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Agricultural Marketing Service

7 CFR Part 51

[Doc No. AMS-SC-21-0039, SC-21-327]

Revising U.S. Grade Standards for Pecans in the Shell and Shelled Pecans

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans by replacing the current grades with U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades. In addition, AMS proposes to update terminology, definitions, and defect scoring guides.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments to the USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; via fax to (540) 361-1199; or, at <https://www.regulations.gov>. Comments should reference the date and page number of this issue of the **Federal Register**.

Comments will be posted without change, including any personal information provided.

All comments received within the comment period will become part of the public record maintained by the Agency and will be made available to the public via

<https://www.regulations.gov>. Comments will be made available for public inspection at the above address during regular business hours or can be viewed at:

<https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Olivia Banks at the address above, or by phone (540) 361-1120; fax (540) 361-1199; or email Olivia.Banks@usda.gov. Copies

of the proposed U.S Standards for Grades for Pecans in the Shell and U.S. Standards for Grades of Shelled Pecans are available at <https://www.regulations.gov>. Copies of the current Standards are available at <https://www.ams.usda.gov/nuts>.

SUPPLEMENTARY INFORMATION: This proposed action, pursuant to 5 U.S.C. 553, would amend regulations at 7 CFR part 51 issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended. These revisions do not affect the Federal marketing order, 7 CFR part 986 (referred to as Marketing Order 986), issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) or applicable imports.

Executive Orders 12866 and 13563

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with 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 proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from review under Executive Order 12866.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications.

AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government

and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Executive Order 12988

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

Background

AMS continuously reviews fruit and vegetable grade standards to ensure their effectiveness in the industry and to modernize language.

On June 12, 2020, the American Pecan Council (APC) petitioned AMS to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans (Standards or Grade Standards). The APC was established by, and is regulated under, the Federal marketing order for the pecan industry, Marketing Order 986, and represents all 15 major U.S. pecan-growing states.

The APC noted that the pecan Standards have not been substantially updated since 1969, the year they were issued, and the terminology of the Standards no longer reflect current industry descriptions and practices. The National Pecan Shellers Association directed the initiative to update the Standards for the APC. The APC voted unanimously to submit their proposed revisions to the USDA. AMS and the APC have since collaborated to refine the proposed revisions.

The proposed changes to the Standards would replace current grades with new ones, revise scoring guides for defects, create new sizes, and revise definitions. AMS proposes to revise the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans by replacing the current grades with U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades. The two current grades for

pecans in the shell are U.S. No. 1 and U.S. No. 2. The six current grades for shelled pecans are U.S. No. 1 Halves, U.S. No. 1 Halves and Pieces, U.S. No. 1 Pieces, U.S. Commercial Halves, U.S. Commercial Halves and Pieces, and U.S. Commercial Pieces. These proposed changes represent current industry descriptions and practices.

The proposed revisions do not affect Marketing Order 986 or applicable imports since there are no grade, size, or quality standards currently applied under the marketing order.

A 60-day comment period is provided for interested persons to submit comments on the proposed revised Grade Standards. Copies of the proposed revised standards are at <https://www.regulations.gov>. After the 60-day comment period, AMS will move forward in accordance with 7 CFR 36.3(a)(1) through (3).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of no more than \$1,000,000 (13 CFR 121.201). Small agricultural service firms (handlers) are defined as those with annual receipts of no more than \$30,000,000 (13 CFR 121.201).

USDA used the following data and computations to estimate whether a majority of U.S. pecan growers and handlers qualify as small or large businesses, and the potential economic impact of this proposed rule on them. There are two distinct steps in this computation. The first step is to use 2017 Agricultural Census data to estimate the

number of commercial pecan growers, using Marketing Order 986's definition of a grower. The second step is to take that estimated number of commercial pecan growers and compute the proportion of those growers that are small or large businesses using the SBA size threshold of \$1,000,000 in annual sales.

Almost all U.S. pecans are grown in a 15-state production area that consists of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas (7 CFR 986.31). Under Marketing Order 986, the term "grower" includes those who produce a minimum of 50,000 pounds of inshell pecans during a representative period or who own a minimum of 30 pecan acres (7 CFR 986.17(b)). Growers with an orchard that is fewer than 30 pecan acres are not regulated by Marketing Order 986 and do not pay an assessment.

