proposed § 983.38(c) would facilitate transfers of pistachios between handlers, which would allow for the highest use of the pistachios. While pistachios could be transferred from one handler to another without first being tested and certified as meeting the aflatoxin requirement, those pistachios would have to meet that requirement prior to entering the market for domestic human consumption. If the pistachios had been tested and certified as meeting the aflatoxin requirement by the first handler, those pistachios would not have to be tested and certified a second time. This would be true only if the lot's identity had been preserved, as discussed in the discussion below relative to "Traceability."

Traceability

Proposed § 983.38(d) would require that each lot of pistachios inspected for aflatoxin be uniquely identified and traceable from the point of testing through shipment by the handler. This is necessary because the handling of pistachios consists of a number of different steps that occur over a period of time.

Witnesses stated that identification of individual lots would be necessary in order to distinguish one lot from another for aflatoxin certification purposes. Unique identification and traceability of lots would be necessary to ensure handler compliance with the provisions of the order. Further, in the event that sub-quality or aflatoxin contamination was found by a handler or his or her customers, traceability

would allow for expeditious response on the part of that handler to remove such product from the production line or market.

Traceability would be accomplished through the maintenance of each lot's identity as that lot proceeds through a handling facility. A lot could be in a handler's storage bins when a sample is taken for aflatoxin testing and certification purposes. The pistachios could be run through a roasting line later that day, and packaged on a subsequent day. In this example, witnesses explained that the handler would assign a unique number to the lot when the sample is taken, and the pistachios in the lot would be identified by that number through the entire handling process. This issue is further discussed in relation to proposed § 983.44, "Inspection, certification and identification."

Sampling

Proposed § 983.38(d)(1) and (d)(2) outline sampling procedures for testing for aflatoxin and other quality requirements. The samples would be drawn by an inspector or under the supervision of an inspector.

Witnesses explained that each sample drawn would need to be sufficient to meet testing procedure requirements under proposed §§ 983.38 (Aflatoxin levels) and 983.39 (Minimum quality levels). The record shows that having one sample drawn to serve both purposes would make the testing procedures more efficient and cost effective, as the process of drawing samples for each certification process would be condensed into one. Witnesses explained that this would help minimize inspection fees, as less sampling time would be needed. Sampling procedures for aflatoxin and minimum quality (including size) certification are described below, and under the discussion of proposed § 983.39.

Aflatoxin Sampling Procedures

As previously discussed, the record is that aflatoxin typically presents itself in high concentrations in very few nuts. Witnesses recommended a sampling system rooted in statistical calculations of aflatoxin per lot based on varying sample sizes calibrated to lot weight. The recommended sampling protocol would rely on established statistical sampling methodologies.

As there is not an internationally agreed upon procedure for aflatoxin sampling of pistachios, the proposed sampling regimen is based upon sequential sampling procedures used in the U.S. peanut industry; sampling