

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS–SC–16–0005, SC–16–331]

U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell. AMS proposes to include red colored walnuts. In addition, AMS proposes to remove the “Unclassified” section. The changes will modernize the standards, and meet growing consumer demand by providing greater marketing flexibility.

DATES: Comments must be submitted on or before January 24, 2017.

ADDRESSES: Interested persons are invited to submit comments to the Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; fax: (540) 361–1199, or on the Web at: www.regulations.gov. Comments should reference the dates 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. All comments submitted in response to this rule will be included in the public record and will be made available to the public and can be viewed as submitted, including any personal information that you provide, on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Contact David G. Horner at the address

above, or at phone (540) 361–1120; fax (540) 361–1199; or, email Dave.Horner@ams.usda.gov. Copies of the proposed U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell are available on the Internet at <http://www.regulations.gov>. Copies of the current U.S. Standards for Grades of Shelled Walnuts and U.S. Standards for Walnuts in the Shell are available on the Specialty Crops Inspection Division Web site at <https://www.ams.usda.gov/grades-standards/nuts>.

SUPPLEMENTARY INFORMATION:

The proposed changes permit grade certification of the red variety. These revisions also affect the grade requirements under the marketing order, 7 CFR parts 984, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) and applicable imports.

Executive Orders 12866 and 13563

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. 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.

Executive Order 13175

This action 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 and would not have 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.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impacts of the revisions to the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell. The purpose of the RFA is to structure regulatory actions such that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The current U.S. walnut standards have four color classifications: Extra Light, Light, Light Amber, and Amber. Product that does not meet these color standards cannot be certified to a U.S. grade. AMS proposes to revise these standards to include certification of red color. In addition, AMS proposes eliminating the “Unclassified” section. The proposed revision modernizes the current grading standards by allowing the industry to meet the growing consumer demand for red colored walnuts and by promoting better market information and greater marketing flexibility within the industry.

The process of grading improves the functioning of a commodity market. Assigning different prices to different product characteristics and levels of quality increases opportunities for profitable trade. Adding red color to the walnut grading standards will facilitate additional market opportunities for walnut producers and other participants in the supply chain. The proposed revision will result in a minor change to the current standards with the only modification being to the color requirements. AMS anticipates that there will be little or no additional cost to implement this revision. The proposed change applies uniformly to all market participants and will not result in disproportionate additional costs being borne by small walnut producers or other small businesses.

To determine the proportion of walnut producers that would be considered small, AMS conducted the analysis that follows. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000 (13 CFR 121.601).

AMS used crop value per acre to determine the number of bearing acres

required to generate annual sales of \$750,000 or more, and came to 136 bearing acres. To reach this number, AMS divided the total crop value measured in dollars by the total utilized production measured in tons. Using annual National Agricultural Statistics Service (NASS) data for the years 2010 to 2014, the five-year average crop value was \$1,507,478,000; utilized production was 504,800 tons; and grower price was \$2,982 per ton. AMS multiplied the price by yield to find the crop value per acre of \$5,670 on average over five years. Finally, AMS divided the SBA-defined annual sales threshold of \$750,000 by value per acre, which resulted in 136 acres.

The NASS Agricultural Census is conducted every five years and in 2012 showed that 87 percent of walnut farming operations in the U.S. fell into its Census category of “under 100 bearing acres” of walnuts. AMS estimates that the proportion of walnut growers that qualify as small businesses under the SBA definition is likely to be close to 90 percent, given the probable exclusion in the “under 100 bearing acres” Census category of walnut producers with bearing acreage between 100 and 136. These small growers will not be disproportionately affected by the proposed rule as all changes to the standards will be applied uniformly to all market participants.

In August 2015, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously to revise the U.S. walnut standards to include non-amber cultivars such as red colored varieties. More than 99 percent of U.S. walnuts are produced in California. Addition of an expanded color certification grade will encourage greater revenue to flow into the industry due to greater marketing opportunities for red colored nuts. Revising the current grading standards to include red walnuts will come at a minimal cost to the industry. The benefits of modernized grading standards, which include better market information and greater marketing flexibility, exceed the minor costs to market participants of implementing this revision to the U.S. standards for walnuts.