In the 2017 Census of Agriculture, the most recent edition to date, 25 acres is the lower bound of the range that includes 30 acres (25 to 49.9 acres). In the 12 states for which the Census has data on the number of pecan farms, the Census identified 17,144 total pecan farms. Of those, 3,221 were farms with 25 pecan acres or more (with bearing and non-bearing acres). Since Marketing Order 986 defines the threshold for a commercially viable farm as 30 acres, the estimate of 3,221 commercial pecan farms may be moderately overstated but is the best available estimate of farms selling into the commercial market and therefore most affected by grade standards applied to the sale of pecans to handlers.

The second step in the computation is to estimate the number of commercial pecan growers that are small and large businesses.

The Census identified 440 farms with sales of more than \$1,000,000, which qualify as a large business under the SBA standard, which represents 14 percent of the 3,221 farms with 25 or more acres and 3 percent of total pecan farms. Therefore, 86

percent of commercially viable pecan farms are small businesses under the SBA standard.

The remaining pecan farms do not sell directly into regular commercial channels but rather sell small quantities to larger farm operations or other businesses.

The APC estimates there are 105 handlers subject to regulation under Marketing Order 986. National Agricultural Statistics Service (NASS) data for the years 2018 through 2020, show that the national average quantity of pecans produced was 267.3 million pounds, with a crop value of \$442.6 million. Dividing crop value by quantity yields a 3-year average grower price of \$1.66 per inshell pound. The average handler margin is approximately \$0.60 per inshell pound according to evidence presented in 2015 during formal rulemaking for Marketing Order 986. Adding the average handler margin to the 3-year average grower price of \$1.66 per pound results in an estimated handler price of \$2.26 per inshell pound. Multiplying the estimated handler price per pound by the 3-year average production of 267.3 million pounds yields a total value of production at the handler level of approximately \$604 million. Dividing this handler-level value of pecan production by the number of handlers (105) results in an average return per handler of \$5.75 million, well below the SBA small business threshold of \$30,000,000 in annual receipts. Building in a \$0.10 higher or lower cost to account for changes since the 2015 data, the range of average returns per handlers could be from \$5.5 to \$6.0 million, still well below \$30,000,000. Using these estimated prices, utilization volume, and number of handlers, and assuming a normal bell-curve distribution of receipts among handlers, the majority of handlers qualify as small businesses.

Food grading standards provide important quality information to buyers and sellers that contribute to the efficient marketing of agricultural commodities. Because the proposed revisions of the Grade Standards represent current industry grading practices, these changes will not require any significant changes in grower or handler business

operations nor any significant industry educational effort. As the Standards are voluntary, handlers are not required to use the new terms or make any changes. Neither large nor small handlers will incur additional costs. No small businesses will be unduly or disproportionately burdened.

USDA has determined that this rule is consistent with and would effectuate the purpose of the Agricultural Marketing Act of 1946. Therefore, this rule proposes to revise the voluntary U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Shelled Pecans issued under the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 51

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

For reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 51 as follows:

PART 51 – FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621 – 1627.

2. Revise § 51.1400 to read as follows:

§ 51.1400 U.S. Extra Fancy.

U.S. Extra Fancy consists of pecans in the shell which meet the following requirements:

- (a) Free from loose, extraneous, or foreign material.
- (b) Well cured.
- (c) Shells are:
 - (1) Uniform in color; and
 - (2) Free from damage by any cause.

(d) Kernels are:

(1) Well developed;

(2) Uniform in color and not darker than “light;” and

(3) Free from damage by any cause.

(e) For tolerances see §51.1406.

3. Revise § 51.1401 to read as follows:

§ 51.1401 U.S. Fancy.

U.S. Fancy consists of pecans in the shell which meet the following requirements:

(a) Free from loose, extraneous, or foreign material.

(b) Well cured.

(c) Shells are:

(1) Uniform in color; and

(2) Free from damage by any cause.

(d) Kernels are:

(1) Fairly well developed;

(2) Uniform in color;

(3) Not darker than “light amber,” unless specified to a lighter color classification;

and

(4) Free from damage by any cause.

(e) For tolerances see §51.1406.

4. Remove the undesignated center heading preceding § 51.1402.

5. Revise § 51.1402 to read as follows:

§ 51.1402 U.S. Choice.

U.S. Choice consists of pecans in the shell which meet the following requirements:

(a) Free from loose, extraneous, or foreign material.

