

increasing supplies of California pistachios.

The record shows that the defects listed in proposed § 983.39 are generally accepted by the industry as those that reduce the marketability and consumer acceptance of pistachios. Handlers currently eliminate defective nuts in their normal operations to pack a product that meets their customers' expectations.

Four categories of defects are proposed. The first is external shell defects, which includes non-splits

(shells that are not open), adhering hull material, dark stain, and other damage that materially detracts from the appearance of the shell. Next are internal defects, which include immature kernels, kernel spotting, insect damage, mold, rancidity, and decay. The third class of "other defects" includes shell pieces and blanks, foreign material, particles and dust, and loose kernels. The final category is in shell pistachios that are below the specified minimum size.

The proposed minimum quality requirements provide a maximum tolerance level for each type of defect. This is to recognize that in normal handling operations, it is impossible to eliminate every single defective nut from a lot. As an example, up to 5 percent (by weight) of the inshell pistachios in a lot may be below the minimum permissible size. The following table contains the proposed defects and tolerances.

MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
a. Non-splits & not split on suture	10.0	.....
(1) Maximum non-splits allowed	4.0	.....
b. Adhering hull material	2.0	.....
c. Dark stain	3.0	.....
d. Damage by other means, other than a, b and c above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot	10.0	.....
INTERNAL (KERNEL) DEFECTS		
a. Damage: Immature kernel (Fills <75% – >50% of the shell), Kernel spotting (Affects 1/8 aggregate surface)	6.0	3.0
b. Serious damage—Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay	4.0	2.5
(1) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	.....
OTHER DEFECTS		
a. Shell pieces and blanks (Fills <50% of the shell)	2.0	.....
(1) Maximum blanks allowed	1.0	.....
b. Foreign material—No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	.....
4. Loose kernels	6.0	.....
Minimum permissible defects (percent by weight)		.....
Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen	5.0	.....

Witnesses testified that about 90 percent of the pistachios produced in California are packed to higher quality standards than those being proposed in the order. Thus, imposition of these quality requirements should have a minimal impact on handlers, while ensuring that the pistachios available to U.S. consumers are of acceptable quality.

The terms used in the above table are defined in further detail under § 983.39(b) of the proposed order. These terms would clarify permissible maximum defects for inshell pistachios and pistachio kernels.

One of the terms defined in paragraph (b) of proposed § 983.39 is "dark stain," an external defect. The definition of that term included in this Recommended Decision differs from that in the Notice of Hearing. In the Notice, dark stain was defined to mean an aggregate amount of

discoloration affecting more than one-eighth of the shell surface or, on dyed nuts, when readily noticeable. Testimony at the hearing indicated that the last portion of that definition would have adversely impacted handlers who dye or color their nuts to remove cosmetic shell defects. Thus, this provision has been modified to exempt dyed or colored nuts from the dark stain requirements. This exemption is intended to allow handlers to improve the marketability of pistachios containing dark stain by covering that defect with a dye or color coat.

Witnesses stated that each shipment of California pistachios intended for domestic human consumption would require a minimum quality certificate. As previously discussed, this certificate would be issued by an inspector and would certify that the pistachios contained in that lot meet the

established minimum quality requirements. Pistachios that fail to meet the minimum quality specifications would be disposed of in such manner as described in proposed § 983.40.

The record also states that under proposed § 983.39 (d), transfers between handlers within the production area would be exempt from minimum quality and size regulation. This exemption, as with a similar exemption for aflatoxin certificates, is designed to allow transfer of product between handlers. It would allow handlers to sell and trade pistachios of varying qualities among themselves, and would allow for efficiencies within the industry due to different handlers' abilities to prepare pistachios for market. All pistachios would have to be inspected and certified as meeting minimum quality