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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-95-305]

Shelled Almonds and Almonds in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Shelled Almonds and the United States Standards for Grades of Almonds in the Shell. The Agricultural Marketing Service (AMS), in cooperation with the almond industry and other interested parties, develops and revises standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

The revision will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language "appearance of the lot" from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090-6456, or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing

this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Act, and issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under these standards and approximately 7,000 producers of almonds. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. A majority of handlers and producers of almonds may be classified as small entities.

The revisions will change the foreign material tolerances; the tolerance for live insects inside the shell; remove the language "appearance of the lot" from all definitions in the standards; combine tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revise current definitions; and add new definitions. These changes are being made in order to bring the standards into conformity with current cultural, harvesting and marketing practices. (The standards were last revised in August 1960 and July 1964, respectively.) Accordingly, AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Shelled Almonds, and the United States Standards for Grades of Almonds in the Shell, was published in the Federal Register on April 22, 1996 (61 FR 17580-17586).

The Almond Board of California's Grades Subcommittee (ABCGS) requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices.

The 60-day comment period ended June 21, 1996, and a total of seven comments were received from growers, handlers, shippers, and receivers.

A copy of the proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information concerning the possible effect of the proposed revision on pesticide use. ARS was unable to identify any relevant information.

Three comments were in favor of the proposal in its entirety. These commentors agreed that due to changes in current cultural, harvesting, and marketing practices of almonds, it was necessary to change the standards as proposed.

One commentor was in favor of the proposal with one exception, the zero tolerance for glass and metal in the U.S. Standards for Grades of Shelled Almonds "could be devastating especially in a year of low prices to processors." The commentor states that "a customer may claim to have found a small piece of glass or metal after the product has been graded and shipped which would cause rejection of the whole load." AMS disagrees that this would be a problem for the industry. Furthermore, an inspection at any point along the marketing chain may be requested. In addition, the ABCGS, which represents a majority of the industry, contends that the zero tolerance for glass and metal, which is

included in the tolerances for foreign material, reflects the current requirements of most buyers and meets current food safety concerns.

The three remaining comments were in favor of the proposal except for its provisions regarding embedded shell as it pertains to foreign material; the definition of similar varietal characteristics; and, definitions and tolerances for chipped and scratched kernels as well as split and broken kernels. All three comments expressed concern over "embedded shell" as a defect in the U.S. Standards for Grades of Almonds in the Shell. The commentors contend that almond shell that has become embedded in the almond nutmeat—embedded shell, should be considered as foreign material. AMS disagrees with classifying embedded shell as foreign material. The definition of foreign material in the standards does not include almonds or almond kernels, and has historically been reserved for material other than pieces of almond or almond kernels. Currently, embedded shell is scored as damage against the tolerance for "other defects." Additionally, AMS understands that the industry is forming a working group to study this issue and to make a recommendation to AMS. Revising the standards to include the commentors' recommendation at this time would be premature in light of this study. Therefore, no change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definition of similar varietal characteristics. One of the commentors raised the concern that the similarity in the shape and appearance is critical. The other commentor raised the concern that this definition is being "relaxed where varieties are not properly identified." AMS disagrees. The proposed definition of similar varietal characteristics includes "kernels that are similar in shape and appearance." Unless the lot is specified as "California," the lot must have kernels that are similar in shape and appearance. Therefore, this should not relax the identification of varieties but enhance it. No change is being made to the rule in response to these comments.

Two of the three comments expressed concern over the proposed revision to the definitions of, and the tolerances for the defects "chipping and scratching," and "split and broken." One of the commentors raised the concern that the tolerances for chipping and scratching and split and broken in the U.S. Sheller Run grade " * * * need to be measured separately." AMS is of the view that the

proposed changes do address the defects separately. In the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, paragraph (c) For kernels damaged by chipping and/or scratching or split and broken allows 35 percent, provided that not more than 15 percent shall be allowed for split and broken. The intent of this section is that chipped and/or scratched kernels have to be measured separately from broken and split kernels. The other commentor stated that the "removal of the separate control limits for the two defects (chipping and scratching or split and broken) will result in wide product variance." AMS agrees that there will be some product variance in the U.S. Standards for Grades of Shelled Almonds, § 51.2109 U.S. Sheller Run grade, but only for chipped and scratched kernels. The proposed changes would allow up to 35 percent chipped and scratched kernels (with 0 percent split and broken), or any combination of the two types of defects totaling 35 percent (or less), as long as the percentage of split and broken does not exceed 15 percent. A contract between interested parties may specify a more restrictive tolerance for these defects. Chipped and scratched kernels essentially retain their full shape, but have superficial chips and scratches of the pellicle and meat. Split and broken kernels are those with 1/8 or more of the kernel split or broken off. In addition, ABCGS views chipped and scratched kernels as less objectionable than split and broken kernels. Therefore, there will be some product variance but only for chipped and scratched kernels, which is less objectionable than split and broken kernels, and contract specifications can further restrict these tolerances. Therefore, no change is being made to the rule in response to these comments.