Background

The current U.S. walnut standards only permit the following four colors: Extra Light, Light, Light Amber, and Amber. However, consumer demand is growing for red walnuts in the U.S. In China, the Livermore variety (a red colored walnut) is very desirable. U.S. growers and companies expect sales to continue rising domestically and in

China, especially once red walnuts are permitted grade certification.

To address anticipated consumer needs, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously in August 2015 to revise the U.S. walnut standards to include non-amber cultivars, beginning with the Livermore variety. Later, the California Walnut Board and Commission sent an official letter to the AMS administrator formally requesting the addition of red colored varieties.

Therefore, AMS proposes to make the following revisions in the U.S. Standards for Grades of Shelled Walnuts:

- § 51.2276 Color chart: Removed and reserved. The information in this section regarding the U.S.D.A. Walnut Color Chart is obsolete.

- § 51.2277 U.S. No. 1(a): Revised to include red walnuts.

- § 51.2278 U.S. Commercial (a): Revised to include red walnuts.

- § 51.2279 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.

- § 51.2281 Color classifications: The section is reorganized into subparts (a) and (b) to include red walnuts.

- § 51.2282 Table II: Revised to include red walnuts.

- § 51.2283 Off color: Revised to include red walnuts.

In addition, AMS proposes to make the following revisions in the U.S. Standards for Grades of Walnuts in the Shell:

- § 51.2946 Color chart: Removed and reserved. This section is now redundant and no longer needed.

- § 51.2948 U.S. No. 1 (a), § 51.2949 U.S. No. 2 (a), and § 51.2950 U.S. No. 3 (a): Subpart (1) was added to subpart (a) in each section to accommodate red walnuts.

- § 51.2951 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.

- § 51.2954 Tolerances for grade defects: Revised to include red walnuts.

The proposed rule provides a 60-day period during which interested parties may comment on the revisions to the standards.

List of Subjects in 7 CFR Part 51

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed 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.

§ 51.2276 [Removed and Reserved]

■ 2. In § 51.2276 is removed and reserved:

■ 3. In § 51.2277, paragraph (a) is revised to read as follows:

§ 51.2277 U.S. No. 1.

* * * * *

(a) Color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See § 51.2281 and § 51.2282.)

* * * * *

■ 4. In § 51.2278, paragraph (a) is revised to read as follows:

§ 51.2278 U.S. Commercial.

* * * * *

(a) Color of walnuts based on the USDA Walnut Color Chart shall be not darker than the “amber” classification. There are no color requirements for “red” walnuts. Color may be specified in connection with the grade in terms of one of the color classifications in the USDA Walnut Color Chart or “red” color. “Red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See § 51.2281 and § 51.2282.)

* * * * *

§ 51.2279 [Removed and Reserved]

■ 5. In § 51.2279 is removed and reserved:

■ 6. Revise § 51.2281 to read as follows:

§ 51.2281 Color classifications.

The following classifications are provided to describe the color of any lot:

(a) “Extra light,” “light,” “light amber,” and “amber:” The portions of kernels in the lot shall be not darker than the darkest color permitted in the specified classification as shown on the USDA Walnut Color Chart.

(b) “Red:” There are no color requirements.

■ 7. In § 51.2282, Table II is amended by adding an entry for “Red” to read as follows:

§ 51.2282 Tolerances for color.

* * * * *

TABLE II

Color classification	Darker than extra light ¹	Darker than light ¹	Darker than light amber ¹	Darker than amber ¹
Red	*	*	*	*

¹ See illustration of this term on USDA Walnut Color Chart.

* * * * *

■ 8. Revise § 51.2283 to read as follows:

§ 51.2283 Off color.

The term “off color” is not a color classification, but shall be applied to any lot which fails to meet the requirements of the “amber” classification when applying the color classifications in the USDA Walnut Color Chart. Off color shall not be used for “red” color.

