

§983.152

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may at the handler's discretion analyze Test Sample #2, and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, the lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 are at or below 10 ppb. If the averaged aflatoxin level of Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §983.52. If the averaged aflatoxin level of Test Samples #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3, and the results of Test Samples #1, #2, and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2, and #3 are at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2, and #3 are above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in §983.52. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of pistachios shipped domestically does not exceed the aflatoxin levels as required

in paragraph (a) of this section or as provided under §983.50. Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the production year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes, the handler may request that the laboratory return them to the handler.

[74 FR 56530, Nov. 2, 2009]

§983.152 Failed lots/rework procedure.

(a) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin regulations of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in §983.150, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(b) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin regulations in §983.150, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the

rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150.

[74 FR 56531, Nov. 2, 2009]

§ 983.155 Reinspection.

(a) Any lot of inshell pistachios that is pin-picked, hand-sorted, color-sorted, and/or resized is considered to be "materially changed." Pistachios which are roasted, salted, flavored, air-legged, dyed, color-coated, cleaned, and otherwise subjected to similar processes are not considered to be materially changed.

(b) Each handler who handles pistachios shall cause any lot or portion of a lot initially certified for aflatoxin, and subsequently materially changed, to be reinspected for aflatoxin and certified as a new lot or new lots: *Provided*, That, handlers exempted from order requirements under § 983.92 are exempt from all reinspection requirements.

[70 FR 61226, Oct. 21, 2005, as amended at 71 FR 51987, Sept. 1, 2006; 72 FR 69141, Dec. 7, 2007. Redesignated and amended at 74 FR 56530, Nov. 2, 2009]

§ 983.164 Reports.

(a) *ACP-2, Failed Lot Notification.* Each handler shall notify the Administrative Committee for Pistachios (committee) of all lots that fail to meet the order's maximum aflatoxin requirements by completing section A of this form. Handlers shall furnish this report to the committee no later than 10 days after completion of the aflatoxin test. Each USDA-approved aflatoxin testing laboratory shall complete section C of this report, and forward this report and the failing aflatoxin test results to the committee and to the handler within 10 days of the test failure.

(b) *ACP-3, Failed Lot Disposition and Rework Report.* Each handler who reworks a failing lot of pistachios shall complete this report and shall forward it to the committee no later than 10 days after the rework is completed. If rework is not selected as a remedy, the handler shall submit the form to the

committee office within 10 days of disposition of the lot.

(c) *ACP-4, Federal Marketing Order Exempt Handler Notification.* Each handler who handles less than 5,000 pounds of assessed weight pistachios in a production year shall complete and furnish this report to the committee no later than November 15 of each production year.

(d) *ACP-5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request permission to handle under the minimal quantities provisions (§ 983.53) of the order shall furnish this report to the committee office no later than August 1 of each production year.

(e) *ACP-6, Inter-handler Transfer.* Each handler who transfers uninspected pistachios to another handler within the production area shall complete the ACP-6 and sign Part A. The transferring handler shall forward the original ACP-6 and one copy to the handler who receives the uninspected pistachios. The transferring handler shall furnish one copy of ACP-6 to the committee within 30 days of the transfer. The handler receiving the uninspected pistachios (receiving handler) shall sign Part B of the original ACP-6 and shall file it with the committee within 30 days of the transfer.

(f) *ACP-7 Monthly Report of Inventory/Shipments.* Each handler of pistachios shall file this report with the committee by the 10th day of each month for the previous month's inventory and shipment information.

(g) *ACP-8, Producer Delivery Report.* Each handler of pistachios shall file this report with the committee by the 15th day of December of each production year: *Provided*, That for the 2007-08 production year, handlers must file this report with the committee by April 17, 2008, to report his/her receipts of pistachios during the current production year, the names of the handlers' producing entities, business type, and the following information concerning each producing entity: Federal Tax Identification number; mailing and e-mail address; telephone and fax number; total bearing acres; county of production; and for the current production year, the total receipts of open