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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. Number AMS-FV-11-0046]

United States Standards for Grades of Almonds in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule revises the United States Standards for Grades of Almonds in the Shell. These standards are issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is revising the standards by changing the determination of internal defects from count to weight. These revisions will align the inspection procedures for incoming inspections (based on the marketing order) and outgoing inspections (based on the standards). These changes will promote greater uniformity and will provide consistency with current marketing practices.

DATES: Effective [Insert date 30 days after date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Lindsay Mitchell, Standardization Branch, Specialty Crops Inspection (SCI) Division, (540) 361-1127 or 1150. The United States Standards for Almonds in the Shell are available through the SCI Division website at: http://www.ams.usda.gov/freshinspection.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of the action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The final rule will revise the United States Standards for Grades of Almonds in the Shell (standards) that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C 1621–1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers have been defined as those having annual receipts of less than $750,000. There are approximately 53 handlers of almonds that would potentially be affected by the changes set forth in this rule and approximately 6,500 producers of almonds. Information provided by the Almond Board of California (ABC) indicates that approximately 36 percent of the handlers would be considered small agricultural service firms. According to data reported by the National Agricultural Statistics Service (NASS), the two-year average crop value for 2008–09 and 2009–10 was $2.566 billion. Dividing that average by 6,500 producers yields average estimated producer revenues of $394,769, which suggests that the majority of almond producers would be considered small entities according to the SBA's definition.

The California almond bearing acreage increased approximately 9 percent between 2008 and 2010, from 680,000 to 740,000 acres. Approximately 1.643 billion pounds (shelled basis) of

almonds were produced during the 2009–10 season. More than two thirds of California's almond crop is exported to approximately 90 countries worldwide, and comprises nearly 80 percent of the world's almond supply.

The changes herein will have the effect of improving grading methods and accuracy without adding any additional financial burden to buyers or sellers of almonds in the shell. This rule changes one step in a multi-step grading procedure (7 CFR 51.2080) and changes the method of determining one of five tolerances used in determining grade (7 CFR 51.2075(b)(5)). The outgoing inspection procedure will become more closely aligned with incoming inspection by shifting the basis (from count to weight) in the standards for determining the percentage of internal defects in an inspection sample of almonds in the shell.

In addition to simplifying the grading process, the weight basis would yield a more accurate percentage of internal defects. With a count method, a defect such as shriveling would result in a particular kernel being counted as one of the 300 kernels in the sample with internal defects, even if the defect left only a small portion of the original kernel in the sample. Due to its lower weight relative to a fully formed kernel, a shriveled kernel has a smaller impact on the percentage of internal defects when the sample is weighed rather than counted.

The lower average percentage of internal defects using the weight method was confirmed by a review of shipping point inspection records, with 14 examples in which both the count and weight method were used on the same sample of inshell almonds. The average serious damage percentages of the count method and the weight method were 1.5 percent and 0.8 percent, respectively. Smaller percentages of defects in sampled lots using the weight method will mean larger quantities of almonds meet a particular grade, which would positively affect the quality of

the almonds, as it would yield more accurate percentages of defects, resulting in higher payments to growers.

Shifting the determination of internal (kernel) defects from a count basis to a weight basis in the standards is expected to contribute to efficiencies in the grading process. It would make the internal defects aspect of the outgoing inspection process consistent with that of the incoming inspection. Weighing rather than counting the kernels may result in slightly more time in the inspection process, but any potential effect on the cost of inspections is expected to be minor or nonexistent, and would be offset by the benefits.

There is no disproportionate impact on smaller entities; entities of all sizes will benefit. This rule would not impose any additional reporting or recordkeeping requirements on either small or large almond producers, handler or exporters.

The use of grading services and grading standards is voluntary unless required by a specific Act, Federal Marketing Order or Agreement, or other regulations governing domestic, import or export shipments. USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there is a marketing program which regulates the handling of almonds under 7 CFR part 981. The revision in this action only affects the inspection procedures for internal defects in the standards. As such, the action would not affect almonds in the shell under the marketing order.

Alternatives were considered for this action. One alternative would be to not issue a rule. However, the need for revisions remains due to differing procedures for incoming and outgoing almond inspections, and is the result of a request by industry. Further, the purpose of these standards is to facilitate the marketing of agricultural commodities.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Section 203(c) of the Act directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

Background

On March 11, 2011, AMS received a letter from the Almond Board of California (Board) requesting that the procedure for measuring internal (kernel) defects in the United States Standards for Grades of Almonds in the Shell be changed from a count basis to a weight basis. The purpose of this change is to align incoming and outgoing inspection procedures.

Currently, almonds must undergo incoming inspections and may undergo outgoing inspections. The almond marketing order (part 981 – Almonds Grown in California) mandates that the percentage of inedible kernels is determined during an incoming inspection. As required in the marketing order (7 CFR 981.42 and 981.442 (Quality Control)), federally licensed state inspectors perform these inspections on 100 percent of the product moving from growers to handlers (packers). "Inedible kernel" is defined in §§ 981.8 and 981.408 of the marketing order and is based on internal (kernel) defects as defined in the standards, in §§ 51.2087 (Decay), 51.2088 (Rancidity), 51.2089 (Damage) and 51.2090 (Serious Damage).

Federally licensed state inspectors also perform outgoing inspections, which are voluntary, on approximately 75 percent of all of the almonds going from the handlers to domestic and international markets, according to shipping point records maintained by Federal State Inspection. The current procedures for determining the percentage of defective kernels in the two different inspections are not the same. For incoming inspections, the percentage of inedible kernels is determined on a weight basis. With outgoing inspections, however, determining the percentage of internal (kernel) defects, which is one step in a multi-step procedure specified in the standards for determining U.S. grade, is done through a combination of count and weight of the nuts in the sample. This change to the standards would more closely align the procedures of the incoming and outgoing inspections.

A key reason for making this change is the increasing magnitude of exports of almonds in the shell. Between the 2006/07 and 2009/10 seasons, export shipments of almonds in the shell doubled, rising from 148 to 297 million pounds (inshell basis), according to trade data from the Foreign Agricultural Service of USDA. During this same time period, the number of handlers exporting almonds in the shell increased by 42 percent. Due to the substantial increase in the number of handlers and volume of shipments, the Board received numerous inquiries regarding the reasons for the different procedures for determining internal defects on incoming and outgoing inspections.

A number of handlers asked the Board's Food Quality and Safety Committee (committee) to look into how to change the standards to make outgoing inspections more consistent with the incoming inspection method. Determining the percentage of nuts with internal defects is the third of three required steps in section 51.2080 (Determination of Grade). In addition, a 10 percent tolerance for internal (kernel) defects is one of five tolerances that are

specified in section 51.2075(b)(5) for determining whether a lot of inshell almonds is graded as U.S. No. 1. Committee staff queried handlers that ship almonds in the shell about changing the determination of internal defects from a count basis to a weight basis, which would apply to both of these sections.

A proposed rule regarding these revisions to the United States Standards for Grades of Almonds in the Shell was published in the **Federal Register** on July 16, 2012 (77 FR 41707). The public comment period closed on August 15, 2012, with no responses. Based on the information gathered, AMS believes the revisions will bring the standards for almonds in the shell in line with the marketing order and thereby improve their usefulness.

List of subjects in 7 CFR part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is to be amended as follows:

Part 51 – [AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621 – 1627.

2. In §51.2075, paragraph (b)(5) is revised to read as follows:

§ 51.2075 U.S. No. 1

* * * * *

(b) * * *

(5) For internal (kernel) defects. 10 percent, by weight, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold

or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

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3. Section 51.2080 is revised to read as follows:

§ 51.2080 Determination of grade.

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked and the percentage having internal defects is determined on the basis of weight.

Dated: February 28, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

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