

5 U.S.C. 553, 601, and 804

This final rule modifies a definition in agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the **Federal Register**.

Furthermore, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Executive Orders 12866 and 13563

This rule does not meet the definition of a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. Because this rule is not a significant regulatory action, it has not been reviewed by the Office of Management and Budget.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13771

Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements of Executive Order 13771. See OMB's Memorandum on "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 proceedings that must be exhausted before parties may file suit in court challenging this rule.

Executive Order 13132

This rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The review reveals that this rule does not contain policies with federalism implications sufficient to warrant federalism consultation under Executive Order 13132.

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 and would not have significant tribal implications.

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

List of Subjects in 7 CFR Part 1

Administrative practice and procedure.

For the reasons set forth in the preamble, 7 CFR part 1 is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS**Subpart P—Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary**

- 1. Add an authority citation for subpart P of part 1 to read as follows:

Authority: 5 U.S.C. 301.

- 2. Section 1.802 is amended by revising the definition of "Judge" to read as follows:

§ 1.802 Definitions.

* * * * *

Judge means any administrative law Judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

* * * * *

Stephen Alexander Vaden,

General Counsel, Office of the General Counsel.

[FR Doc. 2019–20585 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 51**

[Document Number AMS–SC–18–0055, SC–18–330]

U.S. Standards for Grades of Apples

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is amending the U.S. Standards for Grades of Apples by removing smooth net-like russetting as a grade-determining factor in the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS is removing obsolete references to the location where color standards may be examined and purchased. The changes modernize the standards and meet consumer demand by providing greater marketing flexibility.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT:

David G. Horner, Agricultural Marketing Specialist, USDA, AMS, Specialty Crops Program, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg VA, 22406; phone (540) 361–1120; fax (540) 361–1199; or, email Dave.Horner@usda.gov. Copies of the revised U.S. Standards for Apples are available at <http://www.regulations.gov> or on the AMS website at <https://www.ams.usda.gov/grades-standards/fruits>.

SUPPLEMENTARY INFORMATION: The changes exempt Fuji apples from smooth net-like russetting as a grade-determining factor. These revisions also affect the grade requirements under the Export Apple Act.

Executive Orders 12866, 13771, and 13563

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB's Memorandum titled "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.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 or 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

The current U.S. standards provide for apples to be sorted into various grades, including but not limited to U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1. Each of the grades describes the qualities required for apples to meet the standards and those that are not to be scored against certain varieties of apples when determining grade. AMS proposed amending the U.S. standards for apples so that smooth net-like russeting of Fuji apples would not be scored in any grade (See 84 FR 19743). Smooth net-like russeting is a cosmetic defect that affects the skin of the apple but not the internal quality of the fruit. Smooth net-like russeting, which is called flecking by the Pacific Northwest apple industry, is prevalent in the Fuji variety. U.S. apple standards restricted apples from exhibiting an aggregate area of smooth net-like russeting greater than 10 percent for U.S. Extra Fancy, 15 percent for U.S. Fancy, and 25 percent for U.S. No. 1 from meeting the grade requirements. The Export Apple Act regulations (7 CFR part 33) require that apples grade at least U.S. No. 1 or U.S. No. 1 Early (except apples for export to

Pacific ports of Russia must grade at least U.S. Utility or U.S. No. 1 Hail for hail damaged apples, as specified in the U.S. Standards for Grades of Apples). Fuji apples that display smooth net-like russeting greater than the percentages allowed are therefore excluded from the export market due to current U.S. grade standards.

The Washington State Grade Standards for Apples (16 W.A.C. 403) do not consider smooth net-like russeting to be a defect for Fuji apples if the russeting does not rise above the surface of the skin and the skin is not rough to the touch. Apples grown in Washington account for nearly 75 percent of domestic production and more than 90 percent of U.S. export apples. Revising the U.S. apple standards to exclude scoring of smooth net-like russeting on Fuji apples as a quality defect, in alignment with the Washington State standards, will promote consistency across the apple market and remove barriers to the export market for growers of the Fuji variety.