Lastly, one of the three comments suggested revisions to the definitions of "whole," "split or broken kernels," and "injury." The commentor suggested extensive revisions to these definitions in terms of redefining what they mean. AMS is of the view that these definitions have served for the more than 30 years and they have become common terminology among those who buy and sell commercial volumes of almonds. Changing these definitions, when no need has been adequately demonstrated, could disrupt the efficient marketing of almonds. Therefore, no change is being made to the rule in response to this comment.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of

the proposed rule are being finalized without any changes.

List of Subjects in 7 CFR Part 51

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

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

PART 51—[AMENDED]

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 51, Subpart—United States Standards for Grades of Almonds in the Shell is revised to read as follows:

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

Sec.

51.2075	U.S. No. 1.
51.2076	U.S. No. 1 Mixed.
51.2077	U.S. No. 2.
51.2078	U.S. No. 2 Mixed.

Application of Tolerances

51.2079 Application of tolerances.

Determination of Grade

51.2080 Determination of grade.

Definitions

51.2081	Similar varietal characteristics.
51.2082	Loose extraneous and foreign material.
51.2083	Clean.
51.2084	Fairly bright.
51.2085	Fairly uniform color.
51.2086	Well dried.
51.2087	Decay.
51.2088	Rancidity.
51.2089	Damage.
51.2090	Serious damage.
51.2091	Thickness.

Subpart—United States Standards for Grades of Almonds in the Shell

Grades

§ 51.2075 U.S. No. 1.

"U.S. No. 1" consists of almonds in the shell which are of similar varietal characteristics and free from loose extraneous and foreign material. The shells are clean, fairly bright, fairly uniform color, and free from damage caused by discoloration, adhering hulls, broken shells or other means. The kernels are well dried, free from decay, rancidity, and free from damage caused by insects, mold, gum, skin discoloration, shriveling, brown spot or other means.

(a) Unless otherwise specified, the almonds are of a size not less than 28/64 of an inch (11.1 mm) in thickness.

(b) In order to allow for variations incident to proper grading and handling, the following tolerances are provided as specified:

(1) *For external (shell) defects.* 10 percent, by count, for almonds which fail to meet the requirements of this grade other than for variety and size;

(2) *For dissimilar varieties.* 5 percent, by count, including therein not more than 1 percent for bitter almonds mixed with sweet almonds;

(3) *For size.* 5 percent, by count, for almonds which are smaller than the specified minimum thickness;

(4) *For loose extraneous and foreign material.* 2 percent, by weight, including therein not more than 1 percent which can pass through a round opening 24/64 inch (9.5 mm) in diameter: Provided, that such material is practically free from insect infestation; and,

(5) *For internal (kernel) defects.* 10 percent, by count, 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.

§ 51.2076 U.S. No. 1 Mixed.

"U.S. No. 1 Mixed" consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that two or more varieties of sweet almonds are mixed.

§ 51.2077 U.S. No. 2.

"U.S. No. 2" consists of almonds in the shell which meet the requirements of U.S. No. 1 grade, except that an additional tolerance of 20 percent shall be allowed for almonds with shells damaged by discoloration.

§ 51.2078 U.S. No. 2 Mixed.

"U.S. No. 2 Mixed" consists of almonds in the shell which meet the requirements of U.S. No. 2 grade, except that two or more varieties of sweet almonds are mixed.

Application of Tolerances

§ 51.2079 Application of tolerances.

The tolerances for the foregoing grades are applied to the entire lot of almonds, based upon a composite sample drawn from containers throughout the lot.

Determination of Grade

§ 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 count.

Definitions

§ 51.2081 Similar varietal characteristics.

Similar varietal characteristics means that the almonds are similar in shape, and are reasonably uniform in degree of hardness of the shells, and that bitter almonds are not mixed with sweet almonds. For example, hard-shelled varieties, semi-soft shelled varieties, soft-shelled varieties and paper-shelled varieties are not mixed together, nor are any two of these types mixed under this definition.

§ 51.2082 Loose extraneous and foreign material.

