

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Doc. Number AMS–FV–14–0090, FV–16–327]

#### U.S. Standards for Grades of Fresh Fruits and Vegetables, Fruits and Vegetables for Processing, Nuts, and Specialty Crops

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) is revising 41 U.S. Standards for Grades of fresh fruits and vegetables, fruits and vegetables for processing, nuts, and specialty crops by removing the “Unclassified” category from each standard. This revision brings these grade standards in line with other recently amended standards and current terminology. The change also updates the standards to more accurately represent today’s marketing practices and provide the industry with greater flexibility.

**DATES:** September 6, 2016.

**ADDRESSES:** Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406.

**FOR FURTHER INFORMATION CONTACT:** Olivia Vernon, Standardization Branch, Specialty Crops Inspection Division, at the address above or by telephone at (540) 361–2743; fax (540) 361–1199; or, email [olivia.vernon@ams.usda.gov](mailto:olivia.vernon@ams.usda.gov). The current U.S. Standards for Grades are available on the AMS Web site at <http://www.ams.usda.gov/grades-standards>.

**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.” AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official grade standards available upon request. The U.S. Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. import requirements no longer appear in the Code of Federal Regulations (CFR), but are maintained by USDA, AMS, Specialty Crops Program, and are available on the Internet at <http://www.ams.usda.gov/grades-standards>.

AMS is revising these voluntary U.S. standards for grades using the procedures in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36).

#### Background

AMS is eliminating the “Unclassified” section in 41 U.S. grade standards that were issued under the Agricultural Marketing Act of 1946.

The fresh fruit and vegetable grade standards covered by these changes are: Sweet anise, lima beans, beets, Brussels sprouts, cabbage, cucumbers, endive, garlic, collard greens or broccoli greens, mustard greens and turnip greens, horseradish roots, greenhouse leaf lettuce, mushrooms, common green onions, onion sets, parsnips, fresh peas, southern peas, rhubarb, romaine, bunched shallots, spinach plants, summer squash, turnips or rutabagas, dewberries and blackberries, American (eastern type) grapes, juice grapes (European or vinifera type), and raspberries.

In the Proposed Notice, AMS inadvertently included celery, honey dew and honey ball type melons, Persian limes, summer and fall pears, and winter pears in this rulemaking. The grade standards for these commodities are published in the CFR at 7 CFR part 51 whereas the standards for the 41 commodities addressed here are not published in the CFR. AMS ultimately intends to remove celery, honey dew and honey ball type melons,

Persian limes, summer and fall pears, and winter pears standards from the CFR. At that time, the “Unclassified” section will be removed from the grade standards for celery, honey dew and honey ball type melons, Persian limes, summer and fall pears, and winter pears. The fresh fruit and vegetable for processing grade standards covered by these changes are spinach, berries, blueberries, red sour cherries for manufacture, sweet cherries for canning or freezing, cranberries for processing, currants, raspberries, growers’ stock strawberries for manufacture, and washed and sorted strawberries for freezing.

The nut and specialty crops grade standards covered by these changes are: Brazil nuts in the shell, cut peonies in the bud, and tomato plants.

AMS continually reviews all fruit, vegetable, nut and specialty crop grade standards to ensure their usefulness to the industry. AMS determined that the “Unclassified” section should be eliminated from the aforementioned 41 U.S. Standards for Grade as the category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

On September 9, 2015, AMS published a Proposed Notice in the **Federal Register** (80 FR 53021) soliciting comments on removing the term “Unclassified” from the standards. Seven comments were received by November 2, 2015, the closing date of the public comment period, from six private citizens and one individual associated with a U.S. university.

The six private citizen commenters supported the revisions as a positive step forward for the USDA that will offer produce companies and everyday shoppers a clearer idea of the quality of produce they are purchasing. The final commenter suggested that making this change to the standards would create the need for additional grades and categories to cover all variants with in different commodities. The USDA stands by its decision to remove the unclassified category because there is no evidence of use of the category by industry, and for the reason that commodities would fall into one of the established grades currently listed in the standards.

Based on the information gathered, AMS is removing the “Unclassified” category from the aforementioned U.S.

Standards for Grade. The revision brings these grade standards in line with other recently amended standards and current terminology, and updates the standards to more accurately represent today's marketing practices and provide the industry with greater flexibility.

**Authority:** 7 U.S.C. 1621–1627.

Dated: July 29, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–18451 Filed 8–3–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 986

[Docket No. AO–FV–15–0139; AMS–FV–15–0023; FV15–986–1]

#### **Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Order Regulating Handling**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a marketing agreement and order (order) for pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. The order provides authority to collect industry data and to conduct research and promotion activities. In addition, the order provides authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program will be financed by assessments on handlers of pecans grown in the production area and will be locally administered, under USDA oversight, by a Council of seventeen growers and shellers (handlers) nominated by the industry and appointed by USDA.

**DATES:** This rule is effective August 5, 2016.

**ADDRESSES:** Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

#### **FOR FURTHER INFORMATION CONTACT:**

Melissa Schmaedick, Senior Marketing Specialist; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Michelle Sharrow, Rulemaking Branch Chief; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Melissa.Schmaedick@ams.usda.gov](mailto:Melissa.Schmaedick@ams.usda.gov) or [Michelle.Sharrow@ams.usda.gov](mailto:Michelle.Sharrow@ams.usda.gov).

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on June 26, 2015, and published in the July 2, 2015, issue of the **Federal Register** (80 FR 38021); Recommended Decision and Opportunity to File Written Exceptions issued on October 20, 2015, and published in the October 28, 2015, issue of the **Federal Register** (80 FR 66372); and Secretary's Decision and Referendum Order issued on February 22, 2016, and published in the February 29, 2016, issue of the **Federal Register** (81 FR 10138).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Notice of this rulemaking action was provided to tribal governments through USDA's Office of Tribal Relations; no comments have been received.

#### **Preliminary Statement**

The marketing agreement and order regulating the handling of pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas is based on the record of public hearing held July 20 through July 21, 2015, in Las Cruces, New Mexico; July 23 through July 24, 2015, in Dallas, Texas; and, July 27 through July 29, 2015, in Tifton, Georgia. The hearing was held to receive evidence on the marketing order from growers, handlers, and other interested parties located throughout the production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the

formulation of marketing agreements and orders (7 CFR part 900). The marketing order is authorized under section 8(c) of the Act. Notice of this hearing was published in the **Federal Register** on July 2, 2015.

The proposal was submitted for consideration to the Department on May 22, 2015, by the American Pecan Board (Board), a proponent group established in 2013 to represent the interests of growers and handlers throughout the fifteen-state production area. A subsequent, modified draft of the regulatory text was submitted on June 10, 2015.

The order provides the pecan industry with tools to assist the industry in addressing a number of challenges, including: a lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on October 20, 2015, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 27, 2015. No exceptions were filed. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by December 28, 2015. None were filed.

However, USDA provided two conforming changes to the order language as published in the Recommended Decision. These conforming changes replaced the word “redefining” in § 986.55 (c)(6) with “reestablishment,” and the word “redefining” in § 986.33(b) with “reestablishment,” thereby conforming to the terminology used in § 986.58.

Further, USDA provided a correction to the Regulatory Flexibility Act (RFA) analysis published in the Recommended Decision. The RFA incorrectly referenced a Small Business Administration (SBA) threshold of \$7 million in annual receipts to identify small handler entities, while hearing testimony correctly identified a \$7.5 million threshold.

The specifics of these corrections were addressed in the Secretary's Decision and Referendum Order issued on February 22, 2016, and published in the February 29, 2016, issue of the **Federal Register**.