- (b) Well cured.
- (c) Shells are:
 - (1) Fairly uniform in color; and
 - (2) Free from serious damage by any cause.
- (d) Kernels are:
 - (1) Not poorly developed;
 - (2) Fairly uniform in color;
 - (3) Not darker than “amber,” unless specified to a lighter color classification; and
 - (4) Free from serious damage by any cause.
- (e) For tolerances see §51.1406.
- 6. Remove the undesignated center heading preceding § 51.1403.
- 7. Revise § 51.1403 to read as follows:

§ 51.1403 U.S. Standard.

U.S. Standard consists of pecans in the shell which meet the following requirements:

- (a) Free from loose, extraneous, or foreign material;
 - (b) Well cured;
 - (c) No requirement for fullness of kernel;
 - (d) No requirement for uniformity of color of shells or kernels;
 - (e) May contain kernels that are “dark amber” or darker, unless specified to a lighter color classification; and
 - (f) Increased tolerances for defects see § 51.1406.
8. Revise the undesignated center heading preceding § 51.1404 to read as follows:

SIZE CLASSIFICATION

9. Revise § 51.1404 to read as follows:

§ 51.1404 Size classification.

Size of pecans may be specified in connection with the grade in accordance with one of the following classifications. To meet the requirements for any one of the classifications in Table 1 to this section, the lot must conform to both the specified number of nuts per pound and the weight of the 10 smallest nuts per 100-nut sample.

Table 1 to § 51.1404

Size classification	Number of nuts per pound	Minimum weight of the 10 smallest nuts per 100-nut sample
Jumbo	55 or less	In each classification, the 10 smallest nuts per 100 must weigh at least 7% of the total weight of the 100 nut-sample.
Extra Large	56 to 63	
Large	64 to 77	
Medium	78 to 100	
Small	101 or more	

10. Revise the undesignated center heading preceding § 51.1405 to read as follows:

KERNEL COLOR CLASSIFICATION

11. Revise § 51.1405 to read as follows:

§ 51.1405 Kernel color classification.

(a) The skin color of the pecan kernels may be described in terms of the color classifications provided in this section. When the color of kernels in a lot generally conforms to the “light” or “light amber” classification, the color classification may be used to describe the lot in connection with the grade.

(1) *Light* means that the kernel is mostly golden color or lighter, with not more than 25 percent of the surface darker than golden, and none of the surface darker than light brown.

(2) *Light amber* means that more than 25 percent of the kernel is light brown, with not more than 25 percent of the surface darker than light brown, none of which is darker

than medium brown.

(3) *Amber* means that more than 25 percent of the kernel is medium brown, with not more than 25 percent of the surface darker than medium brown, none of which is darker than dark brown (very dark brown or blackish-brown discoloration).

(4) *Dark amber* means that more than 25 percent of the kernel is dark brown, with not more than 25 percent of the surface darker than dark brown (very dark brown or blackish-brown discoloration).

(b) U.S. Department of Agriculture kernel color standards, PEC-MC-1, illustrate the color intensities implied by the terms “golden,” “light brown,” “medium brown,” and “dark brown” referred to in paragraph (a) of this section. The color standards are available at <https://www.ams.usda.gov/grades-standards>.

12. Revise the undesignated center heading preceding § 51.1406 to read as follows:

TOLERANCES

13. Revise § 51.1406 to read as follows:

§ 51.1406 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified:

(a) *U.S. Extra Fancy, U.S. Fancy, and U.S. Choice grades*—(1) *For shell defects, by count.* 5 percent for pecans with damaged shells, including therein not more than 2 percent for shells which are seriously damaged.

(2) *For kernel defects, by count.* 12 percent for pecans with kernels which fail to meet the requirements for the grade or any specified color classification, including therein not more than 7 percent for kernels which are seriously damaged: *Provided*, That not more than 6 percent shall be allowed for kernels which are rancid, moldy, decayed, or injured by insects: *Provided further*, That included in this 6 percent tolerance not more

than 0.5 percent (one-half of 1 percent) shall be allowed for pecans with live insects inside the shell.

(3) *For loose, extraneous, or foreign material, by weight.* 0.5 percent (one-half of 1 percent).

(b) *U.S. Standard grade—(1) For shell defects, by count.* 10 percent for pecans with damaged shells, including therein not more than 3 percent for shells which are seriously damaged.

