

### *Failed Lot Reporting*

According to record evidence, § 983.40(b) would establish reporting requirements for lots failing to meet aflatoxin or minimum quality requirements of the proposed order. Reports of failing lots would have to be filed with the committee within 10 working days of the test failure. Reports regarding lots exceeding the maximum aflatoxin tolerance level would be sent by the accredited laboratory directly to the committee. Reporting of lots exceeding the maximum aflatoxin requirements directly by the laboratory rather than the handler would expedite and increase the efficiency of the committee's ability to locally oversee industry compliance to the proposed aflatoxin provisions. Reports concerning lots failing to meet the minimum quality requirements would be filed by the handler with the committee, as minimum quality testing would be conducted at the handler's facility and not at a laboratory.

Establishing reporting procedures for lots failing to meet the requirements of the order would assist the committee in ensuring that only certified lots are used for domestic human consumption. This would help ensure that poor quality pistachios are either re-worked to requisite quality and aflatoxin levels, or properly disposed of. In this context, witnesses stated that failed lots reporting would be essential to supporting the committee's oversight and auditing responsibilities. Failed lot reporting would also present the committee with an important information-gathering tool, as it would allow the compilation of industry quality statistics.

### *Rework Procedures*

Notification of a failed lot, either with regard to aflatoxin or quality, would alert the committee to the possible reworking of pistachios for reinspection, or to the disposal of those pistachios. Witnesses expressed the importance of establishing rework procedures in order to allow handlers the opportunity to separate acceptable quality pistachios from inferior ones. Witnesses explained that while reworking and reinspection would not be required under the order, rework would provide handlers with an opportunity to secure a better return for their pistachios. Rework and reinspection procedures should therefore benefit both handlers and producers.

Witnesses expanded on the importance of safeguarding against the negative effect of poor quality pistachios in the marketplace by explaining that

lots failing to meet aflatoxin requirements would be subject to a different set of rework procedures than those failing quality requirements.

Rework procedures for inshell pistachios failing to meet aflatoxin requirements would require handlers to remove 100 percent of the failing lot from its bulk or retail packaging. These pistachios would be required to pass through the sorting stages of the handling process in order to remove from the lot those nuts having the characteristics most susceptible to harboring aflatoxin. Witnesses stated that after reworking the lot, the weight of the total accepted and rejected product would be reported to the committee. The acceptable portion of the reworked lot would again be sampled and tested for aflatoxin, as proposed under § 983.38, Aflatoxin levels, with one exception. In the case of a reworked lot, the lot sample size and the test sample size would be doubled from that specified in Table 1 of proposed § 983.38. In addition to being tested for aflatoxin content, the reworked lot would also be sampled and tested for minimum quality.

If, after having been reworked, the lot fails aflatoxin testing for a second time, the lot could be shelled and the kernels reworked, sampled and tested in the manner required for an original lot of pistachio kernels. If the handler decided not to pursue further reworking of the failed lot, those pistachios would be prohibited from entering the stream of commerce for domestic human consumption. That lot would be required to be disposed of, sold for domestic non-human consumption purposes, or exported in compliance with the receiving country's requirements.

Rework procedures proposed for pistachio kernels failing to test negative to aflatoxin would also require a reprocessing of 100 percent of the volume of the failing lot. After reworking, witnesses stated that the total weight of the accepted product and the total weight of the rejected product would be reported to the committee for verification purposes. The reworked lot of kernels would be sampled and reinspected for aflatoxin as specified in the aflatoxin requirements of the order.

According to record evidence, handlers should also be able to rework lots that fail to meet the minimum quality requirements proposed in § 983.39 of the order. As in the case of pistachios failing aflatoxin requirements, handlers would need to remove from packaging and rework 100 percent of the product within that lot. Reworking would be completed by

standard sorting techniques, including mechanical, electronic or manual procedures normally used in the handling of pistachios.

The reworked lot would be sampled and tested as required under proposed § 983.39, "Minimum quality levels." There would be no limit to the number of times a lot could be reworked for minimum quality levels.

### *Testing of Minimal Quantities*

The record supports simplified aflatoxin testing requirements for handlers who handle less than one million pounds of assessed weight of pistachios a year. Additionally, such handlers should qualify for an exemption from minimum quality inspection and certification requirements under certain circumstances. Including these provisions in the proposed order would reduce costs for the smallest handlers, while maintaining the industry objective of having all pistachios used for domestic human consumption meet certain quality (including aflatoxin) levels.

Section 983.41 of the proposed order, Testing of minimal quantities, would provide that aflatoxin testing for handlers of minimal quantities (less than a million pounds per year) could be accomplished in two ways. The first option would allow a handler to have an inspector sample and test all the handler's hulled and dried pistachios for aflatoxin certification prior to further processing. If the pistachios meet the proposed aflatoxin requirement, an aflatoxin certificate would be issued to cover the handler's total inventory. The handler would not then have to comply with the traceability procedures set forth in paragraph (d) of proposed § 983.38.

If the pistachios did not meet the aflatoxin requirements, the handler could subdivide his or her inventory into smaller lots and have each individual lot sampled and tested for aflatoxin. Any lots found to be above the maximum aflatoxin threshold could be reworked and would then be subject to the testing procedures specified in § 983.38.

Witnesses testifying at the hearing stated that small handlers should be allowed to test all of their hulled and dried pistachios before the pistachios are further processed for quality and size. The language of proposed § 983.41(a) has been so clarified.

Witnesses also testified that handlers of minimal quantities could apply to the committee for an exemption from inspection with respect to the minimum quality requirements set forth in