



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS-FV-14-0101, SC-17-331]

United States Standards for Grades of Pecans

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the U.S. Standards for Grades of Shelled Pecans and the U.S. Standards for Grades of Pecans in the Shell. The revisions include replacing the term “midget” with “extra small” in the Shelled Pecan standards and removing references to plastic models of pecan kernels and information on where the color standards may be examined from both standards.

DATES: This direct final rule is effective [INSERT DATE SIXTY DAYS FROM THE DATE PUBLISHED IN THE **FEDERAL REGISTER**]; without further action or notice, unless significant adverse comment is received by [INSERT DATE THIRTY DAYS FROM THE DATE PUBLISHED IN THE **FEDERAL REGISTER**]. If significant adverse comment is received, AMS will publish a timely withdrawal of this rule in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments to the USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; fax: (540) 361-1199; or at www.regulations.gov. Comments should reference the date and page number of this issue of the **Federal Register**, and will be made available for public inspection in the above office during regular business hours.

Comments can also be viewed as submitted, including any personal information you provide, on the www.regulations.gov website.

FOR FURTHER INFORMATION CONTACT: Lindsay H. Mitchell at the address above, by phone (540) 361-1120; fax (540) 361-1199; or, email lindsay.mitchell@ams.usda.gov. Copies of the revised U.S. Standards for Grades of Shelled Pecans and the U.S. Standards for Grades of Pecans in the Shell are available at <http://www.regulations.gov> or <http://www.ams.usda.gov/grades-standards/nuts>.

SUPPLEMENTARY INFORMATION:

Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) as amended, 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.”

The Agricultural Marketing Service (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. The U.S. Standards for Grades of Fruits and Vegetables that no longer appear in the Code of Federal Regulations are maintained by AMS at: <http://www.ams.usda.gov/grades-standards>.

Executive Orders 12866, 13771, and 13563

This rule is not expected to be an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. See the Office of Management and Budget’s memorandum, “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling

Regulatory Costs' ” (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments nor significant Tribal implications.

Executive Order 12988

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

Background

AMS continuously reviews fruit and vegetable grade standards to assess their effectiveness in the industry and to modernize language. In addition, on May 13, 2013, AMS received a petition from the Little People of America stating that the group is “trying to raise awareness around and eliminate the use of the word midget.” The petition further stated that, “Though the use of the word midget by the USDA when classifying certain food products is benign, Little People of America, and the dwarfism

community, hopes that the USDA would consider phasing out the term midget.” Five grade standards contain the term “midget”: U.S. Standards for Grades of Canned Lima Beans, U.S. Standards for Grades of Canned Mushrooms, U.S. Standards for Grades of Pickles, U.S. Standards for Grades of Green Olives, and U.S. Standards for Grades of Shelled Pecans. Canned lima beans, canned mushrooms, pickles, and green olives will be covered in another notice due to additional changes being made to those specific standards.

Prior to developing the proposed revisions to the pecan grade standards, AMS solicited comments and suggestions about the standards from the National Pecan Shellers Association (NPSA). The NPSA recommended replacing the term “midget” with “extra small.”

As part of modernizing the standards, the obsolete language regarding the purchase of plastic pecan models (PEC-MC-1) is being removed. These color standards are still in effect, but are no longer available for purchase from the single previous manufacturer. Related information on where the color standards can be examined also will be removed as it is no longer current.

A notice announcing these changes was published in the January 12, 2016, Federal Register (81 FR 1386). AMS received one comment in favor of the changes. After the comment period ended, AMS recognized that the standards for both in-shell and shelled pecans are published in the Code of Federal Regulations (7 CFR 51.1400 through 51.1416 and 51.1430 through 51.1451), even though there was no Federal marketing order for pecans at that time. The Pecan Marketing Order No. 986 became effective

August 5, 2016. Therefore, AMS is providing notice and an opportunity to comment on the revised regulatory language.

AMS is making the following revisions in the U.S. Standards for Grades of Shelled Pecans:

- §51.1436 Color classifications (b): Revised to remove reference to plastic models and address for viewing them.
- §51.1437 Table I: Revised to change Midget to Extra small.
- §51.1438 Table II and Table III: Revised to change Midget pieces to Extra small pieces.
- §51.1443 Particles and dust: Revised to change midget to extra small.

In addition, AMS is making the following revision in the U.S. Standards for Grades of Pecans in the Shell:

- §51.1403 Kernel color classifications (b): Revised to remove reference to plastic models and address.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

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. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms (handlers) are defined as those with annual

receipts of less than \$7,500,000.

Considering the economic impact on small entities involves estimating whether a majority of growers and handlers in the U.S. pecan market qualify as small or large businesses. The following paragraphs explain a set of computations that achieves this goal.

