

# Proposed Rules

Federal Register

Vol. 77, No. 136

Monday, July 16, 2012

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Doc. Number FV-11-0046]

#### United States Standards for Grades of Almonds in the Shell

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA), is proposing to revise the United States Standards for Grades of Almonds in the Shell. AMS received written requests from the produce industry to amend the standards to align inspection procedures for incoming inspections (based on the marketing order) and outgoing inspections (based on the grade standards). Therefore, AMS is proposing to change the determination of internal defects from count to weight.

**DATES:** Comments must be received by August 15, 2012.

**ADDRESSES:** Interested persons are invited to submit written comments to the Standardization and Training Branch, Fresh Products Division, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361-1199, or on the Web at: [www.regulation.gov](http://www.regulation.gov). Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. Comments can also be viewed on the [www.regulations.gov](http://www.regulations.gov) Web site. The current United States Standards for Almonds in the Shell, along with the proposed changes, will be available either through the address cited above or by accessing the AMS, Fresh

Products Division Web site at: <http://www.ams.usda.gov/freshinspection>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Newell, at the above address or call (540) 361-1120.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866 Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of the proposed action on small entities. 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. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

This rule proposes to revise the United States Standards for Grades of Almonds in the Shell (standards) that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627). Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000 and small agricultural producers have been defined as those having annual receipts of less than \$750,000.

There are approximately 53 handlers of almonds that would potentially be affected by the changes set forth in this proposed rule and approximately 6,500 producers of almonds. Information provided by the Almond Board of California (ABC) indicates that approximately 36 percent of the handlers would be considered small agricultural service firms.

According to data reported by the National Agricultural Statistics Service (NASS), the two-year average crop value for 2008-09 and 2009-10 was \$2.566 billion. Dividing that average by 6,500 producers yields average estimated producer revenues of \$394,769, which

suggests that the majority of almond producers would be considered small entities according to the SBA's definition.

The California almond bearing acreage increased approximately 9 percent between 2008 and 2010, from 680,000 to 740,000 acres. Approximately 1.643 billion pounds (shelled basis) of almonds were produced during the 2009-10 season. More than two thirds of California's almond crop is exported to approximately 90 countries worldwide, and comprises nearly 80 percent of the world's almond supply.

The changes proposed herein will have the effect of improving grading methods and accuracy without adding any additional financial burden to buyers or sellers of almonds in the shell. This rule changes one step in a multi-step grading procedure (7 CFR 51.2080) and changes the method of determining one of five tolerances used in determining grade (7 CFR 51.2075(b)(5)). The outgoing inspection procedure will become more closely aligned with incoming inspection by shifting the basis (from count to weight) in the standards for determining the percentage of internal defects in an inspection sample of almonds in the shell.

In addition to simplifying the grading process, the weight basis would yield a more accurate percentage of internal defects. With a count method, a defect such as shriveling would result in a particular kernel being counted as one of the 300 kernels in the sample with internal defects, even if the defect left only a small portion of the original kernel in the sample. Due to its lower weight relative to a fully formed kernel, a shriveled kernel has a smaller impact on the percentage of internal defects when the sample is weighed rather than counted.

The lower average percentage of internal defects using the weight method was confirmed by a review of shipping point inspection records, with 14 examples in which both the count and weight method were used on the same sample of inshell almonds. The average serious damage percentages of the count method and the weight method were 1.5 percent and 0.8 percent, respectively. Smaller percentages of defects in sampled lots using the weight method will mean

larger quantities of almonds meet a particular grade, which would positively affect the quality of the almonds, as it would yield more accurate percentages of defects, resulting in higher payments to growers.

Shifting the determination of internal (kernel) defects from a count basis to a weight basis in the standards is expected to contribute to efficiencies in the grading process. It would make the internal defects aspect of the outgoing inspection process consistent with that of the incoming inspection. Weighing rather than counting the kernels may result in slightly more time in the inspection process, but any potential effect on the cost of inspections is expected to be minor or nonexistent, and would be offset by the benefits.

There is no disproportionate impact on smaller entities; entities of all sizes will benefit.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large almond producers, handlers or exporters and will be done at no cost to the industry.

The use of grading services and grading standards is voluntary unless required by a specific Act, Federal Marketing Order or Agreement, or other regulations governing domestic, import or export shipments.

USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there is a marketing program which regulates the handling of almonds under 7 CFR part 981. The revision being proposed in this action only affects the inspection procedures for internal defects in the standards. As such, the proposed action would not affect almonds in the shell under the marketing order.