In December 2016, the Northwest Horticultural Council (NHC) petitioned AMS to remove the requirement for scoring smooth net-like russeting from the U.S. Standards for Grades of Apples for the Fuji variety. In response, AMS asked the NHC to provide justification and evidence of industry support, which they did in a memorandum submitted in April 2018. The NHC provided research showing that Fuji apples have a propensity for smooth net-like russeting and that the feature does not negatively affect the internal quality of the fruit. In addition, the NHC stated that revising the U.S. apple standards would partially harmonize them with the Washington State apple standards, and help prevent sound Fuji apples from being rejected in domestic and international markets. The NHC petition was supported by the Washington Apple Commission, Idaho Apple Commission, California Apple Commission, and many other apple organizations. AMS conducted research on the proposal by meeting with Washington State and industry personnel in November 2018. Based on available data, AMS concluded that exempting Fuji apples from scoring smooth net-like russeting as a quality defect would provide the industry with greater flexibility, and align the U.S. standards with current state and industry practices.

Comments

On May 6, 2019, AMS published a proposed rule in the **Federal Register** (84 FR 19743) soliciting comments on

removing smooth net-like russeting as a grade-determining factor from the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades for Fuji apples. In addition, AMS proposed removing obsolete references to the location where color standards may be examined and purchased. The comment period closed on July 5, 2019. Three comments were received; all supported the proposed revisions.

One commenter was an association representing 7,500 apple growers throughout America as well as more than 400 individual firms involved in the apple business. They “strongly support[ed]” the revisions as they will remove an unnecessary obstacle to U.S.-grown Fuji apples accessing the global marketplace. Another commenter representing growers, shippers, and packers in the Pacific Northwest “fully supported” the proposed revisions and “encourage[d] its swift adoption.” The third commenter was anonymous and stated that the revisions were “ideal” since the changes would prevent sound apples from going to waste.

Based on the information gathered, AMS is making the following revisions to the U.S. Standards for Grades of Apples:

- *Section 51.300 U.S. Extra Fancy:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- *Section 51.301 U.S. Fancy:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect.
- *Section 51.302 U.S. No. 1:* Revised to exempt the Fuji variety from scoring of smooth net-like russeting as a defect. The revision of the U.S. No. 1 grade also will affect the U.S. No. 1 Hail (§ 51.302(a)) grade and the permitted combination grades (§ 51.304).
- *Section 51.305 Color Requirements:* Revised to remove obsolete references to the location where color standards may be examined and purchased.

Regulatory Flexibility Analysis

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 revision to the U.S. Standards for Grades of Apples (7 CFR 51.300–51.322). 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 regulatory flexibility analysis.

The revision will result in a minor change to the current U.S. standards to allow smooth net-like russeting of the Fuji variety of apple. There will be little

or no additional cost to implement this revision.

According to the Small Business Administration (SBA) (13 CFR 121.601), the definition of a small apple producer is one whose annual sales are less than \$750,000. Based on this definition, data from the 2012 Agricultural Census show that at least 94 percent of farm operations that produce apples are considered small. These small growers will not be disproportionately affected by the rule as all changes to the standard will be applied uniformly on all market participants.

The proposal for the change to the U.S. Standards for Grades of Apples was submitted by the NHC, which represents apple growers, packers, and shippers in Washington, Oregon, and Idaho who account for 75 percent of domestic fresh apple production. This proposal was reviewed by the U.S. Apple Association and the U.S. Apple Export Council. The addition of smooth net-like russeting to the list of features that are not scorable against Fuji apples in the U.S. Standards for Grades of Apples will promote consistency in apple grading, increase U.S. Fuji apple access into export markets, and provide for greater price stability for the Fuji variety of apples.

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. Revise § 51.300 to read as follows:

§ 51.300 U.S. Extra Fancy.