Almost all U.S. pecans are grown in the 15-state production area of the Federal marketing order for pecans (Marketing Order 986). There are 2,500 growers of pecans in the production area and 250 handlers subject to regulation under the marketing order. The grower number estimate was supplied by the American Pecan Council, which administers the marketing order under the oversight of USDA. The handler number estimate comes from the Secretary's Decision on promulgating the marketing order (81 FR 10140).

According to data published by the National Agricultural Statistics Service (NASS), the 3-year average value of utilized pecan production for 2014 through 2016 was \$591.204 million. Dividing this average value of utilized pecan production by the total number of pecan growers (2,500) provides an average return per grower estimate of \$236,482, well below the SBA small business threshold of \$750,000 in annual receipts. Using this average value of utilized production and grower number information, and assuming a normal bell-curve distribution of receipts among growers, the majority of growers qualify as small businesses.

Evidence presented in 2015 during formal rulemaking for the pecan Federal marketing order indicated an average handler margin of \$0.58 per pound. Adding the handler margin to the 2014-2016 average grower price of \$2.22 per pound of inshell

pecans results in an estimated handler price of \$2.80 per pound. Multiplying the estimated handler price by the 3-year average utilized production figure of 266.312 million pounds yields a total value of production at the handler level of \$745.7 million. Dividing this handler-level value of utilized pecan production by the number of handlers (250) results in an average return per handler of \$2.98 million, well below the SBA small business threshold of \$7.5 million in annual receipts. Using this estimated price, utilization volume and value, and number of handlers, and assuming a normal bell-curve distribution of receipts among handlers, the majority of handlers qualify as small businesses.

The pecan standard changes are limited to modernizing grading terminology and removing language related to outdated vendor references for color standards. The pecan size standard currently known as “midget” will be changed to “extra small.” Additionally, obsolete vendor information for the pecan kernel color standards will be revised. Information regarding the purchasing of the color standards from the manufacturer is obsolete as models are no longer available. The inspection procedures and color standards will remain in effect. AMS also is removing outdated language in another section that identified where the kernel models could be viewed. The remaining language in that section identifies the four “color intensities” of the kernel color standards.

With the adoption of this rule, current inspection methods will continue unchanged. The “extra small” size category will be identical to the previous “midget” size category; only the name will change. Renaming the size category and continuing to use the current method of applying kernel color standards will not require any significant

changes in grower or handler business operations. Any additional costs to growers and handlers will be negligible. No small businesses will be unduly or disproportionately burdened.

Renaming the size standard and removing outdated language helps keep grading standards current. Food grading standards provide important quality information to buyers and sellers, contributing to the efficient marketing of agricultural commodities.

A 30-day comment period is provided for public comment on the changes to the U.S. Standards for Grades of Shelled Pecans and the U.S. Standards for Grades of Pecans in the Shell proposed herein. If no significant comment is received, the changes in this rule, would be implemented 30 days thereafter.

List of Subjects in 7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is 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 §51.1403, paragraph (b) is revised to read as follows:

§51.1403 Kernel color classifications.

* * * * *

(b) U.S. Department of Agriculture kernel color standards, PEC-MC-1, illustrate the color intensities implied by the terms “golden,” “light brown,” “medium brown,” and “dark brown” referred to in paragraph (a) of this section.

3. In §51.1436, paragraph (b) is revised to read as follows:

§51.1436 Color classifications.

* * * * *

(b) U.S. Department of Agriculture kernel color standards, PEC-MC-1, illustrate the color intensities implied by the terms “golden,” “light brown,” “medium brown,” and “dark brown” referred to in paragraph (a) of this section.

4. In §51.1437, Table I is amended by removing the entry “Midget” and adding in its place the entry “Extra small” to read as follows:

§51.1437 Size classifications for halves.

* * * * *

Table I

Size classifications for halves	Number of halves per pound
* * * * *	
Extra small	751 or more

* * * * *

5. In §51.1438, Table II and Table III are amended by removing the entry “Midget pieces” and adding in its place the entry “Extra small pieces” to read as follows:

§51.1438 Size classifications for pieces.

* * * * *

Table II

Size classification	Maximum diameter (will pass through round opening of following diameter)	Minimum diameter (will not pass through round opening of the following diameter)(inch)

* * * * *		
Extra small pieces	3/16 inch	1/16
* * * * *		

* * * * *

**Table III
[Percent]**

Size classification	Total tolerance for offsize pieces	Tolerance (included in total tolerance) for pieces smaller than	
		2/16	1/16 inch
* * * * *			
Extra small pieces	15		2
* * * * *			

6. Revise §51.1443 to read as follows:

§51.1443 Particles and dust.

Particles and dust means, for all size designations except “extra small pieces” and “granules,” fragments of kernels which will pass through a round opening two-sixteenths inch in diameter.

Dated: October 3, 2018

Bruce Summers
Administrator
Agricultural Marketing Service

BILLING CODE 3410-02 P
[FR Doc. 2018-21845 Filed: 10/5/2018 8:45 am; Publication Date: 10/9/2018]