

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 983

[Docket No. AO-F&V-983-2; FV02-983-01]

#### **Pistachios Grown in California; Hearing on Proposed Marketing Agreement and Order No. 983**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public hearing on proposed marketing agreement and order.

**SUMMARY:** Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover pistachios grown in California. The proposal was submitted on behalf of the California pistachio industry by the Proponents Committee for a Federal Marketing Order for Pistachios. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. The program would be financed by assessments on pistachio handlers and would be administered by a committee of growers and handlers nominated by the industry and appointed by the Department of Agriculture (USDA).

**DATES:** The hearing will be held in Fresno, California, from July 23 to July 25, 2002. The hearing session on Tuesday, July 23, will begin at 8:00 a.m. and end at 5:00 p.m. The hearing session on Wednesday, July 25, will begin at 8:00 a.m. and end at 4:00 p.m. If an additional hearing session is necessary, the hearing will continue at 8:00 a.m. on Thursday, July 25, 2002.

**ADDRESSES:** The hearing location is: The Fresno Metropolitan Flood Control District, Board of Directors' Chambers,

5469 East Olive Street, Fresno, California, 93727.

#### **FOR FURTHER INFORMATION CONTACT:**

Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259-7988, fax: (435) 259-4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection

with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

This proposal is the result of nearly three years of efforts undertaken by the Proponents Committee (committee), a committee representing producers and handlers of pistachios in California. The committee was established in 2000 as a result of renewed industry interest in a Federal marketing order. An earlier attempt to establish a Federal marketing order in 1996 on behalf of the pistachio industry by the California Pistachio Commission (Commission) and the Western Pistachio Association (Association) was terminated in 2000 due to lack of industry support for certain proposed provisions. The current proposal is different from that which was previously proposed since many controversial issues have either been removed or resolved through more exacting specification in the proposed regulations. The Proponents Committee is independent of the Commission and the Association.

The proponent group contends that the proposed marketing order program would ensure consistency in the quality of California pistachios, thereby increasing consumer demand and confidence in the product, and enhancing producer returns.

Presently, industry quality control practices are limited to voluntary testing for aflatoxin and other quality requirements under a California Pistachio Marketing Agreement (agreement) entered into by a number of pistachio handlers under authority of the California Department of Food and Agriculture. The agreement is limited to issues relating to the blending of artificially opened pistachios with those naturally opened, and the bleaching of pistachios. Aflatoxin testing and

sampling guidelines are only for exports to specified countries.

The proposal for an order has been widely discussed within the California pistachio industry for at least 10 years, including discussions related to the 1996 proposal. None of the recommendations or proposals discussed herein have received approval by the Secretary of Agriculture.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of pistachios produced in the production area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce and foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for pistachios;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (\*) apply only to the proposed marketing agreement.

## List of Subjects in Proposed 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

The marketing agreement and order proposed by the Proponents Committee for a Federal Marketing Order for Pistachios Grown in California would add a new part 983 to read as follows:

## PART 983—PISTACHIOS GROWN IN CALIFORNIA

### Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674

## Definitions

### § 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

### § 983.2 Act.

*Act* means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

### § 983.3 Affiliation.

*Affiliation.* This term normally appears as “affiliate of”, or “affiliated with”, and means a person such as a producer or handler who is: a producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term “control” (including the terms “controlling”, “controlled by”, and “under the common control with”) means the possession, direct or indirect, of the power to direct or cause

the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

#### **§ 983.4 Aflatoxin.**

*Aflatoxins* are a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

#### **§ 983.5 Aflatoxin inspection certificate.**

*Aflatoxin inspection certificate* is a certificate issued by an accredited laboratory or by a USDA laboratory.

#### **§ 983.6 Assessed weight.**

*Assessed weight* means pounds of edible inshell pistachios received for processing by a handler within each production year with the weight computed at 5 percent moisture: *Provided*, That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

#### **§ 983.7 Certified pistachios.**

*Certified pistachios* are those for which aflatoxin inspection and minimum quality certificates have been issued.

#### **§ 983.8 Committee.**

*Committee* means the administrative committee for pistachios established pursuant to § 983.32.

#### **§ 983.9 Confidential data or information.**

*Confidential data or information* submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

#### **§ 983.10 Department or USDA.**

*Department or USDA* means the United States Department of Agriculture.