Loose extraneous and foreign material means loose hulls, empty broken shells, pieces of shells, external insect infestation and any substance other than almonds in the shell or almond kernels.

§ 51.2083 Clean.

Clean means that the shell is practically free from dirt and other adhering foreign material.

§ 51.2084 Fairly bright.

Fairly bright means that the shells show good characteristic color.

§ 51.2085 Fairly uniform color.

Fairly uniform color means that the shells do not show excessive variation in color, whether bleached or natural.

§ 51.2086 Well dried.

Well dried means that the kernel is firm and brittle, not pliable or leathery.

§ 51.2087 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2088 Rancidity.

Rancidity means that the kernel is noticeably rancid to taste.

§ 51.2089 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almond. Any one of the following defects or combination thereof, the seriousness of which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Discoloration of the shell which is medium gray to black and affects more than one-eighth of the surface in the aggregate. Normal variations of a reddish or brownish color shall not be considered discoloration;

(b) Adhering hulls which cover more than 5 percent of the shell surface in the aggregate;

(c) Broken shells when a portion of the shell is missing, or the shell is broken or fractured to the extent that moderate pressure will permit the kernel to become dislodged;

(d) Insect injury when the insect, web or frass is present or there is definite evidence of insect feeding;

(e) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(f) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(g) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin;

(h) Shriveling when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat. An almond containing two kernels shall not be classed as damaged if either kernel has more than three-fourths of the pellicle filled with meat; and,

(i) Brown spot which affects an aggregate area on the kernel greater than the area of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2090 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold. The following defect shall be considered as serious damage: Shriveling when the kernel is seriously withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered seriously damaged if more than one-fourth of the pellicle is filled with meat.

§ 51.2091 Thickness.

Thickness means the greatest dimension between the two semi-flat surfaces of the shell measured at right angles to a plane extending between the seams of the shell.

3. In Part 51, Subpart—United States Standards for Grades of Shelled Almonds is revised to read as follows:

Subpart—United States Standards for Grades of Shelled Almonds

Grades

Sec.	
51.2105	U.S. Fancy.
51.2106	U.S. Extra No. 1.
51.2107	U.S. No. 1.
51.2108	U.S. Select Sheller Run.
51.2109	U.S. Standard Sheller Run.
51.2110	U.S. No. 1 Whole and Broken.
51.2111	U.S. No. 1 Pieces.

Mixed Varieties

51.2112 Mixed varieties.

Size

51.2113 Size requirements.
51.2114 Tolerances for size.

Application of Tolerances

51.2115 Application of tolerances.

Definitions

51.2116	Similar varietal characteristics.
51.2117	Whole.
51.2118	Clean.
51.2119	Well dried.
51.2120	Decay.
51.2121	Rancidity.
51.2122	Insect injury.
51.2123	Foreign material.
51.2124	Doubles.
51.2125	Split or broken kernels.
51.2126	Particles and dust.
51.2127	Injury.
51.2128	Damage.
51.2129	Serious damage.
51.2130	Diameter.
51.2131	Fairly uniform in size.

Subpart—United States Standards for Grades of Shelled Almonds

Grades

§ 51.2105 U.S. Fancy.

“U.S. Fancy” consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from injury caused by chipped and scratched kernels, and free from damage caused by mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;
- (b) *For doubles.* 3 percent;
- (c) *For kernels injured by chipping and/or scratching.* 5 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 2 percent, including not more than one-half of this amount, or 1 percent, for split or broken kernels, and including not more than one-half of the former amount, or 1 percent, for seriously damaged kernels.

§ 51.2106 U.S. Extra No. 1.

“U.S. Extra No. 1” consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;
- (b) *For doubles.* 5 percent;
- (c) *For kernels damaged by chipping and/or scratching.* 5 percent;
- (d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;
- (e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,
- (f) *For other defects.* 4 percent, including not more than one-fourth of this amount, or 1 percent, for split or broken kernels, and including not more than three-eighths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2107 U.S. No. 1.

“U.S. No. 1” consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 10 percent;

(d) *For foreign material.* One-twentieth of 1 percent (0.05 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 5 percent including not more than one-fifth of this amount, or 1 percent, for split or broken kernels, and including not more than three-tenths of the former amount, or 1½ percent, for seriously damaged kernels.

§ 51.2108 U.S. Select Sheller Run.