“U.S. Extra Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing injury, visible watercore, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible watercore after January 31st of the year following the year of production except

for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

- 3. Revise § 51.301 to read as follows:

§ 51.301 U.S. Fancy.

“U.S. Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible watercore, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible watercore after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible watercore and smooth net-like russeting shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table 1 of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

- 4. Amend § 51.302 by revising the introductory text to read as follows:

§ 51.302 U.S. No. 1.

“U.S. No. 1” consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table 1 of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of “damage by russeting,” except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent; *Provided*, That, in the case of the Yellow Newtown or similar varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent; and that smooth net-like russeting shall not be scored against the Fuji variety under any circumstances. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible watercore shall not be

scored in this grade. (See §§ 51.305 and 51.306.)

* * * * *

- 5. In § 51.305, remove the two undesignated introductory paragraphs and add paragraphs (a) and (b) in their place to read as follows:

§ 51.305 Color requirements.

(a) In addition to the requirements specified for the grades set forth in §§ 51.300 through 51.304, apples of these grades shall have the percentage of color specified for the variety in table 1 of this section. All apple varieties other than those appearing in table 1 of this section shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided*, That an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color.

(b) Color standards USDA Visual Aid APL–CC–1 (Plates a–e) consists of a folder containing the color requirements for apples set forth in paragraph (a) of this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. The color standards are available for purchase at <http://www.ams.usda.gov>.

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Dated: September 18, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019-20570 Filed 9-30-19; 8:45 am]

BILLING CODE 3410-02-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AE84

Payday Alternative Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule (referred to as the PALs II rule) to allow federal credit unions (FCUs) to offer additional payday alternative loans (PALs) to their members. The final rule does not replace the NCUA's current PALs rule (referred to as the PALs I rule). Rather, the PALs II rule grants FCUs additional flexibility to offer their members meaningful alternatives to traditional payday loans while maintaining many of the key structural safeguards of the PALs I rule.

DATES: The final rule is effective on December 2, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew Biliouris, Director, Office of Consumer Financial Protection; Joseph Goldberg, Director, Division of Consumer Compliance Policy and Outreach, Office of Consumer Financial Protection; or Marvin Shaw, Staff Attorney, Division of Regulations and Legislation, Office of General Counsel; 1775 Duke Street, Alexandria, VA 22314-6113 or telephone: (703) 518-1140 (Messrs. Biliouris and Goldberg), or (703) 518-6540 (Mr. Shaw).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Comments
- III. Summary of the Final Rule
- IV. Statement of Legal Authority
- V. Section-by-Section Analysis
- VI. Regulatory Procedures

I. Background

Federal credit unions (FCUs) provide individuals of modest means access to affordable credit for productive and provident purposes.¹ This core credit union mission puts FCUs in natural competition with short-term, small-dollar lenders that offer payday, vehicle

¹ See Credit Union Membership Access Act, Public Law 105-219, section 2, 112 Stat. 913 (Aug. 7, 1998) (codified as 12 U.S.C. 1751 note).

title, and other high-cost installment loans to borrowers of modest means.²

A “payday loan” generally refers to a short-term, small-dollar loan repayable in one or more installments with repayment secured by a pre- or post-dated check or a preauthorized electronic fund transfer (EFT) from the borrower's checking account.³ A payday loan usually matures in 14 days, around the borrower's next payday, at which time the borrower is often required to repay the loan in a single balloon payment. The borrower typically does not pay interest on a payday loan. Rather, payday lenders charge high “application” fees relative to the amount borrowed, which typically range between \$15 and \$35 per 100 borrowed.⁴ This pricing structure produces a triple-digit annual percentage rate (APR).⁵