#### **§ 983.11 Districts.**

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are

produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by a two-thirds vote of the committee, to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

#### **§ 983.12 Domestic shipments.**

*Domestic shipments* means shipments to the fifty states of the United States or to territories of the United States.

#### **§ 983.13 Edible pistachios.**

*Edible pistachios* are those which do not exceed the level of defects under § 983.38 and § 983.39.

#### **§ 983.14 Handle.**

*Handle* means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios; and/or

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce: *Provided*, however, That transportation within the production area between handlers and from the orchard to the processing facility is not handling.

#### **§ 983.15 Handler.**

*Handler* means any person who handles pistachios.

#### **§ 983.16 Inshell pistachios.**

*Inshell pistachios* means pistachios that have a shell that has not been removed.

#### **§ 983.17 Inspector.**

*Inspector* means any inspector authorized by the USDA to inspect pistachios.

#### **§ 983.18 Lot.**

*Lot* means any quantity of pistachios that is submitted for testing purposes under this part.

#### **§ 983.19 Minimum quality requirements.**

*Minimum quality requirements* are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

#### **§ 983.20 Minimum quality certificate.**

*Minimum quality certificate* is a certificate issued by the USDA or Federal/State Inspection Service.

#### **§ 983.21 Part and subpart.**

*Part* means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued thereunder. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

#### **§ 983.22 Person.**

*Person* means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

#### **§ 983.23 Pistachios.**

*Pistachios* means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

#### **§ 983.24 Processing.**

*Processing* means hulling and drying pistachios in preparation for market.

#### **§ 983.25 Producer.**

*Producer* means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

#### **§ 983.26 Production area.**

*Production area* means the State of California.

#### **§ 983.27 Production year.**

*Production year* is synonymous with "fiscal period" and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary.

#### **§ 983.28 Proprietary capacity.**

*Proprietary capacity* means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

#### **§ 983.29 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

**§ 983.30 Shelled pistachios.**

*Shelled pistachios* means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

**§ 983.31 Substandard pistachios.**

*Substandard pistachios* means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

**Administrative Committee****§ 983.32 Establishment and membership.**

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers*. Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers*. Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3.

(c) *Public member*. One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

**§ 983.33 Initial members and nomination of successor members.**

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) *Initial members*. Nominations for initial members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) *Successor producer members*. Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided*, That any qualified

individuals who seek nomination shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all producers who are on record with the committee within the respective districts; the person receiving the highest number of votes shall be the member nominee for that district, and the person receiving the second highest number of votes shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) *Handlers*. Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) *Producers*. Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not

hold concurrent seats as both a producer and handler.

(e) *Member's affiliation*. Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) *Cooperative affiliation*. In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) *Alternate members*. Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) *Selection by Secretary*. Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten members

of the committee and an alternate for each member.

(i) *Acceptance.* Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) *Term of office.* Selected producer members and producer alternate members of the committee shall serve for terms of two years: *Provided* that four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the Commission. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) *Qualifications.* (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer, employee, or agent of a handler.

(3) Any member or alternate member who at the time of selection was employed by or an agent of a person or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(5) The committee, with the approval of the Secretary, may issue rules and regulations covering the qualifications for members or alternate members.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

#### § 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is quorum shall constitute the act of the committee: *Provided*, That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

- (1) Minimum quality levels;
- (2) Aflatoxin levels;
- (3) Inspection programs;
- (4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided*, That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further*, That the public member and the alternate for the public member may be paid reasonable

compensation in addition to necessary expenses.

#### § 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

#### § 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for

examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

#### Marketing Policy

##### § 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the

committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

#### Regulations

##### § 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15.0 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing ("lot samples") in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of the following Tables 1 and 2 ("test samples"). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2.

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less .....	10	3.0	1.0
221–440 .....	15	4.5	1.5
441–1100 .....	20	6.0	2.0
1101–2200 .....	30	9.0	3.0
2201–4400 .....	40	12.0	4.0
4401–11,000 .....	60	18.0	6.0
11,001–22,000 .....	80	24.0	8.0
22,001–150,000 .....	100	30.0	10.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less .....	10	1.5	.5
221–440 .....	15	2.3	.75
441–1100 .....	20	3.0	1.0
1101–2200 .....	30	4.5	1.5
2201–4400 .....	40	6.0	2.0
4401–11,000 .....	60	9.0	3.0
11,001–22,000 .....	80	12.0	4.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION—Continued

Lot weight (lbs.)	Number of incre- mental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
22,001–150,000 .....	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be analyzed and prepared as described in the applicable provisions of the official methods of analysis of the Association of Analytical Communities (AOAC). A portion of the ground composite shall be analyzed chemically for total aflatoxin using High Pressure Liquid Chromatograph (HPLC), Vicam method (Aflatest) or other methods as described in the applicable provisions of Official Methods of Analysis of the AOAC. The aflatoxin level shall be calculated on a kernel weight basis. For inshell tests where shell and kernels are ground together, it shall be assumed the shell accounts for 50% of the lot weight so aflatoxin results shall be doubled.