(2) *For kernel defects, by count.* 30 percent for pecans with kernels which fail to meet the requirements for the U.S. Extra Fancy, U.S. Fancy, or U.S. Choice grades, including therein not more than 10 percent for kernels which are seriously damaged: *Provided,* That not more than 7 percent shall be allowed for kernels which are rancid, moldy, decayed, or injured by insects: *Provided further,* That included in this 7 percent tolerance not more than 0.5 percent (one-half of 1 percent) shall be allowed for pecans with live insects inside the shell.

(3) *For loose, extraneous, or foreign material, by weight.* 0.5 percent (one-half of 1 percent).

14. Revise the undesignated center heading preceding § 51.1407 to read as follows:

APPLICATION OF TOLERANCES

15. Revise § 51.1407 to read as follows:

§ 51.1407 Application of tolerances.

Individual 100-count samples shall have not more than one and one-half times a specified tolerance of 5 percent or more and not more than double a tolerance of less than 5 percent, except that at least one pecan which is seriously damaged by live insects inside the shell is permitted: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade.

16. Add an undesignated center heading preceding § 51.1408 to read as follows:

SAMPLE FOR GRADE OR SIZE DETERMINATION

17. Revise § 51.1408 to read as follows:

§ 51.1408 Sample for grade or size determination.

Each sample shall consist of 100 pecans. The individual sample shall be drawn at random from a sufficient number of packages to form a 100-count composite sample. The number of such individual 100-count samples drawn for grade or size determination will vary with the size of the lot. When practicable, at point of packaging the sample may be obtained from the grading belt after sorting has been completed.

18. Add an undesignated center heading preceding § 51.1409 to read as follows:

DEFINITIONS

19. Revise § 51.1409 to read as follows:

§ 51.1409 Loose extraneous or foreign material.

Loose extraneous or foreign material means loose hulls, empty broken shells, rocks, wood, glass, plastic, or any substance other than pecans in the shell or pecan kernels.

20. Revise § 51.1410 to read as follows:

§ 51.1410 Well cured.

Well cured means the kernel separates freely from the shell, breaks cleanly when bent without splintering, shattering, or loosening the skin; and the kernel appears to be in good shipping or storage condition as to moisture content.

21. Revise § 51.1411 to read as follows:

§ 51.1411 Well developed.

Well developed means that the kernel is full-meated throughout its width and length.

22. Revise § 51.1412 to read as follows:

§ 51.1412 Fairly well developed.

Fairly well developed means that the kernel is full-meated in over 50 percent of its width and length.

23. Revise § 51.1413 to read as follows:

§ 51.1413 Poorly developed.

Poorly developed means that the kernel is full-meated in less than 25 percent of its width and length.

24. Revise § 51.1414 to read as follows:

§ 51.1414 Uniform in color.

Uniform in color means that the shells do not show sufficient variation in color to detract from the general appearance of the lot and that 95 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

25. Revise § 51.1415 to read as follows:

§ 51.1415 Fairly uniform in color.

Fairly uniform in color means that the shells do not show sufficient variation in color to materially detract from the general appearance of the lot and that 85 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

26. Remove the undesignated center heading preceding § 51.1416.

27. Revise § 51.1416 to read as follows:

§ 51.1416 Damage.

Damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual pecan or the general appearance of the pecans in the lot. The following defects shall be considered as damage:

(a) Adhering hull material or dark stains affecting an aggregate of more than 5 percent of the surface of the individual shell;

(b) Adhering material from inside the shell when firmly attached to more than one-third of the outer surface of the kernel and contrasting in color with the skin of the kernel;

(c) Broken shells when any portion of the shell is missing;

(d) Internal flesh discoloration of a medium shade of gray or brown extending more than one-fourth inch (6 mm) lengthwise beneath the center ridge, or any equally objectionable amount in other portions of the kernel; or lesser areas of dark discoloration affecting the appearance to an equal or greater extent;

(e) Kernels which are dark amber in color;

(f) Kernels which are not well cured;

(g) Kernel spots when more than one dark spot is present on either half of the kernel, or when any such spot is more than one-eighth inch (3 mm) in greatest dimension;

(h) Poorly developed kernels;

(i) Shriveling when the surface of the kernel is very conspicuously wrinkled; and

(j) Split or cracked shells when the shell is spread apart or will spread upon application of slight pressure.

28. Add § 51.1417 to read as follows:

§ 51.1417 Serious damage.

Serious damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual pecan. The following defects shall be considered as serious damage:

- (a) Adhering hull material or dark stains affecting an aggregate of more than 20 percent of the individual shell;
- (b) Broken shells when the missing portion of shell is greater in area than a circle one-fourth inch (6 mm) in diameter;
- (c) Dark discoloration of the skin which is darker than dark amber over more than 25 percent of the surface of the kernel;
- (d) Decay affecting any portion of the kernel;
- (e) Insects, web, frass, or the kernel shows distinct evidence of insect feeding on the kernel;
- (f) Internal flesh discoloration of a dark shade extending more than one-third the length of the kernel beneath the ridge, or an equally objectionable amount of dark discoloration in other portions of the kernel;
- (g) Kernel spots when more than three dark spots on either half of the kernel, or when any spot or the aggregate of two or more spots on one of the halves of the kernel affects more than 10 percent of the surface;
- (h) Mold, on the surface or inside the kernel, which is plainly visible without magnification;
- (i) Rancidity when the kernel is distinctly rancid to the taste. Staleness of flavor shall not be classed as rancidity;
- (j) Undeveloped kernels having practically no food value, or which are blank (complete shell containing no kernel); and
- (k) Worm holes when penetrating the shell.

29. Add § 51.1418 to read as follows:

§ 51.1418 Inedible kernels.

Inedible kernels means that the kernel or pieces of kernels are rancid, moldy, decayed, injured by insects or otherwise unsuitable for human consumption.

30. Add § 51.1419 to read as follows:

§ 51.1419 Rancidity.

Rancidity refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. While there is no definitive measure to determine rancidity, the tendency of the kernel to become rancid can be evaluated by testing the kernel's peroxide and free fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acid should be less than 1%.

31. Add § 51.1420 to read as follows:

§ 51.1420 Kernel moisture content.

Moisture content shall be no more than 6%, unless otherwise specified.

32. Revise § 51.1430 to read as follows:

§ 51.1430 U.S. Extra Fancy.

U.S. Extra Fancy consists of pecan half-kernels which meet the following requirements:

- (a) *For quality.* (1) Well dried;
- (2) Well developed;
- (3) Uniform in color;
- (4) Not darker than "light;"
- (5) Free from damage by any cause; and
- (6) Comply with tolerances for defects (see §51.1437).
- (b) *For size.* (1) Uniform in size; and
- (2) Conform to size classification or count specified.

33. Revise § 51.1431 to read as follows:

§ 51.1431 U.S. Fancy.

U.S. Fancy consists of pecan half-kernels which meet the following requirements:

- (a) *For quality.* (1) Well dried;

- (2) Fairly well developed;
 - (3) Uniform in color;
 - (4) Not darker than “light amber,” unless specified to a lighter color classification;
 - (5) Free from damage by any cause; and
 - (6) Comply with tolerances for defects (see §51.1437).
- (b) *For size.* (1) Uniform in size; and
- (2) Conform to size classification or count specified.

34. Revise § 51.1432 to read as follows:

§ 51.1432. U.S. Choice.

U.S. Choice consists of pecan half-kernels which meet the following requirements:

- (a) *For quality.* (1) Well dried;
 - (2) Not poorly developed;
 - (3) Fairly uniform in color;
 - (4) Not darker than “amber,” unless specified to a lighter color classification;
 - (5) Free from serious damage by any cause; and
 - (6) Comply with tolerances for defects (see §51.1437).
- (b) *For size.* (1) Fairly uniform in size; and
- (2) Conform to size classification or count specified.

35. Revise § 51.1433 to read as follows:

§ 51.1433 U.S. Standard.

U.S. Standard consists of pecan half-kernels which meet the following requirements:

- (a) *For quality.* (1) Well dried;
- (2) No requirement for fullness of kernel;
- (3) No requirement for uniformity of kernel;

(4) May contain kernels “dark amber” or darker, unless specified to a lighter color classification; and

(5) Increased tolerances for defects (see § 51.1437).

(b) *For size.* (1) No uniformity in size; and

(2) Conform to size classification or count specified.

36. Add an undesignated center heading preceding § 51.1434 to read as follows:

COLOR CLASSIFICATIONS

37. Revise § 51.1434 to read as follows:

§ 51.1434 Color classification.

(a) The skin color of pecan kernels may be described in terms of the color classifications provided in this section. When the color of kernels in a lot generally conforms to “light” or “light amber” classification, that color classification may be used to describe the lot in connection with the grade.

(1) *Light* means that the kernel is mostly golden color or lighter, with not more than 25 percent of the surface darker than golden, and none of the surface darker than light brown.

(2) *Light amber* means that the kernel has more than 25 percent of the surface light brown, but not more than 25 percent of surface darker than light brown, and none of the surface darker than medium brown.

(3) *Amber* means that the kernel has more than 25 percent of the surface medium brown, but not more than 25 percent of surface darker than medium brown, and none of the surface darker than dark brown (very dark brown or blackish-brown discoloration).

(4) *Dark amber* means that the kernel has more than 25 percent of the surface dark brown, but not more than 25 percent of surface darker than dark brown (very dark brown or blackish-brown discoloration).

(b) U.S. Department of Agriculture kernel color standards, PEC-MC-1, illustrate the color intensities implied by the terms “golden,” “light brown,” “medium brown,” and “dark brown” referred to in paragraph (a) of this section. The color standards are available at <https://www.ams.usda.gov/grades-standards>.

38. Add an undesignated center heading preceding § 51.1435 to read as follows:

SIZE CLASSIFICATIONS

39. Revise § 51.1435 to read as follows:

§ 51.1435 Size classification for halves.

The size of pecan halves in a lot may be specified in accordance with one of the size classifications shown in Table 1 to this section.

(a) *Basis of weight.* The number of halves per pound shall be based upon the weight of half-kernels after all pieces, meal and flour, shell, center wall, and foreign material have been removed.

(b) *Size specifications.* In lieu of the size classifications in Table 1 to this section, the size of pecan halves in a lot may be specified in terms of the number of halves or a range of number of halves per pound. For example, “400” or “600-700.”

(c) *Tolerance for count per pound.* In order to allow for variations incident to proper sizing, a tolerance shall be permitted as follows:

(1) When an exact number of halves per pound is specified, the actual count per pound may vary not more than 5 percent from the specified number; and

(2) When any size classification shown in Table 1 to this section or a range in count per pound is specified, no tolerance shall be allowed for counts outside of the specified range.

(d) *Tolerances for pieces, meal, and flour--(1) For U.S. Extra Fancy halves.* In order to allow for variations incident to proper sizing and handling, not more than 5 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided*, That

included in this amount, not more than 3 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

(2) *For U.S. Fancy halves.* In order to allow for variations incident to proper sizing and handling, not more than 15 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided,* That not more than one-third of this amount, or 5 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

(3) *For all other halves.* In order to allow for variations incident to proper sizing and handling, not more than 20 percent, by weight, of any lot may consist of pieces, meal, and flour: *Provided,* That not more than one-quarter of this amount, or 5 percent, shall be allowed for portions less than one-half of a complete half-kernel, including not more than 1 percent for meal and flour.

Table 1 to § 51.1435

Size classification for halves	Number of halves per pound
Mammoth	250 or less
Junior Mammoth	251 to 350
Jumbo	351 to 450
Large	451 to 550
Medium	551 to 650
Topper	651 to 750
King Topper	751 or more

40. Remove the undesignated center heading preceding § 51.1436.

41. Revise § 51.1436 to read as follows:

§ 51.1436 Size classification for pieces.

The size of pecan pieces in a lot may be specified in accordance with one of the size classifications shown in Table 1 to this section. Sizes are measured using a round-hole screen.

(a) *Size specifications.* In lieu of the size classifications in Table 1 to this section, the size of pieces in a lot may be specified in terms of minimum diameter, or as a range described in terms of minimum and maximum diameters expressed in sixteenths or sixty-fourths of an inch.

(b) *Tolerances for size of pieces.* In order to allow for variations incident to proper sizing, tolerances are provided for pieces in a lot which fail to meet the requirements of any size specified. The tolerances, by weight, are as follows:

(1) *For U.S. Extra Fancy and Fancy pieces.* Not more than 15 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 1 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

(2) *For U.S. Choice pieces.* Not more than 20 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 2 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

(3) *For U.S. Standard pieces.* Not more than 25 percent of the lot may fall outside of the size range in Table 1 to this section. Further, not more than 2 percent of the pieces may pass through an eight sixty-fourths of an inch round hole screen.

