

Agricultural Marketing Service, USDA

§ 983.40

(v) *Undersized* means inshell pistachios that fall through a 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 certifi-

cate, 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 Table 4 of this paragraph (e)(1). 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 incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. 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 currently 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. 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 following the production year in which the pistachios were shipped, and are subject to audit by the committee at any time.

[69 FR 17850, Apr. 4, 2004, as amended at 70 FR 40186, July 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, §983.39 was suspended, effective December 10, 2007.

§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

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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 prod-

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uct 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.

EFFECTIVE DATE NOTE: At 72 FR 69141, Dec. 7, 2007, in §983.40, paragraph (a), in paragraph (b), the words “and/or the minimum quality” in the first sentence, the words “either” and “or the minimum quality” in the second sentence, and the words “, 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” in the third sentence, in paragraph (c), the fifth sentence, and paragraph (e) were suspended, effective December 10, 2007.

§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 both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler’s discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in §983.38.