Alternatives were considered for this action. One alternative would be to not issue a proposed rule. However, the need for revisions remains due to differing procedures for incoming and outgoing almond inspections, and the proposal is the result of a request by industry. Further, the purpose of these standards is to facilitate the marketing of agricultural commodities.

#### **Executive Order 12988**

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

Section 203(c) of the Act 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 standards available upon request.

#### **Background**

On March 11, 2011, AMS received a letter from the Almond Board of California (Board) requesting that the procedure for measuring internal (kernel) defects in the United States Standards for Grades of Almonds in the Shell be changed from a count basis to a weight basis. The purpose of this change is to align incoming and outgoing inspection procedures.

Currently, almonds must undergo incoming inspections and may undergo outgoing inspections. The almond marketing order (part 981—Almonds Grown in California) mandates that the percentage of inedible kernels is determined during an incoming inspection. As required in the marketing order (7 CFR 981.42 and 981.442 (Quality Control)), Federally licensed state inspectors perform these inspections on 100% of the product moving from growers to handlers (packers). Inedible kernel is defined in section 981.8 and 981.408 of the marketing order and is based on internal (kernel) defects as defined in the standards, in sections 51.2087 (Decay), 51.2088 (Rancidity), 51.2089 (Damage) and 51.2090 (Serious Damage).

Federally licensed state inspectors also perform outgoing inspections, which are voluntary, on approximately 75% of all of the almonds going from the handlers to domestic and international markets, according to shipping point records maintained by Federal State Inspection.

The current procedures for determining the percentage of defective kernels in the two different inspections are not the same. For incoming inspections, the percentage of inedible kernels is determined on a weight basis. With outgoing inspections, however, determining the percentage of internal (kernel) defects, which is one step in a multi-step procedure specified in the standards for determining U.S. grade, is done through a combination of count and weight of the nuts in the sample. This proposed change would more closely align the procedures of the incoming and outgoing inspections.

A key reason for making this change is the increasing magnitude of exports of almonds in the shell. Between the 2006/07 and 2009/10 seasons, export

shipments of almonds in the shell doubled, rising from 148 to 297 million pounds (inshell basis), according to trade data from the Foreign Agricultural Service of USDA. During this same time period, the number of handlers exporting almonds in the shell increased by 42%. Due to the substantial increase in the number of handlers and volume of shipments, the Board received numerous inquiries regarding the reasons for the different procedures for determining internal defects on incoming and outgoing inspections.

A number of handlers asked the Board's Food Quality and Safety Committee (committee) to look into how to change the standards to make outgoing inspections more consistent with the incoming inspection method. Determining the percentage of nuts with internal defects is the third of three required steps in section 51.2080 Determination of Grade. In addition, a 10 percent tolerance for internal (kernel) defects is one of five tolerances that are specified in section 51.2075(b)(5) for determining whether a lot of inshell almonds is graded as U.S. No. 1. Committee staff queried handlers that ship almonds in the shell about changing the determination of internal defects from a count basis to a weight basis, which would apply to both of these sections.

AMS is proposing to amend section 51.2075(b)(5) by changing the word "count" in the first line to "weight." The other four tolerances specified in section 51.2075(b) remain unchanged. AMS is also proposing to amend section 51.2080 by changing the word "count" in the last line to "weight." This would make the internal defects aspect of the outgoing inspection process consistent with that of the incoming inspection mandated by the marketing order.

The proposed rule provides for a 30-day comment period for interested parties to comment on the revisions to the standard.

#### **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 proposed to be amended as follows:

#### **PART 51—[AMENDED]**

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

**Authority:** 7 U.S.C. 1621–1627.

2. In § 51.2075, paragraph (b)(5) is revised to read as follows:

**§ 51.2075 U.S. No. 1.**

\* \* \* \*

(b) \* \* \*

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

\* \* \* \*

3. § 51.2080 is revised to read as follows:

**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 weight.

Dated: July 11, 2012.

**David R. Shipman,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2012-17229 Filed 7-13-12; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 457**

[Docket No. FCIC-12-0006]

**RIN 0563-AC39**

**Common Crop Insurance Regulations;  
Florida Citrus Fruit Crop Insurance  
Provisions**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Florida Citrus Fruit Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of policyholders, and to reduce

vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2014 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 15, 2012 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-12-0006, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#/privacyNotice>.

**FOR FURTHER INFORMATION CONTACT:** Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

**E-Government Act Compliance**

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**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 will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small