(4) *Certification of lots “negative” as to aflatoxin.* Lots shall be certified as “negative” on the aflatoxin inspection certificate, if Test Sample #1 has an aflatoxin level at or below 5.0 ppb. If the aflatoxin level of Test Sample #1 is above 5.0 ppb, the accredited laboratory shall analyze Test Sample #2 and results

of Test Samples 1 and 2 shall be averaged. A lot will be certified as negative as to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results are at or below 10.0 ppb. If the averaged results are above 10.0 ppb, Test Sample #3 shall be analyzed and all three test sample results shall be averaged. If all three results average 15.0 ppb or less the lot will be certified as negative as to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate. If any sample analyzed results in an aflatoxin level over 15.0 ppb, the lot shall fail regardless of which test sample number it may be. If the lot fails, the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accredited laboratory shall send a copy of this report to the committee and to the failed lot's owner within 10 working days of failure. The aflatoxin inspection certificate shall certify each lot using a certification form identifying each lot by weight and date. This 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 California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). 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, 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 the laboratory to return them to the handler.

#### § 983.39 Minimum quality levels.

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3:

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permis- sible defects (percent by weight)	
	Inshell	Kernels
<b>EXTERNAL (SHELL) DEFECTS</b>		
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	.....
<b>INTERNAL (KERNEL) DEFECTS</b>		
a. Damage .....	6.0	3.0
Immature kernel (Fills <75%—>50% of the shell)		
Kernel spotting (Affects 1/8 aggregate surface)		
b. Serious damage .....	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay		
(1) Maximum insect damage allowed .....	2.0	0.5
Total external or internal defects allowed .....	9.0	.....
<b>OTHER DEFECTS</b>		
a. Shell pieces and blanks (Fills <50% of the shell) .....	2.0	.....
(1) Maximum blanks allowed .....	1.0	.....
b. Foreign material .....	0.25	0.1
No glass, metal or live insects permitted		

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS—Continued

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
c. Particles and dust .....	0.25	.....
d. Loose kernels .....	6.0	.....
	Minimum permissible size (percent by weight)	
a. Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen .....	5.0	.....

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) “*Loose kernels*” means edible kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) “*External (shell) defects*” means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an  $\frac{18}{1000}$  (.018) inch thick by  $\frac{1}{4}$  (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an  $\frac{18}{1000}$  (.018) inch thick by  $\frac{1}{4}$  (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth ( $\frac{1}{8}$ ) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface or, on dyed nuts, when readily noticeable. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such

damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. “Immature kernels” in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* which is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means  $\frac{1}{16}$ th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces,

blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through  $\frac{5}{64}$  inch round opening.

(v) *Undersized* means inshell pistachios that fall through a  $\frac{30}{64}$ -inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in the following Table 4. These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the



supervision of an inspector or as

approved under an alternative USDA  
recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incre- mental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell test sample (grams)	Weight of kernel test sample (grams)
220 or less .....	10	500	500	100
221–440 .....	15	500	500	100
441–1100 .....	20	600	500	100
1101–2200 .....	30	900	500	100
2201–4400 .....	40	1200	500	100
4401–11,000 .....	60	1800	500	100
11,001–22,000 .....	80	2400	1000	200
22,001–150,000 .....	100	3000	1000	200

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of this part. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for internal kernel analysis. The USDA protocol appears in USDA inspection instruction manual “Pistachios in the Shell, Shipping Point and Market Inspection Instructions,” June 1994; revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at <http://www.ams.usda.gov/fv/fvstand.htm>.

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels as required in paragraph (a)(1) of this section. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years, and are subject to audit by the committee at any time.