“U.S. Select Sheller Run” consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

- (a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;
- (b) *For doubles.* 15 percent;
- (c) *For kernels damaged by chipping and/or scratching.* 20 percent;
- (d) *For foreign material.* One-tenth of 1 percent (0.10 percent). No part of this percentage shall be allowed for glass and metal;
- (e) *For particles and dust.* One-tenth of 1 percent (0.10 percent);
- (f) *For split and broken kernels.* 5 percent: Provided, that not more than two-fifths of this amount, or 2 percent, shall be allowed for pieces which will pass through a round opening ²⁰/₆₄ inch (7.9 mm) in diameter; and,
- (g) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2109 U.S. Standard Sheller Run.

“U.S. Standard Sheller Run” consists of shelled almonds of similar varietal characteristics which are whole, clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, split or broken kernels, particles and dust, and free from damage caused by chipped and scratched kernels, mold, gum, shriveling, brown spot or other means. (See §§ 51.2113 and 51.2114.)

In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 25 percent;

(c) *For kernels damaged by chipping and/or scratching or split and broken.* 35 percent; Provided, that not more than three-sevenths of this amount, or 15 percent, shall be allowed for split and broken: And Provided Further, that not more than one-third of this latter amount, or 5 percent, shall be allowed for pieces which will pass through a round opening $\frac{29}{64}$ inch (7.9 mm) in diameter;

(d) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(e) *For particles and dust.* One-tenth of 1 percent (0.10 percent); and,

(f) *For other defects.* 3 percent, including not more than two-thirds of this amount, or 2 percent, for serious damage.

§ 51.2110 U.S. No. 1 Whole and Broken.

“U.S. No. 1 Whole and Broken” consists of shelled almonds of similar varietal characteristics which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) In this grade not less than 30 percent, by weight, of the kernels shall be whole. Doubles shall not be considered as whole kernels in determining the percentage of whole kernels.

(b) Unless otherwise specified, the minimum diameter shall be not less than $\frac{29}{64}$ of an inch (7.9 mm). (See §§ 51.2113 and 51.2114.)

(c) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(2) *For doubles.* 35 percent;

(3) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(4) *For particles and dust.* One-tenth of 1 percent (0.10 percent);

(5) *For undersize.* 5 percent; and,

(6) *For other defects.* 5 percent, including not more than three-fifths of

this amount, or 3 percent, for serious damage.

§ 51.2111 U.S. No. 1 Pieces.

“U.S. No. 1 Pieces” consists of shelled almonds which are not bitter, which are clean and well dried, and which are free from decay, rancidity, insect injury, foreign material, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

(a) Unless otherwise specified, the minimum diameter shall be not less than $\frac{8}{64}$ of an inch (3.2 mm). (See §§ 51.2113 and 51.2114.)

(b) In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, shall be permitted:

(1) *For bitter almonds mixed with sweet almonds.* 1 percent;

(2) *For foreign material.* Two-tenths of 1 percent (0.20 percent). No part of this percentage shall be allowed for glass and metal;

(3) *For particles and dust.* 1 percent; and

(4) *For other defects.* 5 percent, including not more than three-fifths of this amount, or 3 percent, for serious damage.

Mixed Varieties

§ 51.2112 Mixed varieties.

Any lot of shelled almonds designated as “one type” or undesignated as to type, which consists of a mixture of two or more dissimilar varieties which meet the other requirements of any of the grades of U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, U.S. No. 1 Whole and Broken may be designated as: “U.S. No. 1 Mixed;” “U.S. Select Sheller Run Mixed;” “U.S. Standard Sheller Run Mixed;” “U.S. No. 1 Whole and Broken Mixed;” respectively; but no lot of any of these grades may include more than 1 percent of bitter almonds mixed with sweet almonds.

Size

§ 51.2113 Size requirements.

The size may be specified in terms of range in count of whole almond kernels per ounce or in terms of minimum, or minimum and maximum diameter. When a range in count is specified, the whole kernels shall be fairly uniform in size, and the average count per ounce shall be within the range specified. Doubles and broken kernels shall not be used in determining counts. Count ranges per ounce commonly used are shown below, but other ranges may be specified: Provided, that the kernels are fairly uniform in size.

Count Range Per Ounce

16 to 18, inclusive.

18 to 20, inclusive.

20 to 22, inclusive.

22 to 24, inclusive.

23 to 25, inclusive.

24 to 26, inclusive.

26 to 28, inclusive.

27 to 30, inclusive.

30 to 34, inclusive.

34 to 40, inclusive.

40 to 50, inclusive.

50 and smaller.

§ 51.2114 Tolerances for size.

(a) When a range is specified as, for example, “ $\frac{18}{20}$,” no tolerance for counts above or below the range shall be allowed.

(b) When the minimum, or minimum and maximum diameter are specified, a total tolerance of not more than 10 percent, by weight, may fail to meet the specified size requirements: Provided, that not more than one-half of this amount, or 5 percent, may be below the minimum size specified.

Application of Tolerances

§ 51.2115 Application of tolerances.

The tolerances for the grades are to be applied to the entire lot, and a composite sample shall be taken for determining the grade. However, any container or group of containers in which the almonds are found to be materially inferior to those in the majority of the containers shall be considered a separate lot.

Definitions

§ 51.2116 Similar varietal characteristics.

Similar varietal characteristics means that the kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety.

(a) When a lot is specified as “one type,” all kernels shall be the same in shape and appearance; and,

(b) When a lot is specified and carton marked as “California,” kernels present may include any one or a combination of blanchable varieties within the “California” Marketing Classification. In addition, Nonpareil or similar types may be included provided that it does not exceed twenty-five percent (25%), by weight, of the lot.

§ 51.2117 Whole.

Whole means that there is less than one-eighth of the kernel chipped off or missing, and that the general contour of

the kernel is not materially affected by the missing part.

§ 51.2118 Clean.

Clean means that the kernel is practically free from dirt and other foreign substance.

§ 51.2119 Well dried.

Well dried means that the kernel is firm and brittle, and not pliable or leathery.

§ 51.2120 Decay.

Decay means that part or all of the kernel has become decomposed.

§ 51.2121 Rancidity.

Rancidity means that the kernel is noticeably rancid to the taste.

§ 51.2122 Insect injury.

Insect injury means that the insect, web, or frass is present or there is definite evidence of insect feeding.

§ 51.2123 Foreign material.

Foreign material means pieces of shell, hulls or other foreign matter which will not pass through a round opening $\frac{8}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2124 Doubles.

Doubles means kernels that developed in shells containing two kernels. One side of a double kernel is flat or concave.

§ 51.2125 Split or broken kernels.

Split or broken kernels means seven-eighths or less of complete whole kernels but which will not pass through a round opening $\frac{8}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2126 Particles and dust.

Particles and dust means fragments of almond kernels or other material which will pass through a round opening $\frac{8}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2127 Injury.

Injury means any defect which more than slightly detracts from the appearance of the individual almond. The following shall be considered as injury:

(a) Chipped and scratched kernels when the affected area on an individual kernel aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter.

§ 51.2128 Damage.

Damage means any defect which materially detracts from the appearance of the individual kernel, or the edible or shipping quality of the almonds. Any one of the following defects or combination thereof, the seriousness of

which exceeds the maximum allowed for any one defect shall be considered as damage:

(a) Chipped and scratched kernels, when the affected area on an individual kernel aggregates more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(b) Mold, when visible on the kernel, except when white or gray and easily rubbed off with the fingers;

(c) Gum, when a film of shiny, resinous appearing substance affects an area aggregating more than the equivalent of a circle one-quarter inch (6.4 mm) in diameter;

(d) Shriveling, when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed: Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat;

(e) Brown spot on the kernel, either single or multiple, when the affected area aggregates more than the equivalent of a circle one-eighth inch (3.2 mm) in diameter; and,

(f) Skin discoloration when more than one-half of the surface of the kernel is affected by very dark or black stains contrasting with the natural color of the skin.

§ 51.2129 Serious damage.

Serious damage means any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold.

§ 51.2130 Diameter.

Diameter means the greatest dimension of the kernel, or piece of kernel at right angles to the longitudinal axis. Diameter shall be determined by passing the kernel or piece of kernel through a round opening.

§ 51.2131 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample, the weight of 10 percent, by count, of the largest whole kernels shall not exceed 1.70 times the weight of 10 percent, by count, of the smallest whole kernels.

Dated: January 14, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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7 CFR Part 51

[Docket Number FV-96-301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. This rule revises the "Application of Tolerances" sections, which establishes the limitations of defective fruit per sample. It also sets a minimum sample size of twenty-five fruit.

EFFECTIVE DATE: February 20, 1997.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090-6456, or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 150 handlers of Florida citrus who are subject to regulation under these standards and approximately 11,000 producers of citrus in Florida. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. A majority of handlers and producers of Florida citrus may be classified as small entities.

The revisions are to the "Application of Tolerances" sections, which establishes the limitations of defective fruit per sample and the "Tolerances" sections, which add a minimum of twenty-five fruit per sample. The industry stated that without these