

proposed § 983.39 of the order. If the exemption were granted, the handler would be required to pull and retain (for 90 days) samples from each lot shipped. The samples would be required to be made available for review by the committee.

Witnesses explained that if it was determined that an exempt handler were shipping substandard pistachios, the committee should be able to revoke the handler's exemption. The handler in question would then be subject to minimum quality and size inspections until further determination by the committee. The record indicates that implementing regulations should be effectuated to establish the specific procedures for such exemptions.

Commingling

Witnesses recommended under proposed § 983.42 that after a lot were issued an aflatoxin inspection certificate and minimum quality certificate, it could be commingled with other certified lots and maintain its aflatoxin and minimum quality certifications. However, handlers would be required to comply with paragraph (d) of proposed § 983.38 which provides that each certified lot be identified and traceable from testing through shipment. Thus, if pistachios were transferred between handlers prior to certification, those pistachios would be required to meet the certification provisions of this proposed order prior to being commingled with other certified lots. In the case of the exemption from minimum quality certification for handlers handling less than 1 million pounds, any pistachios transferred from an exempt handler to a non-exempt handler would be subject to minimum quality certification.

Reinspection

Witnesses supported authority for the committee to reject an inspection certificate and request reinspection of a lot whenever it has reason to believe that pistachios may have been damaged or deteriorated while in storage. That lot would be prevented from entering the marketplace for domestic human consumption until a new certification was obtained.

USDA would not allow invalidation of a certificate that has been issued by an inspector. However, there may be circumstances that warrant a requirement that a lot be subject to a second inspection. Thus, proposed § 983.43, Reinspection, is modified to provide that the Department, upon recommendation of the committee, may establish rules and regulations to establish conditions under which

pistachios would be subject to reinspection.

Inspection, Certification and Identification

The record indicates that all pistachios shipped for domestic human consumption should be required to be inspected and certified as meeting the order's quality requirements (including those pertaining to aflatoxin levels). If deemed necessary, lots of pistachios could be required to be identified by appropriate seals, stamps, tags, or other identification affixed to the containers by the handler. All inspections would be at the expense of the handler.

Witnesses testified that not all handlers would have their pistachios tested or inspected at the same point in the handling process. The proposed order is intended to be flexible, as it was explained by witnesses that inspection could be appropriate for certain handlers at one stage in the process while being appropriate for other handlers at another stage. Witnesses stated that differences in inspection timing throughout different handlers' processing systems would not pose a compliance problem as long as lot identity was required and maintained.

Several handler witnesses testified that they have already implemented traceability systems in their plants. Currently, several different systems for tracking lots of pistachios exist in the industry. Record testimony indicates that some handlers identify lots by date and shift. These lots are then traced by written records maintained by the handler's staff. Other handlers mark the containers with a code using crayons or markers. Yet other handlers use bar codes.

The record indicates that current handling practices relating to the tracking of lots may be adequate for compliance purposes under the order. However, if deemed necessary, the USDA, upon recommendation of the committee, could issue rules to specify that handlers be required to affix some standardized type of identification to the containers in a lot.

The record shows that the responsibility for affixing such identification could be given to the handlers without requiring it be done under the direction or supervision of an inspector. This represents a departure from the regulatory text of proposed § 983.44 contained in the Notice of Hearing. Originally, affixing of identification would have been required under the supervision of an inspector. Witnesses explained that giving handlers the responsibility to maintain pistachio identity could result in more

flexibility in handlers' operations and lower costs. Section 983.44 has been modified accordingly.

Substandard Pistachios

Record evidence indicates that the committee should have the authority to establish reporting and disposition requirements as it deems necessary to ensure that pistachios which do not meet the aflatoxin and minimum quality requirements prescribed by § 983.38 and § .39 are not shipped for domestic human consumption. This authority would appear in § 983.45 of the proposed order, and would require approval by the Department through the informal rulemaking process.

Witnesses opined that much of the information the committee and the Department would need to administer the order has been covered by reporting requirements set forth elsewhere in the proposed order. For example, reports would be required when pistachio lots fail testing for the aflatoxin tolerance or fail inspections for minimum quality and size specifications. However, in the course of administering the order, the committee may determine that further reports are necessary. This section gives the committee the authority to establish further reporting requirements, subject to the approval of the Department.

The committee should also be authorized to recommend other rules (aside from those relating to reporting requirements) needed to ensure appropriate disposition of substandard pistachios. For example, handlers could be required to dispose of substandard pistachios under the supervision of the committee staff or an inspector. Again, such rules would need to be approved by USDA.

In the Notice of Hearing, reference to § 983.38 was inadvertently omitted from § 983.45 of the proposed order. This oversight is corrected in this document.

Modification or Suspension of Regulations

According to record evidence, proposed § 983.46 should allow for modification, suspension, or termination of the requirements in §§ 983.38 through 983.45 of the order. These sections of the proposed order relate to aflatoxin and minimum quality requirements.

The record shows that the quality and aflatoxin requirements specified in the proposed order are reasonable and appropriate at the current time. However, if the committee were to determine by reasons of changed industry conditions (such as development of new technology) that certain provisions of the order need to