Despite marketing payday loans as a temporary lifeline to borrowers, most payday lenders refinance or “rollover” the borrower's initial payday loan charging additional fees without a significant economic benefit to the borrower. In fact, the Center for Responsible Lending estimates that 76 percent of payday loans are rollovers.⁶ Borrowers most often rollover a payday loan because the borrower does not have the ability to repay the initial loan upon maturity or will have limited funds to meet other obligations.⁷ This pattern of repeated borrowings creates a “cycle of debt” that can increase the borrower's risk of becoming unbanked, filing for bankruptcy, or experiencing severe financial hardship.⁸

2010 Payday Alternative Loan Rulemaking (PALs I Rule)

In 2010, the Board amended the NCUA's general lending rule, § 701.21, to provide a regulatory framework for FCUs to make viable alternatives to

² Roy F. Bergengren, *Coöperative Credit*, 191 *The Annals of the American Academy of Political and Social Science* 144-148 (1937).

³ Robert W. Snarr, Jr., Fed. Reserve Bank of Phila., *No Cash 'til Payday: The Payday Lending Industry*, Compliance Corner (1st quarter 2002) available at www.philadelphiafed.org/bank-resources/publications/compliance-corner/2002/first-quarter/q1cc1_02.cfm.

⁴ See National Consumer Law Center, *Consumer Credit Regulation* 403-6 (1st ed. 2012).

⁵ The “annual percentage rate” is a “measure of the cost of credit, expressed as a yearly rate.” 12 CFR 1026.14(a).

⁶ Uriah King & Leslie Parrish, Center for Responsible Lending, *Phantom Demand: Short-Term Due Date Generates 76% of Total Volume* 15 (July 2009) available at www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-generates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html.

⁷ *Id.*

⁸ *Id.*

payday loans, the PALs I rule.⁹ The PALs I rule, § 701.21(c)(7)(iii), permits an FCU to offer to its members a PAL loan, a form of closed-end consumer credit, at a higher APR than other credit union loans as long as the PAL has certain structural features, developed by the Board, to protect borrowers from predatory payday lending practices that can trap borrowers in repeated borrowing cycles.

For example, the PALs I rule eliminates the potential for “loan churning,” the practice of inducing a borrower to repay an existing loan with another loan without significant economic benefit to the borrower, by prohibiting an FCU from rolling one PALs I loan into another PALs I loan.¹⁰ As the Board previously explained, “these provisions of the [PALs I rule] will work to curtail a member's repetitive use and reliance on this type of product, which often compounds the member's already unstable financial condition . . . The Board recognizes that continuously ‘rolling-over’ a loan can subject a borrower to additional fees and repayment amounts that are substantially more than the initial amount borrowed.”¹¹ However, to avoid the possibility of a default in cases where the borrower cannot repay the initial PAL loan, an FCU may extend the maturity of an existing PALs I loan to the maximum term limit permissible under the regulation as long as the borrower does not pay any additional fees or receive additional credit. An FCU may also refinance a traditional payday loan into a PALs I loan.¹²

The PALs I rule also eliminates the underlying borrower payment shock from a single balloon payment, which often forces a borrower to rollover a payday loan, by requiring that each PAL loan fully amortize over the life of the loan.¹³ As the Board previously stated in the preamble to the final PALs I rule, “balloon payments often create additional difficulty for borrowers trying to repay their loans, and requiring FCUs to fully amortize the loans will allow borrowers to make manageable payments over the term of the loan, rather than trying to make one large payment.”¹⁴ Accordingly, an FCU must structure a PALs I loan so that a member repays principal and interest in

⁹ Short-Term, Small Amount Loans, 75 FR 58285 (Sept. 24, 2010).

¹⁰ 12 CFR 701.21(c)(7)(iii)(A)(4).

¹¹ Short-Term, Small Amount Loans, 75 FR 24497, 24499 (May 5, 2010).

¹² Short-Term, Small Amount Loans, 75 FR 58285, 58286 (Sept. 24, 2010).

¹³ 12 CFR 701.21(c)(7)(iii)(A)(5).

¹⁴ Short-Term, Small Amount Loans, 75 FR 58285, 58287 (Sept. 24, 2010).