#### § 983.40 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the

minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements 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 § 983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. 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.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, 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 § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed 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. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

#### § 983.41 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing one of two following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test all of the hulled and dried pistachios before testing for aflatoxin certification.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test specific lots. Any lots that have less than 15.0 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15.0 ppb may be tested after reworking in the same manner as specified in § 983.40.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exception from minimum quality testing. If the

committee grants an exception, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

#### **§ 983.42 Commingling.**

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

#### **§ 983.43 Reinspection.**

Whenever the committee has reason to believe that pistachios may have been damaged or deteriorated while in storage, the committee may reject the then effective inspection certificate and require the owner of the pistachios to have a reinspection to establish whether or not such pistachios may be shipped for human consumption.

#### **§ 983.44 Inspection, certification and identification.**

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of an inspector. All inspections shall be at the expense of the handler.

#### **§ 983.45 Substandard pistachios.**

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by § 983.39 shall not be shipped for domestic human consumption.

#### **§ 983.46 Modification or suspension of regulations.**

(a) In the event that the committee, at any time, finds that, by reason of changed conditions, the regulations contained in § 983.38 through § 983.45 should be modified or suspended, it shall, by a vote of at least seven members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality regulations (§ 983.38 or § 983.39) should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary

shall modify or suspend such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

#### **Reports, Books and Records**

##### **§ 983.47 Reports.**

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

##### **§ 983.48 Confidential information.**

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

##### **§ 983.49 Records.**

Each handler shall maintain such records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part. With the exception of records required to be retained under § 983.38(d)(5), such records shall be retained for at least 2 years beyond the crop year of their applicability.

##### **§ 983.50 Random verification audits.**

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

##### **§ 983.51 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or which may have been shipped by him.

#### **Expenses and Assessments**

##### **§ 983.52 Expenses.**

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

##### **§ 983.53 Assessments.**

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the pro rata share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment established prior to October 1 of each year if it determines, based on information including crop volume, that the action is necessary, and if the revision does not exceed the assessment limitations specified in this section and the modification is made prior to the date established for payment of the assessment.

##### **§ 983.54 Contributions.**

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

##### **§ 983.55 Delinquent assessments.**

(a) Any handler who fails to file a return or pay any assessment within the time required by the committee shall

pay to the committee a penalty of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. If delinquent for more than 60 days, then the committee can request that USDA stop providing certificates to the delinquent handler. The amount of the assessment may be changed by the Secretary upon recommendation of the committee.

(b) In addition to any other penalty imposed, the committee may require any person who fails to pay any assessment or related charge pursuant to this section to furnish and maintain a surety bond in a form and amount and for a period of time specified by the committee as assurance that all payments to the committee will be made when due.

#### **§ 983.56 Accounting.**

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided*, That any sum paid by a person in excess of his/her pro rata share or the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(iv) To cover necessary expenses of liquidation in the event of termination

of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected;

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements; and

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

#### **Miscellaneous Provisions**

##### **§ 983.57 Compliance.**

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

##### **§ 983.58 Rights of the Secretary.**

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

##### **§ 983.59 Personal liability.**

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member,

employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

##### **§ 983.60 Separability.**

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

##### **§ 983.61 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

##### **§ 983.62 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

##### **§ 983.63 Agent.**

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

##### **§ 983.64 Effective time.**

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

##### **§ 983.65 Suspension or termination.**

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever it finds that such provisions do not tend to effectuate the declared policy of the Act.

##### **§ 983.66 Referendum.**

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of [the effective date of this part] the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds ( $\frac{2}{3}$ ) majority of voting producers, or a two thirds ( $\frac{2}{3}$ ) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

#### **§ 983.67 Procedure upon termination.**

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the

members of said committee and upon said joint trustees.

#### **§ 983.68 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued thereunder,

(b) Release or extinguish any violation of this part or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

#### **§ 983.69 Exemption.**

Any handler may handle pistachios within the production area free of the regulatory and assessment provisions of this part if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

#### **§ 983.70 Relationship with the California Pistachio Commission.**

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

#### **§ 983.90 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

#### **§ 983.91 Additional parties.**

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is

executed by the handler and delivered to the Secretary.

#### **§ 983.92 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pistachios in the same manner as is provided for in this agreement.

Dated: June 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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BILLING CODE 3410-02-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 2002-CE-23-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This proposed AD would require you to repetitively inspect the inboard forward flap bellcranks for cracks or replace bellcranks depending on the amount of usage. This proposed AD is the result of Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. The actions specified by this proposed AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 28, 2002.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-23-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday