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§ 996.72 Confidential information.

All reports and records furnished or submitted by handlers and importers to USDA which include data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and control of one or more employees of USDA, and, except as provided in § 996.74 or otherwise provided by law, such information shall not be disclosed to any person outside USDA.

§ 996.73 Verification of reports.

For the purpose of checking and verifying reports filed by handlers and importers and the operation of handlers and importers under the provisions of this Part, the officers, employees or duly authorized agents of USDA shall have access to any premises where peanuts may be held and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler or importer and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed by the handler.

§ 996.74 Compliance.

(a) A handler or importer shall be subject to withdrawal of inspection services, for a period of time to be determined by USDA, if the handler or importer:

(1) Acquires farmers stock peanuts without official incoming inspection, pursuant to § 996.30;

(2) Fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts, pursuant to § 996.31, and ships such peanuts for human consumption use;

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(3) Ships failing quality peanuts, pursuant to § 996.31, for human consumption use;

(4) Commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use;

(5) Fails to maintain positive lot identification, pursuant to § 996.40(a), on peanut lots certified for human consumption use;

(6) Fails to maintain and provide access to records, pursuant to § 996.71, on the reconditioning or disposition of peanuts acquired by such handler or importer; or

(7) Otherwise violates any provision of section 1308 of the Act or any provision of this part.

(b) Any peanut lot which fails to meet the Outgoing quality standards specified in § 996.31, and is not reconditioned to meet such standards, or is not disposed to non-human consumption outlets as specified in § 996.50, shall be reported by USDA to the Food and Drug Administration and listed on an Agricultural Marketing Service Web site.

§ 996.75 Effective time.

The provisions of this part, as well as any amendments, shall apply to 2003-04 and subsequent crop year peanuts, to 2002-03 and 2001-02 crop year peanuts not yet inspected, or failing peanuts that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated.

[68 FR 46924, Aug. 7, 2003]

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

Sec.

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999.600 Regulation governing the importation of pistachios.

AUTHORITY: 7 U.S.C. 601-674.

§ 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) *Dates in retail packages* means whole or pitted dates, other than dates prepared or preserved, wrapped or packaged for sale at retail.

(2) *Dates for packaging* means whole or pitted dates in bulk containers which are to be repacked, in whole or part, in the United States as dates in retail packages.

(3) *Bulk container* means any container of dates which, together with the dates therein, weighs more than ten pounds.

(4) *Dates for processing* means any dates for use in a bakery, confectionery, or other product and includes dates coated with a substance materially altering their color.

(5) *Dates prepared or preserved* means dates processed into a confection or other product, dates coated with a substance materially altering their color, or dates prepared for incorporation into a product by chopping, slicing, or other processing which materially alters their form.

(6) *Person* means any individual, partnership, corporation, association, or other business unit.

(7) *USDA inspector* means an inspector of the Specialty Crops Inspection Division, Fruit and Vegetable Program, or any other duly authorized employee of the USDA.

(8) *Inspection certificate* means a written statement or memorandum report issued by a USDA inspector setting forth in addition to appropriate descriptive information the quality and condition of the product inspected, and in the case of imported dates, a statement of meeting or failing, as applicable, the U.S. import requirements under section 8e of the AMA Act of 1937.

(9) *Importation* means release from custody of United States Customs and Border Protection.

(b) *Grade requirements.* (1) Except as provided in paragraph (d) of this section, the importation into the United States of any lot of dates for packaging or dates in retail packages is prohib-

ited unless the dates are wholesome and unadulterated and meet the following grade requirements which are determined to be comparable to those imposed upon domestic dates handled pursuant to Order No. 987, as amended (part 987 of this chapter: The whole or pitted dates in the lot are of one variety, and are of such quality and condition that upon inspection on the basis of a representative sample thereof, with hydration (of the sample) in accordance with good commercial practice or without any hydration, the dates possess a reasonably good color, are reasonably uniform in size, are reasonably free from defects, possess a reasonably good character, and score not less than 80 points when scored in accordance with the scoring system applicable to U.S. Grade B dates, as prescribed in the U.S. Standards for Grades of Dates (§§ 52.1001 through 52.1011 of this chapter): *Provided*, That not more than 25 percent, by weight, of the dates may possess semidry or dry calyx ends except that not more than 5 percent, by weight, of the dates may possess dry calyx ends: *And provided further*, That in determining the grade for pitted dates, the pitted dates shall not be scored as damaged because of the longitudinal slit caused by removing the pit or the mashing resulting therefrom unless the flesh is seriously torn or mangled.

(2) Compliance with the grade requirements shall be determined on the basis of an inspection and certification by a USDA inspector.

(c) *Inspection and certification requirements*—(1) *Inspection.* Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Processed Fruits and Vegetables and Related Products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant. Applications for inspection shall be made at least 10 days in advance and be accompanied by, or there shall be submitted promptly thereafter, either an onboard bill of lading designating the lots to be inspected by USDA inspectors and those to be entered as dates for processing, or a list of such lots and their identifying marks.

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(2) *Certification.* Each lot of dates inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

- (i) The date and place of inspection.
- (ii) The name of the applicant.
- (iii) The Customs entry number pertaining to the lot or shipment covered by the certificate;
- (iv) The variety, quantity, and identifying marks of the lot inspected.
- (v) The statement, if applicable: “Meets U.S. import requirements under section 8e of the AMA Act of 1937”.

(vi) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefor.

(d) *Exemptions.* (1) Notwithstanding any other provisions of this section, any lot of dates for importation which in the aggregate does not exceed 70 pounds and any dates that are so denatured as to render them unfit for human consumption may be imported exempt from the provisions of this section.

(2) The grade, size, quality, and maturity requirements of this section shall not apply to dates which are donated to needy persons, prisoners, or Native Americans on reservations; dates for processing; or dates prepared or preserved, but all such dates shall be subject to the safeguard provisions contained in §999.500.

(3) Dates for packaging or dates in retail packages that fail to meet the grade, size, quality, and maturity requirements of this section may be reclassified as dates for processing for importation, but such dates shall be subject to the safeguard provisions contained in §999.500.

(e) *Importation.* No person may import dates into the United States unless he or she first files with Customs and Border Protection at the port at which the Customs entry is filed, as a condition of each such importation, either an inspection certificate or an executed “Importer’s Exempt Commodity Form” (FV-6).

(f) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of dates, prior to importation, so that such dates may

be made eligible to meet the grade requirements prescribed in paragraph (b) of this section.

(g) *Books and records.* Each person subject to this section shall maintain true and complete records of his transactions with respect to imported dates. Such records and copies of executed forms shall be retained for not less than two years subsequent to the calendar year of acquisition. The Secretary, through his duly authorized representatives, shall have access to any such person’s premises during regular business hours and shall be permitted at any such times to inspect such records and any dates held by such person.

(h) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions on the importation of dates under the Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(i) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to an agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[28 FR 3469, Apr. 10, 1963, as amended at 31 FR 960, Jan. 25, 1966; 33 FR 15986, Oct. 31, 1968; 36 FR 6736, Apr. 8, 1971; 58 FR 69190, Dec. 30, 1993; 74 FR 2808, Jan. 16, 2009; 80 FR 15678, Mar. 25, 2015]

§999.100 Regulation governing imports of walnuts.

(a) *Definitions.* (1) *Walnuts* means all walnuts commonly known as English or Persian walnuts (*Juglans regia*).

(2) *Inshell walnuts* means walnuts, the kernels or edible portions of which are contained in the shell.

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(3) *Shelled walnuts* means the kernels of walnuts after the shells are removed.

(4) *Person* means any individual, partnership, corporation, association, or other business unit.

(5) *USDA Inspector* means any Federal or Federal-State inspector of the Fresh Products Standardization and Inspection Branch of the Fruit and Vegetable Division, Consumer and Marketing Service, United States Department of Agriculture.

(6) *Importation of walnuts* means the release of walnuts from the custody of the United States Customs Service.

(b) *Grade and size regulations.* No person may import walnuts (*Juglans regia*) into the United States unless such walnuts have been inspected and certified by a USDA inspector as meeting the following requirements:

(1) *Inshell walnuts.* All inshell walnuts shall be of a quality equal to or better than the requirements of U.S. No. 2 and "baby" size as prescribed in the United States Standards for Walnuts (*Juglans regia*) in the Shell (§§51.2945 through 51.2966 of this title); or

(2) *Shelled walnuts.* All shelled walnuts shall be of a quality equal to or better than the requirements for U.S. Commercial Grade as prescribed in the United States Standards for Shelled Walnuts (*Juglans regia*) (§§51.2275 through 51.2294 of this title excluding §§51.2278(b), 51.2284 and 51.2285) effective January 25, 1959, except that the minimum size shall be pieces not more than five percent of which will pass through a round opening $\frac{3}{4}$ inch in diameter and no other size requirements shall apply.

(c) *Inspection and certification.* (1) All inspections and certifications required by paragraph (b) of this section shall be made by USDA inspectors in accordance with the regulations governing the inspection and certification of fresh fruits, vegetables, and other products (Part 51 of this title). The cost of inspection and certification shall be borne by the applicant.

(2) Each inspection certificate shall set forth among other things the following:

- (i) The date and place of inspection;
- (ii) The name of the applicant;
- (iii) The name of the importer;

(iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;

(v) The quantity and identifying marks of the container; and

(vi) The statement, if applicable, "Meets U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937".

(3) Whenever walnuts are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request.

(4) Inspection must be completed prior to the importation of walnuts. To avoid delay the applicant should make advance arrangements with the USDA inspection office.

(d) *Reconditioning prior to importation.* Nothing contained in this section shall be deemed to preclude reconditioning walnuts prior to importation, in order that such walnuts may be made eligible to meet the grade and size regulations prescribed in paragraph (b) of this section.

(e)(1) *Minimum quantity.* Notwithstanding any other provision of this section, the importation of any lot of walnuts which does not exceed, in net weight, 60 pounds of shelled walnuts or 115 pounds of inshell walnuts shall be exempt from the requirements of this section.

(2) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not apply to walnuts which are: green walnuts (so immature that they cannot be used for drying and sale as dried walnuts); walnuts used in non-competitive outlets such as use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture, but such walnuts shall be subject to the safeguard provisions contained in §999.500.

(f) *Other import requirements.* The provisions of this section do not supersede

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any restrictions or prohibitions on walnuts under the Federal Plant Quarantine Act of 1912, or any other applicable laws or regulations of city, county, State, or Federal Agencies including the Federal Food, Drug and Cosmetic Act.

(g) *Compliance.* Any person violating any of the provisions of this regulation is subject to a forfeiture in the amount prescribed in section 608a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 608c(14) of said act, or to both such forfeiture and penalty. False representations in any matter within the jurisdiction of any agency of the United States, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[29 FR 230, Jan. 9, 1964, as amended at 40 FR 29263, July 11, 1975; 41 FR 2075, Jan. 14, 1976; 42 FR 35146, July 8, 1977; 58 FR 69190, Dec. 30, 1993; 74 FR 2809, Jan. 16, 2009]

§ 999.200 Regulation governing the importation of prunes.

(a) *Definitions.* (1) *Prunes* means and includes all sun-dried or artificially dehydrated plums, of any type of variety, produced from plums, except: Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver plums; (ii) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packing, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes", but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation; and (iii) brine dried prunes that have been impregnated with brine or salt

during the dehydration process to the extent that they have lost their form and character as prunes, and cannot be reconstituted to permit economic use of the individual fruits as prunes, and are imported under International Harmonized Tariff Schedule No. 0813.20.1000.

(2) *Pitted prunes* means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(3) *Macerated prunes* means dried prunes with the pit removed that are characterized by a flattened appearance with slightly more skin break where the pit has been removed than with pitted prunes.

(4) *Standard prunes* means any lot of prunes meeting the grade and size requirements prescribed in paragraph (b)(1) of this section.

(5) *Standard pitted prunes* means any lot of pitted prunes meeting the grade requirements prescribed in paragraphs (b)(2) and (b)(3) of this section.

(6) *Standard pitted macerated prunes* means any lot of pitted macerated prunes meeting the grade requirements in paragraphs (b)(2) and (b)(4) of this section.

(7) *Manufacturing grade substandard prunes* means any lot of prunes which meets the grade requirements prescribed in paragraph (b)(5) of this section but fails to meet the requirements for standard prunes, standard pitted prunes and standard pitted macerated prunes.

(8) *Size* means the number of prunes contained in a pound.

(9) *Person* means any individual, partnership, corporation, association, or other business unit.

(10) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

(11) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, or any other duly authorized employee of the USDA.

(12) *Importation* means release from custody of the U.S. Bureau of Customs.

(13) *Undersized prunes* means those prunes that pass freely through a round opening 23/32 of an inch in diameter.

(b) *Grade and size requirements.* (1) Except as provided in paragraph (b)(5) or paragraph (d) of this section, no person may import any lot of prunes into the United States unless the prunes are inspected and an inspection certificate issued with respect thereto, and the lot meets the applicable grade requirements specified in exhibit A of this section and the average count (i.e., number) of the prunes in such lot is 100 or less per pound. In determining whether any lot conforms to the size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of smallest prunes may not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points.

(2) No person may import any lot of pitted prunes or pitted macerated prunes for human consumption as pitted or pitted macerated prunes unless the lot meets the applicable minimum grade requirements set forth in § 999.200 (exhibit A), except that skin or flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements. Pitted and pitted macerated prunes shall not be subject to size and undersized requirements.

(3) No person may import any lot of pitted prunes for human consumption as pitted prunes unless the lot does not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer.

(4) No person may import any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the lot does not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

(5) Any person may import any lot of prunes, except any lot containing undersized prunes, pitted prunes or pitted macerated prunes, into the United

States for use in human consumption outlets as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption if the prunes are inspected and an inspection certificate issued with respect thereto, and each lot meets the grade requirements set forth in paragraphs (1), (2), and (3) of exhibit A of this section, and the importer first files as a condition of such importation an executed Form FV-6—'Importer's Exempt Commodity Form.'

(c) *Inspection and certification requirements*—(1) *Inspection.* Inspection shall be performed by a USDA inspector in accordance with the regulations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant.

(2) *Certification.* Each lot of prunes inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

- (i) The date and place of inspection.
- (ii) The name of the applicant.
- (iii) The Customs entry number pertaining to the lot or shipment covered by the certificate;
- (iv) The quantity and identifying marks of the lot inspected.
- (v) The statement, as applicable: "Meets U.S. import requirements for standard prunes, standard pitted and standard pitted macerated prunes under section 8e of the AMA Act of 1937"; "Meets U.S. import requirements for manufacturing grade substandard prunes under section 8e of the AMA Act of 1937"; or "Fails to meet U.S. import requirements for prunes under section 8e of the AMA Act of 1937".
- (vi) If the lot fails to meet the import requirements, a statement of the reason therefor.

(d) *Exemptions.* Notwithstanding any other provisions of this section, the importation of any lot of prunes which in the aggregate does not exceed 150 pounds, net weight, and any prunes that are so denatured as to render them unfit for human consumption

shall be exempt from the requirements of this section.

(e) *Additional requirements*—(1) *General*. Prior to importation of any prunes, the person importing such prunes shall file an inspection certificate with the Collector of Customs at the port at which the customs entry is filed. In addition, if such prunes are manufacturing grade substandard prunes, such person shall also file with the Collector of Customs an executed Form FV-6—'Importer's Exempt Commodity Form.' Promptly after such filing, such person shall transmit a copy of this form to the Fruit and Vegetable Division. No person may import, sell, or use any manufacturing grade substandard prunes other than for use as set forth in paragraph (b)(5) of this section. Each person importing manufacturing grade substandard prunes shall obtain from each purchaser, no later than the time of delivery to such purchaser, and file with the Fruit and Vegetable Division not later than the 5th day of the month following the month in which the prunes were delivered, an executed Form FV-6—'Importer's Exempt Commodity Form.' One copy of this executed form shall be retained by the importer and one copy shall be retained by the purchaser.

(2) *Manufacturing Grade Substandard Prune—sale by other than importer*. Each wholesaler or other reseller of manufacturing grade substandard prunes should, for his or her protection, obtain from each purchaser and hold in his or her files an executed Form FV-6—'Importer's Exempt Commodity Form' covering each sale during the calendar year.

(f) *Reconditioning*. Nothing contained in this section shall preclude the reconditioning of failing lots of prunes, prior to importation, so that such prunes may be made eligible to meet the requirements prescribed pursuant to paragraphs (b)(1) through (5), as applicable, of this section.

(g) *Books and records*. Each person subject to this section shall maintain true and complete records of his transactions with respect to imported prunes. Such records and copies of executed forms shall be retained for not less than 2 years subsequent to the calendar year of acquisition. The Sec-

retary, through his duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted at any such times to inspect such records and any prunes held by such person.

(h) *Other restrictions*. The provisions of this section do not supersede any restrictions or prohibitions on the importation of prunes under the Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(i) *Compliance*. Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to an agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

EXHIBIT A

GRADE REQUIREMENTS

A. *Defects*. Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms*. (1) *Off-color* means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) *Inferior meat condition* means flesh which is fibrous, woody, or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) *End cracks* means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch ($\frac{3}{8}$ ") but not more than one-half of one inch ($\frac{1}{2}$ ") in length.

(4) *Fermentation* means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) *Skin or flesh damage* means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch ($\frac{3}{8}$ " in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of the prunes;

(c) Any cracks, splits, or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) *Scab* means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch ($\frac{3}{8}$ " in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch ($\frac{3}{4}$ " in diameter.

(7) *Burned* means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) *Mold* means a characteristic fungus growth and is self-explanatory.

(9) *Imbedded dirt* means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot readily be removed in washing the fruit.

(10) *Insect infestation* means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowances for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, brown rot, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%), and, within such tolerance, brown rot shall not exceed three percent (3%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, in-

sect infestation, and decay shall not exceed eight percent (8%).

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed fifteen percent (15%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

[36 FR 18782, Sept. 22, 1971, as amended at 47 FR 47230, Oct. 25, 1982; 57 FR 56245, Nov. 27, 1992; 59 FR 38113, July 27, 1994; 60 FR 57910, Nov. 24, 1995; 74 FR 2809, Jan. 16, 2009]

EFFECTIVE DATE NOTE: At 74 FR 2809, Jan. 16, 2009, §999.200 was suspended indefinitely.

§ 999.300 Regulation governing importation of raisins.

(a) *Definitions.* For purposes of this section:

(1) *Raisins* means grapes from which a part of the natural moisture has been removed.

(2) *Varietal type* means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, Other Seedless raisins, Golden Seedless raisins, and Other Seedless-Sulfured raisins.

(3) *Thompson Seedless Raisins* includes those raisins commonly referred to in international trade as Sultana raisins and means raisins made from Thompson Seedless (Sultana) grapes and from grapes with characteristics similar to Thompson Seedless (Sultanina) grapes.

(4) *Person* means any individual, partnership, corporation, association, or other business unit.

(5) *USDA inspector* means an inspector of the Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, or any

other duly authorized employee of the U.S. Department of Agriculture.

(6) *Importation of raisins* means the release of raisins from custody of the U.S. Customs and Border Protection.

(b) *Grade and size requirements.* The importation of raisins into the United States is prohibited unless the raisins are inspected and certified as provided in this section. Except as provided in paragraph (e)(2) of this section, no person may import raisins into the United States unless such raisins have been inspected and certified by a USDA inspector as to whether or not the raisins are of a varietal type, and if a varietal type, as at least meeting the following applicable grade and size requirements, which requirements are the same as those imposed upon domestic raisins handled pursuant to Order No. 989, as amended (part 989 of this chapter):

(1) With respect to Thompson Seedless and Other Seedless-Sulfured raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841 through 52.1858 of this title): *Provided*, That, at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem and undeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors;

(2) With respect to Muscat raisins—the requirements of U.S. Grade C as defined in said standards;

(3) With respect to Layer Muscat raisins—the requirements of U.S. Grade B as defined for “Layer or Cluster Raisins with Seeds” in said standards, except for the provisions therein relating to moisture content;

(4) With respect to Currant raisins—the requirements of U.S. Grade B as defined in said standards;

(5) With respect to Monukka and Other Seedless raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

(6) With respect to Golden Seedless raisins—the requirements prescribed in paragraph (b)(1) of this section for Thompson Seedless raisins and the color requirements for “colored” as defined in said standards.

(c) *Inspection and certification requirements.* (1) All inspections and certifications required by paragraph (b) of this section shall be made by USDA inspectors in accordance with the regulations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (part 52 of this title). The cost of each such inspection and certification shall be borne by the applicant.

(2) Each lot of raisins inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

- (i) The date and place of inspection;
- (ii) The name of the applicant;
- (iii) The name of the importer;
- (iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;
- (v) The quantity and identifying marks of the lot inspected;
- (vi) The statement, as applicable, “Meets U.S. import requirements under section 8e of the AMA Act of 1937” or “Fails to meet U.S. import requirements under section 8e of the AMA Act of 1937”; and
- (vii) If the lot fails to meet the import requirements, a statement of the reasons therefor.

(3) Whenever raisins are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request. To avoid delay in scheduling the inspection the applicant should make advance arrangements with the USDA inspection office.

(d) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of raisins prior to importation of raisins in order that such raisins may be made eligible to

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meet the applicable grade and size requirements in paragraph (b) of this section.

(e) *Exemptions.* (1) Notwithstanding any other provision of this section, any lot of raisins which in the aggregate does not exceed 100 pounds, net weight, may be imported without regard to the restrictions of this section.

(2) Any lot of raisins which does not meet the applicable grade and size requirements of paragraph (b) of this section may be imported for use in the production of alcohol, syrup for industrial use, or any lot of raisins which does not meet such requirements with respect to mechanical damage or sugaring may be imported for use in the production of raisin paste, but all such raisins shall be subject to the safeguard provisions contained in § 999.500.

(f) *Books and records.* Each person subject to this section shall maintain true and complete records of his transactions with respect to imported raisins. Such records shall be retained for not less than 2 years subsequent to the calendar year of importation. The Secretary, through his duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted at any such time to inspect such records and any imported raisins held by such person.

(g) *Other restriction.* The provisions of this section do not supersede any restrictions or prohibitions on the importation of raisins under the Federal Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, or any other applicable laws or regulations, or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(h) *Compliance.* Any person violating any of the provisions of this regulation is subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representation to an agency of the United States in any matter within its jurisdiction, knowing

it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[37 FR 5282, Mar. 14, 1972, as amended at 37 FR 13635, July 12, 1972; 37 FR 23820, Nov. 9, 1972; 41 FR 52646, Dec. 1, 1976; 43 FR 47972, Oct. 18, 1978; 43 FR 57863, Dec. 11, 1978; 45 FR 65513, Oct. 3, 1980; 47 FR 51731, Nov. 17, 1982; 50 FR 45808, Nov. 4, 1985; 53 FR 34715, Sept. 8, 1988; 67 FR 57505, Sept. 11, 2002; 74 FR 2809, Jan. 16, 2009; 80 FR 15678, Mar. 25, 2015]

§ 999.400 Regulation governing the importation of filberts.

(a) *Definitions.* (1) *Filberts* means filberts or hazelnuts.

(2) *Inshell filberts* means filberts, the kernels or edible portions of which are contained in the shell.

(3) *Shelled filberts* means the kernels of filberts after the shells are removed.

(4) *Person* means any individual, partnership, corporation, association, or other business unit.

(5) *USDA inspector* means a Federal or Federal-State inspector, Food Safety and Quality Service, United States Department of Agriculture, or any other duly authorized employee of the USDA.

(6) *Importation* means release from custody of the United States Bureau of Customs.

(b) *Grade and size requirements.* Except as provided in paragraph (d) of this section, no person shall import into the United States any lot of filberts unless the filberts meet the following requirements, which are identical to those for filberts grown in Oregon and Washington and handled pursuant to Order No. 982, as amended (7 CFR part 982):

(1) *Inshell filberts.* All inshell filberts shall be of a quality equal to or better than the requirements of U.S. No. 1 grade and medium size as defined in the U.S. Standards for Filberts in the Shell (7 CFR part 51), except that the tolerance for insect injury shall be two percent. With this modification, the U.S. No. 1 grade, medium size is identical to the Oregon No. 1 grade, medium size (as defined in the Oregon Grade Standards Filberts in Shell) and prescribed for inshell filberts under Order No. 982, as amended.

(2) *Shelled filberts.* All shelled filberts shall be of a quality equal to or better than the requirements prescribed in exhibit A of this section.

(c) *Inspection and certification requirements*—(1) *General*. Compliance with the grade and size requirements of paragraph (b) of this section shall be determined on the basis of an inspection and certification by a USDA inspector.

(2) *Inspection*. Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Fresh Fruits and Vegetables and Related Products (7 CFR part 51). The cost of each such inspection and related certification shall be borne by the applicant. Whenever filberts are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request. Inspection must be completed prior to the importation of filberts. The applicant should make advance arrangements with the USDA inspection office to avoid delay in scheduling the inspection.

(3) *Certification*. Each lot of filberts inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

- (i) The date and place of inspection.
- (ii) The name of the applicant.
- (iii) The name of the importer.
- (iv) The Customs entry number pertaining to the lot or shipment covered by the certificate;
- (v) The quantity, and identifying marks of the lot inspected.
- (vi) The statement, if applicable: “Meets U.S. import requirements under section 8e of the AMA Act of 1937”.
- (vii) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefor.

(d) *Exemptions*. Notwithstanding any other provisions of this section, the importation of any lot of filberts which does not exceed 115 pounds in net weight shall be exempt from the requirements of this section.

(e) *Reconditioning prior to importation*. Nothing contained in this section shall be deemed to preclude reconditioning

filberts prior to importation, in order that such filberts may be made eligible to meet the applicable grade and size regulations prescribed in paragraph (b) of this section.

(f) *Other restrictions*. The provisions of this section do not supersede the Federal Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State or Federal agencies.

(g) *Compliance*. Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to any agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

EXHIBIT A

GRADE REQUIREMENTS FOR SHELLED FILBERTS

Filbert kernels or portions of filbert kernels shall meet the following requirements:

- (1) Well dried and clean;
- (2) Free from foreign material, mold, rancidity, decay or insect injury; and
- (3) Free from serious damage caused by serious shriveling, or other means.

TOLERANCES

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

- (1) For Foreign Material: 0.02 of one percent, for foreign material.
- (2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided*, That not more than one percent shall be for mold, rancidity, or insect injury.

DEFINITIONS

(1) *Well dried* means that the kernels are firm and crisp, not containing more than 6 percent moisture.

(2) *Clean* means practically free from plainly visible adhering dirt or other foreign material.

(3) *Foreign material* means any substance other than the filbert kernels, or portions of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) *Serious damage* means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) *Serious shriveling* means when the kernel is seriously shrunken, wrinkled and tough.

(ii) *Mold* means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) *Rancidity* means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) *Decay* means that any portion of the kernel is decomposed.

(v) *Insect injury* means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

[42 FR 64899, Dec. 29, 1977, as amended at 45 FR 63482, Sept. 25, 1980; 47 FR 12612, Mar. 24, 1982; 48 FR 34015, July 27, 1983; 74 FR 2809, Jan. 16, 2009]

§ 999.500 Safeguard procedures for walnuts, dates, pistachios, and raisins exempt from grade, size, quality, and maturity requirements.

(a) Each person who imports or receives any of the commodities listed in paragraphs (a)(1) through (4) of this section shall file (electronically or paper) an "Importer's Exempt Commodity Form" (FV-6) with the Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS,

USDA. A "person who imports" may include a customs broker, acting as an importer's representative (hereinafter referred to as "importer"). A copy of the form (electronic or paper) shall be provided to the U.S. Customs and Border Protection. If a paper form is used, a copy of the form shall accompany the lot to the exempt outlet specified on the form. Any lot of any commodity offered for inspection or aflatoxin testing and, all or a portion thereof, subsequently imported as exempt under this provision shall also be reported on an FV-6. Such form (electronic or paper) shall be provided to the Marketing Order and Agreement Division in accordance with paragraph (d) of this section. The applicable commodities are:

(1) Dates which are donated to needy persons, prisoners or Native Americans on reservations; dates for processing; dates prepared or preserved; or dates for packaging or dates in retail packages that fail to meet grade, size, quality, and maturity requirements and are reclassified as dates for processing;

(2) Walnuts which are: Green walnuts (so immature that they cannot be used for drying and sale as dried walnuts); walnuts used in non-competitive outlets such as use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture;

(3) Substandard pistachios which are for non-human consumption purposes; or

(4) Raisins which do not meet grade and size requirements and are used in the production of alcohol, or syrup for industrial use, or which do not meet grade requirements with respect to mechanical damage or sugaring and are used in the production of raisin paste.

(b) *Certification of exempt use.* (1) Each importer of an exempt commodity as specified in paragraph (a) of this section shall certify on the FV-6 form (electronic or paper) as to the intended exempt outlet (*e.g.*, processing, charity, livestock feed). If certification is made using a paper FV-6 form, the importer shall provide a handwritten signature on the form.

(2) Each receiver of an exempt commodity as specified in paragraph (a) of this section shall also receive a copy of

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the associated FV-6 form (electronic or paper) filed by the importer. Within two days of receipt of the exempt lot, the receiver shall certify on the form (electronic or paper) that such lot has been received and will be utilized in the exempt outlet as certified by the importer. If certification is made using a paper FV-6 form, the receiver shall provide a handwritten signature on the form.

(c) It is the responsibility of the importer to notify the Marketing Order and Agreement Division of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise disposed of. In such cases, a second FV-6 form must be filed by the importer, providing sufficient information to determine ultimate disposition of the exempt lot, and such disposition shall be so certified by the final receiver.

(d) All FV-6 forms and other correspondence regarding entry of exempt commodities must be submitted electronically, by mail, or by fax to the Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; email ComplianceInfo@ams.usda.gov; or fax (202) 720-5698.

[80 FR 15678, Mar. 25, 2015]

§ 999.600 Regulation governing the importation of pistachios.

(a) *Definitions.* As used in this part:

(1) *Aflatoxin* is one of 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.

(2) *Aflatoxin inspection certificate* means a certificate issued by a USDA or USDA-accredited laboratory.

(3) *Certified lots of pistachios* are those for which aflatoxin inspection certificates have been issued.

(4) *Customs* means the U.S. Customs and Border Protection.

(5) *Importation of pistachios* means the release of pistachios from the custody of U.S. Customs and Border Protection.

(6) *Importer* means a person who engages in the importation of pistachios into the United States.

(7) *Inshell pistachios* means pistachios that have shells that have not been removed.

(8) *Inspection Service* means the Federal Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, or the Federal-State Inspection Programs.

(9) *Inspector* means any inspector authorized by USDA to draw and prepare pistachio samples.

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

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

(12) *Pistachio* means the nut of the pistachio tree, *Pistachia vera*, whether inshell or shelled.

(13) *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.

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

(15) *Substandard pistachios* means pistachios, inshell or shelled, that do not comply with the aflatoxin regulations of this section.

(16) *USDA* means the United States Department of Agriculture, including any officer, employee, service, program, or branch of the Department of Agriculture, or any other person acting as the Secretary's agent or representative in connection with any provisions of this section.

(17) *USDA laboratory* means laboratories of the Science and Technology Programs, Agricultural Marketing Service, USDA, that perform chemical analyses of pistachios for aflatoxin content.

(18) *USDA-accredited laboratory* means a laboratory that has been approved or accredited by the U.S. Department of Agriculture to perform chemical analyses of pistachios for aflatoxin content.

(b) *Importation Requirements.* The importation of any lot of pistachios for

human consumption is prohibited unless it meets the requirements contained in this section, which are determined to be the same as or comparable to those imposed upon domestic pistachios handled pursuant to Order No. 983, as amended (part 983 of this chapter).

(c) *Maximum aflatoxin tolerance.* No importer shall ship for domestic human consumption lots of pistachios that exceed an aflatoxin level of 15 ppb. Compliance with the aflatoxin requirements of this section shall be determined upon the basis of sampling by a USDA-authorized inspector and testing by a USDA or USDA-accredited laboratory. All shipments must be covered by an aflatoxin inspection certificate issued by the laboratory. Testing and certification must be completed prior to the importation of pistachios.

(d) *Sampling.*

(1) Prior to, or upon, arrival of a pistachio lot at a port of entry, the importer shall provide a copy of the Customs entry documentation for the pistachio lot or lots to the Inspection Service office that will draw and prepare samples of the pistachio shipment. More than one lot may be listed on one entry document. The documentation shall include: The Customs entry number; the container number(s) or other identification of the lot(s); the weight of the pistachios in each lot being imported, the location where the lot will be made available for sampling; and a contact name or telephone number at the testing location. The Inspection Service shall sign, stamp, and return the entry document to the importer. The importer shall provide a copy of the relevant entry documentation and such other identifying information as may be requested for each pistachio lot to the inspector at the time samples are drawn and prepared.

(2) All sampling for aflatoxin testing shall be performed by USDA-authorized inspectors in accordance with USDA rules and regulations governing the inspection and certification of fresh fruits, vegetables, and other products

(7 CFR part 51). The cost of each such sampling and related certification shall be borne by the applicant. Whenever pistachios are offered for sampling and testing, the applicant shall furnish any labor and pay any costs incurred for storing, moving, and opening containers as may be necessary for proper sampling and testing. The applicant should make advance arrangements with the Inspection Service to avoid delay in scheduling sampling. Importers may make arrangements for required sampling by contacting the Inspection Service office closest to where the pistachios will be made available for sampling. For questions regarding inspection services, a list of Federal or Federal-State Inspection Program offices, or for further assistance, importers may contact: Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 1536-S, Washington, DC, 20250; Telephone: (202) 720-5870; Fax: (202) 720-0393.

(3) Lot samples shall be drawn from each lot of pistachios designated for aflatoxin testing, and individual test samples shall be prepared by, or under the supervision of, an inspector. Each sample shall be drawn and prepared in accordance with the sample size requirements outlined in Tables 1 and 2 below. The gross weight of the inshell lot and test samples for aflatoxin testing and the minimum number of incremental samples required are shown in Table 1. The gross weight of the kernel lot and test samples for aflatoxin testing and the minimum number of incremental samples required is shown in Table 2. If more than one test sample is necessary, the test samples shall be designated by the inspector as Test Sample #1 and Test Sample #2. Each sample shall be placed in a suitable container, with the lot number clearly identified, and the importer shall submit it, along with a copy of the customs entry documentation, to a USDA or USDA-accredited laboratory. The importer shall assume all costs for shipping samples to the laboratory.

TABLE 1—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	2.0	2.0
221–440	15	3.0	3.0
441–1,100	20	4.0	4.0
1,101–2,200	30	6.0	6.0
2,201–4,400	40	8.0	8.0
4,401–11,000	60	12.0	6.0
11,001–22,000	80	16.0	8.0
22,001–150,000	100	20.0	10.0

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

Lot weight (lbs.)	Minimum number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.0	1.0
221–440	15	1.5	1.5
441–1,100	20	2.0	2.0
1,101–2,200	30	3.0	3.0
2,201–4,400	40	4.0	4.0
4,401–11,000	60	6.0	3.0
11,001–22,000	80	8.0	4.0
22,001–150,000	100	10.0	5.0

(e) *Aflatoxin testing.* Importers may make arrangements for required chemical analysis for aflatoxin content at the nearest USDA or USDA-accredited laboratory. For further information concerning chemical analysis and a list of laboratories authorized to conduct such analysis contact: Science and Technology Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0270, Washington, DC 20250-0270; Telephone: (202) 720-5231; Fax: (202) 720-6496.

(1) Aflatoxin test samples shall be received and logged by a USDA or USDA-accredited laboratory, and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatography (HPLC) or the AOAC-approved immunoaffinity column with direct fluorometry method. The aflatoxin level shall be calculated on a kernel weight basis.

(2) Lots that require a single test sample will be certified as “negative” on the aflatoxin inspection certificate if the sample has an aflatoxin level at or below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV-249) as described in paragraph (h)(1) of this section.

(3) Lots that require two test samples will be certified as “negative” on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV-249). If the aflatoxin level of Test Sample #1 is above 10 ppb and at or below 20 ppb, the laboratory may, at the importer’s discretion, analyze Test Sample #2 and average the test results of Test Samples #1 and #2. Alternately, the importer may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after reworking. If the importer directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged result of Test Samples #1 and #2 is at or below 15 ppb. If the average aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails and the laboratory shall fill out an *Imported Pistachios—Failed Lot Notification* report (Form FV-249).

(4) If an importer does not elect to use Test Sample #2 for certification

purposes, the importer may request that the laboratory return the sample to the importer.

(f) *Certification.* Each lot of pistachios sampled and tested in accordance with paragraphs (d) and (e) of this section shall be covered by an aflatoxin inspection certificate completed by the laboratory. The certification expires for the lot or remainder of the lot after 12 months. Each such certificate shall set forth the following:

- (1) The date and place of sampling and testing.
- (2) The name of the applicant.
- (3) The Customs entry number pertaining to the lot or shipment covered by the certificate.
- (4) The quantity and identifying marks of the lot tested.
- (5) The aflatoxin level of the lot, stated on a kernel weight basis.
- (6) The statement, if applicable: "Meets U.S. import requirements under section 8e of the AMA Act of 1937."
- (7) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefore.

(g) *Failed lots/rework procedure.* Any lot or portion thereof that fails to meet the import requirements prior to or after reconditioning may be exported, sold for non-human consumption, or disposed of under the supervision of Customs and, if necessary for verification purposes, the Federal or Federal-State Inspection Programs, with the costs of certifying the disposal of such lot paid by the importer.

(1) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent 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 by the importer to Customs and USDA on an *Imported Pistachios—Rework and Failed Lot Disposition* report (Form FV-251) as de-

scribed in paragraph (h)(2) of this section. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section, 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 exported, used for non-human consumption, or otherwise disposed of.

(2) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent 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 Customs and USDA on an *Imported Pistachios—Rework and Failed Lot Disposition* report (Form FV-251). The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section.

(3) *Failed lot reporting.* If a lot fails to meet the aflatoxin requirements of this part, the testing laboratory shall complete an *Imported Pistachios—Failed Lot Notification* report (Form FV-249) as described in paragraph (h)(1) of this section, and shall submit it to Customs, the importer, and USDA within 10 working days of the test failure. This form must be completed and submitted each time a lot fails aflatoxin testing.

(h) *Reports and Recordkeeping.*

(1) *Form FV-249 Imported Pistachios—Failed Lot Notification.* Each USDA or USDA-accredited laboratory shall notify the importer; Customs; and the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; of all lots that fail to meet the maximum aflatoxin requirements by completing this form and submitting it within 10 days of failed aflatoxin testing.

(2) *Form FV-251 Imported Pistachios—Rework and Failed Lot Disposition.* Each importer who reworks a failing lot of pistachios shall complete this report and shall forward it to Customs and the Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, no later than 10 days after the rework is completed. If rework is not selected as a remedy, the importer shall complete and submit this form within 10 days of alternate disposition of the lot.

(i) *Exemptions.* Any importer may import pistachios free of the requirements of this section if such importer imports a quantity not exceeding a total of 5,000 dried pounds between September 1 and August 31 of each year. Substandard pistachios imported for use in non-human consumption outlets shall be subject to the safeguard provisions contained in § 999.500.

(j) *Reconditioning prior to importation.* Nothing contained in this section shall be deemed to preclude reconditioning pistachios prior to importation, in order that such pistachios may be made eligible to meet the applicable aflatoxin regulations prescribed in paragraphs (c) through (f) of this section.

(k) *Comingling.* Certified lots of pistachios may be comingled with other certified lots, but the comingling of certified lots and uncertified lots shall

cause the loss of certification for the comingled lots.

(l) *Retesting.* Whenever USDA has reason to believe that imported pistachios may have been damaged or deteriorated while in storage, USDA may reject the then effective inspection certificate and may require the owner of the pistachios to have them retested to establish whether or not such pistachios may be shipped for human consumption.

(m) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of the said Act, or to both such forfeiture and penalty. False representation to any agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001, which provides for a fine or imprisonments or both.

(n) *Other import requirements.* The provisions of this section do not supersede any restrictions or prohibitions on pistachios under the Federal Plant Quarantine Act of 1912, or any other applicable laws or regulations of city, county, State, or Federal Agencies including the Federal Food, Drug and Cosmetic Act.

[77 FR 51691, Aug. 27, 2012]