

Decision are revised by adding the following two paragraphs at the end of the section entitled "Aflatoxin Testing Procedures."

In its exception, the proponents requested two editorial changes in proposed § 983.38: one in paragraph (d)(3) and another in paragraph (d)(4). In paragraph (d)(3), the word "and" between the terms "High Pressure Liquid Chromatograph (HPLC)" and "Vicam Method (Aflatest)" should be replaced with a comma. Proponents state that these are two separate tests and should not be run together to appear as though it is one test, or that both are required. This change has been incorporated into the language of the proposed order.

In paragraph (d)(4) of § 983.38, the word "accreditation" should be changed to "accredited." The next to the last sentence should therefore begin, "The accredited laboratory shall * * *". This recommendation is consistent with the definition of "accredited laboratory" in § 983.1 and has been incorporated into the language of the proposed order.

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended Decision (pertaining to the minimum quality requirements) are revised by adding the following paragraph after the eighth paragraph of the section entitled "Proposed Minimum Quality Levels."

The proponents' exception requested that the definition of the term "loose kernels" in § 983.39(b)(1) be revised by eliminating the word "edible." As previously discussed, a definition of the term "edible" has been deleted from the proposed order as unnecessary. Thus, this change is needed as a conforming change and is being incorporated in the definitions section of the order.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Regulating the Handling of Pistachios Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400) to determine whether the issuance of the annexed order regulating the handling of pistachios grown in California is approved or favored by growers, as defined under the terms of the order, who, during the representative period were engaged in the production of pistachios in the proposed production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2002 through August 31, 2003.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel, Regional Manager, California Marketing Field Office, and Rose Aguayo, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California, 93721; telephone (559) 487-5901.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Dated: December 11, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Regulating the Handling of Pistachios Grown in California ¹

Findings and Determinations

Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of pistachios grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the

handling of pistachios in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in California as defined in the proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative To Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pistachios grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on July 23, 2003, and published in the **Federal Register** on August 4, 2003 (68 FR 45990), as revised herein, shall be and are the terms and provisions of this agreement and order and are set forth in full herein. Sections 983.90 through 983.92 apply only to the proposed marketing agreement and not the proposed order.

Title 7, chapter IX is proposed to be amended by adding part 983 to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

Definitions

Sec.	
983.1	Accredited laboratory.
983.2	Act.
983.3	Affiliation.
983.4	Aflatoxin.
983.5	Aflatoxin inspection certificate.
983.6	Assessed weight.
983.7	Certified pistachios.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.