§ 51.2946 [Removed and reserved].

- 9. In § 51.2946 is removed and reserved.
- 10. In § 51.2948, paragraphs (a) is revised to read as follows:

§ 51.2948 U.S. No. 1.

* * * * *

(a) Kernel color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 70 percent, by count, of the walnuts have kernels which are not darker than “light amber,” and which are free from grade defects: *Provided*, That at least four-sevenths of the above amount, or 40

percent of the walnuts have kernels which are not darker than “light.” Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects and/or higher percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

■ 11. In § 51.2949, paragraphs (a) is revised to read as follows:

§ 51.2949 U.S. No. 2.

* * * * *

(a) Kernel color shall be specified in connection with this grade either in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 60 percent, by count, of the walnuts have kernels which are not darker than “light amber,” and which are free from grade defects. Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects, and/or percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

■ 12. In § 2950, paragraphs (a) is revised to read as follows:

§ 51.2950 U.S. No. 3.

* * * * *

(a) Kernel color may be specified in connection with this grade either in terms of “light amber” or “light” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, there is no requirement in this grade for the percentage of walnuts having kernels which are “light amber” or “light.” However, the percentage, by count, of nuts with kernels not darker than “light amber” which are free from grade defects and/or the percentage with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

§ 51.2951 [Removed and reserved].

- 13. In § 51.2951 is removed and reserved.
- 14. In § 51.2954 revise the table to read as follows:

§ 51.2954 Tolerances for Grade Defects.

* * * * *

TOLERANCES FOR GRADE DEFECTS

Grade	External (shell) defects	Internal (kernel) defects	Kernel color based on USDA Walnut Color Chart	Kernel color based on red
U.S. No. 1	10%, by count, for splits. 5%, by count, for other shell defects, including not more than 3% seriously damaged.	10% total, by count, including not more than 6% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5% or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 70% of “light amber” kernels or the required 40% of “light” kernels or any larger percentage of “light amber” or “light” kernels specified.

TOLERANCES FOR GRADE DEFECTS—Continued

Grade	External (shell) defects	Internal (kernel) defects	Kernel color based on USDA Walnut Color Chart	Kernel color based on red
U.S. No. 2	10%, by count, for splits. 10%, by count, for other shell defects, including not more than 5% serious damage by adhering hulls.	15% total, by count, including not more than 8% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5/8 or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 60% or any specified larger percentage of "light amber" kernels, or any specified percentage of "light" kernels.
U.S. No. 3	Same as above tolerance for U.S. No. 2.	Same as above tolerance for U.S. No. 2.	No tolerance to reduce any percentage of "light amber" or "light" kernel specified.

Dated: November 18, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-16-0090; SC16-927-1 CR]

Pears Grown in Oregon and Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible Oregon and Washington pear growers to determine whether they favor continuance of the marketing order regulating the handling of pears grown in Oregon and Washington.

DATES: The referendum will be conducted from February 15 through March 1, 2017. Only current growers of pears within the designated production area in Oregon and Washington that have grown pears during the period July 1, 2015, through June 30, 2016, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724; the Office of the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; or Internet: <http://www.ecfr.gov/cgi-bin/text-idx?SID=>

1aaabcfe0d44b8af50dc165366358d74&mc=true&node=pt7.8.927&rgn=div5.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 927 (7 CFR part 927), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from February 15 through March 1, 2017, among eligible Oregon and Washington pear growers. Only current growers that were also engaged in the production of pears in Oregon or Washington during the period of July 1, 2015, through June 30, 2016, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Oregon and Washington pears represented in the referendum favor continuance of their program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the order and relative benefits and disadvantages to growers, handlers, and

consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0189, Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1600 Oregon-Washington pear growers to cast a ballot. Participation is voluntary. Ballots postmarked after March 1, 2017, will not be included in the vote tabulation.

Teresa Hutchinson and Gary D. Olson of the Northwest Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400-900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

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

Dated: November 18, 2016.

Bruce Summers,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016-28256 Filed 11-23-16; 8:45 am]

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