Table 1 to § 51.1436

Size classification	Maximum diameter (will pass through round opening of the following diameter)	Minimum diameter (will not pass through round opening of the following diameter)
Extra-Large Pieces	No limitation	32/64 inch
Large Pieces	32/64 inch	24/64 inch
Halves and Pieces	No limitation	20/64 inch
Medium Pieces	24/64 inch	16/64 inch
Small Pieces	16/64 inch	12/64 inch
Topping Pieces	12/64 inch	8/64 inch
Granules	8/64 inch	4/64 inch

42. Revise the undesignated center heading preceding § 51.1437 to read as follows:

TOLERANCES FOR DEFECTS

43. Revise § 51.1437 to read as follows:

§ 51.1437 Tolerances for defects.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by weight, are provided as specified:

- (a) U.S. Extra Fancy grade. (1) No foreign material;
- (2) 0.01 percent for shell, and center wall;
- (3) Zero tolerance is provided for pecan weevil;
- (4) 3 percent for portions of kernels which are “dark amber” or darker color; and
- (5) 3 percent for portions of kernels which fail to meet the remaining

requirements of the grade, including therein not more than 0.50 percent for defects causing serious damage: *Provided*, That any unused portion of this tolerance may be applied to increase the tolerance for kernels which are “dark amber” or darker color, or darker than any specified lighter color classification.

- (b) U.S. Fancy grade. (1) No foreign material;
- (2) 0.01 percent for shell and center wall;
- (3) No more than 2 pecan weevil larvae per 30-pounds of product;
- (4) 5 percent for portions of kernels which are “dark amber” or darker color, or

darker than any specified lighter color classification, but which are not otherwise defective; and

- (5) 5 percent for portions of kernels which fail to meet the remaining

requirements of the grade, including therein not more than 0.50 percent for defects causing serious damage: *Provided*, That any unused portion of this tolerance may be

applied to increase the tolerance for kernels which are “dark amber” or darker color, or darker than any specified lighter color classification.

(c) U.S. Choice grade. (1) No foreign material;

(2) 0.01 percent for shell and center wall;

(3) No more than 5 pecan weevil larvae per 30-pounds of product;

(4) 15 percent for portions of kernels which are “dark amber” or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; and

(5) 8 percent for portions of kernels which fail to meet the remaining requirements of the grade, including therein not more than 1 percent for defects causing serious damage.

(d) U.S. Standard grade. (1) No foreign material;

(2) 0.01 percent for shell and center wall;

(3) No limit on the number of pecan weevil larvae per 30 pounds of product;

(4) 25 percent for portions of kernels which are “dark amber” or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; and

(5) 15 percent for portions of kernels which fail to meet the remaining requirements of the grade, including therein not more than 1 percent for defects causing serious damage.

44. Add an undesignated center heading preceding § 51.1438 to read as follows:

APPLICATION OF STANDARDS

45. Revise § 51.1438 to read as follows:

§ 51.1438 Application of standards.

The grade of a lot of shelled pecans shall be determined on the basis of a composite sample drawn at random from containers in various locations in the lot.

However, any identifiable container or number of containers in which the pecans are obviously of a quality or size materially different from that in the majority of containers, shall be considered as a separate lot, and shall be sampled and graded separately.

46. Revise the undesignated center heading preceding § 51.1439 to read as follows:

DEFINITIONS

47. Revise § 51.1439 to read as follows:

§ 51.1439 Half-kernel.

(a) For Extra Fancy halves, a *half-kernel* means one of the separated halves of an entire pecan kernel with not more than one-eighth of its original volume missing, exclusive of the portion which formerly connected the two halves of the kernel.

(b) For all other halves, a *half-kernel* means one of the separated halves of an entire pecan kernel with not more than one-quarter of its original volume missing, exclusive of the portion which formerly connected the two halves of the kernel.

48. Remove the undesignated center heading preceding § 51.1440.

49. Revise § 51.1440 to read as follows:

§ 51.1440 Piece.

Piece means a portion of a kernel which is less than seven-eighths of a half-kernel, but which will not pass through a round opening four sixty-fourths of an inch in diameter.

50. Remove the undesignated center heading preceding § 51.1441.

51. Revise § 51.1441 to read as follows:

§ 51.1441 Meal and flour.

Meal and flour means fragments of kernels which will pass through a round opening four sixty-fourths of an inch in diameter.

52. Revise § 51.1442 to read as follows:

§ 51.1442 Well dried.

Well dried means that the portion of kernel is firm and crisp, not pliable, or leathery. Moisture should be no more than 4.5%, unless otherwise specified.

53. Revise § 51.1443 to read as follows:

§ 51.1443 Well developed.

Well developed means that the kernel is full-meated through its width and length.

54. Revise § 51.1444 to read as follows:

§ 51.1444 Fairly well developed.

Fairly well developed means that the kernel is full-meated in over 50 percent of its width and length.

55. Revise § 51.1445 to read as follows:

§ 51.1445 Poorly developed.

Poorly developed means that the kernel is full-meated in less than 25 percent of its width and length.

56. Revise § 51.1446 to read as follows:

§ 51.1446 Uniform in color.

Uniform in color means that 95 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

57. Revise § 51.1447 to read as follows:

§ 51.1447 Fairly uniform in color.

Fairly uniform in color means that 85 percent or more of the kernels in the lot have skin color within the range of one or two color classifications.

58. Revise § 51.1448 to read as follows:

§ 51.1448 Uniform in size.

Uniform in size means that, in a representative sample of 100 halves, the 10 smallest halves weigh not less than 25 percent as much as the 10 largest halves.

59. Revise § 51.1449 to read as follows:

§ 51.1449 Fairly uniform in size.

Fairly uniform in size means that, in a representative sample of 100 halves, the 10 smallest halves weigh not less than one-half as much as the 10 largest halves.

60. Revise § 51.1450 to read as follows:

§ 51.1450 Foreign material.

Foreign material includes rocks, wood, glass, plastic, insects, or any similar material. It does not include hard shell, center wall, or pecan weevil larvae.

61. Remove the undesignated center heading preceding § 51.1451.

62. Revise § 51.1451 to read as follows:

§ 51.1451 Damage.

Damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as damage:

(a) Adhering material from inside the shell when attached to more than one-fourth of the surface on one side of the half-kernel or piece;

(b) Dust or dirt adhering to the kernel when conspicuous;

(c) Internal flesh discoloration of a medium shade of gray or brown extending more than one-fourth the length of the half-kernel or piece, or lesser areas of dark discoloration affecting the appearance to an equal or greater extent;

(d) Kernel which is not well dried;

(e) Kernel which is “dark amber” or darker color;

(f) Kernel having more than one dark kernel spot, or one dark kernel spot more than one-eighth inch in greatest dimension;

(g) Poorly developed kernel; and

(h) Shriveling when the surface of the kernel is very conspicuously wrinkled.

63. Add § 51.1452 to read as follows:

§ 51.1452 Serious damage.

Serious damage means any specific defect described in this section; or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of kernel or of the lot as a whole. The following defects shall be considered as serious damage:

(a) Adhering material from inside the shell when attached to more than one-half of the surface on one side of the half-kernel or piece;

(b) Any plainly visible mold;

(c) Dark kernel spots when more than three are on the kernel, or when any dark kernel spot or the aggregate of two or more spots affect an area of more than 10 percent of the surface of the half-kernel or piece;

(d) Dark skin discoloration, darker than “dark brown,” when covering more than one-fourth of the surface of the half-kernel or piece;

(e) Decay affecting any portion of the kernel;

(f) Insects, web, or frass or any distinct evidence of insect feeding on the kernel;

(g) Internal discoloration, which is dark gray, dark brown, or black and extends more than one-third the length of the half-kernel or piece;

(h) Rancidity when the kernel is distinctly rancid to the taste. Staleness of flavor shall not be classed as rancidity; and

(i) Undeveloped kernel.

64. Add § 51.1453 to read as follows:

§ 51.1453 Rancidity.

Rancidity refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. While there is no definitive measure to determine rancidity, the tendency of the kernel to become rancid can be evaluated by testing the kernel's peroxide and free-fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acid should be less than 1%.

65. Add an undesignated center heading and § 51.1454 to read as follows:

METRIC CONVERSION TABLE

§ 51.1454 Metric conversion table.

Table 1 to § 51.1454

Inches	Millimeters (mm)
32/64	12.7
28/64	11.1
24/64	9.5
20/64	7.9
16/64	6.4
12/64	4.8
8/64	3.2
6/64	2.4
5/64	2.0
4/64	1.6

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