

Proposed Rules

Federal Register

Vol. 61, No. 78

Monday, April 22, 1996

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

[Docket Number FV-95-305]

Shelled Almonds and Almonds in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the United States Standards for Grades of Shelled Almonds and the United States Standards for Grades of Almonds in the Shell. The Almond Board of California's Grades Subcommittee (ABCGS) recommends changes "to better reflect the requirements of today's almond industry." The ABCGS specifically requests changes to the foreign material tolerances; the tolerance for live insects inside the shell; removing the language "appearance of the lot" from all definitions in the standards; combining tolerances for chipping and scratching and split and broken in the U.S. Standard Sheller Run grade; revising current definitions; and adding new definitions.

The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

DATES: Comments must be postmarked or courier dated on or before July 21, 1996.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of

Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, DC 20090-6456. FAX number (202) 720-8871.

Comments should make reference to the date 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.

FOR FURTHER INFORMATION CONTACT:

Frank O'Sullivan, at the above address or call (202) 720-2185.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Shelled Almonds and U.S. Standards for Grades of Almonds In The Shell will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

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

The United States Standards for Grades of Shelled Almonds and United States Standards for Grades of Almonds in the Shell are issued in accordance with the provisions of the Agricultural Marketing Act of 1946. The standards were last revised in August 1960 and July 1964, respectively. The ABCGS has requested that the standards be revised in order to bring them into conformity

with current cultural, harvesting and marketing practices.

The definition of "similar varietal characteristics" in § 51.2117 of the current U.S. Standards for Grades of Shelled Almonds states that the "kernels are similar in shape and appearance. For example, long types shall not be mixed with short types, or broad types mixed with narrow types, and bitter almonds shall not be mixed with sweet almonds. Color of the kernels shall not be considered, since there is often a marked difference in skin color of kernels of the same variety." The ABCGS recommended adding two designations to this definition — "one type" and "California." This would affect all of the grades that have a requirement for "similar varietal characteristics" (only the U.S. No. 1 Pieces grade has no such requirement). The "one type" designation would retain the current definition of similar varietal characteristics. The "California" designation would allow for more than one variety of blanchable type almonds to be mixed, including up to 25 percent of the "Nonpareil" or similar type, and meet the definition of "similar varietal characteristics, California" designation. Lots not designated as either type would be considered "one type."

The industry commonly markets almonds indicating either individual varieties or mixtures of several similar appearing varieties. There are five established industry mixtures, including "California." The other four consist of "Nonpareil," "Mission," "NePlus Ultra," and "Inshell Bleaching." All are recognized as separate groupings and may contain several varieties showing dissimilar characteristics (based on shape and appearance). However, the varieties in each classification have broad similarities in their uses, propensity for blanching, and acceptance for particular end products. The "California" mixture is widely recognized within the industry. The "California" mixture is defined in the Almond Variety Update, 1985, referencing the establishment of the definition in 1972 by USDA, Federal-State Inspection Service. It may include the varieties Ballico, California, Davey, Harvey, Merced, Norman, Ruby, Thompson, Vesta and all other varieties that are similar to the varieties listed and in addition the variety Nonpareil

may be included in the classification but not to exceed 25 percent by weight of the lot. All varieties in the "California" mixture are blanchable.

All blanchable type almonds are not similar in shape and appearance. However, the ABCGS contends that handlers are not concerned with differences in the shape or appearance of the almonds, as long as they are blanchable. This mixing of varieties is a common practice in the industry today. However, using the current standards, inspected lots would not meet the requirement for similar varietal characteristics, and would be certified as either failing to meet a specific grade due to dissimilar varieties; or, as meeting a "Mixed" grade designation. The ABCGS states that these options (fails to meet a specified grade and Mixed) negatively impact the marketing of such lots even though the seller and buyer are fully aware of the product's characteristics. (The U.S. Fancy and U.S. Extra No. 1 grades cannot be redesignated as "Mixed" lots.)

By expanding the definition of similar varietal characteristics as ABCGS recommends, the standards will be in-line with current marketing practices. The change would allow lots that are comprised of blanchable types, including up to 25 percent Nonpareil types, to meet the requirements of "similar varietal characteristics" when so designated as "California" type.

Currently, the U.S. No. 1, U.S. Select Sheller Run, U.S. Standard Sheller Run, and U.S. No. 1 Whole and Broken grades may be designated as U.S. No. 1 Mixed, U.S. Select Sheller Run Mixed, U.S. Standard Sheller Run Mixed, and U.S. No. 1 Whole and Broken, Mixed if two or more dissimilar varieties are found in excess of the tolerance, and all other defects are within the tolerances. If the definition for "similar varietal characteristics" is changed as ABCGS recommends, only those lots designated as "one type" or undesignated lots would need be redesignated as "Mixed" if the tolerance for dissimilar varieties is exceeded.

This proposed change regarding similar varietal characteristics would not affect the U.S. Standards for Grades of Almonds In The Shell. Because of the nature of in shell almonds, no change to the current definition of similar varietal characteristics is warranted in this standard.

The ABCGS recommends that the tolerances for foreign material be tighter in most grades, including a "zero tolerance" for glass and metal in all grades in the U.S. Standards for Grades of Shelled Almonds. They contend that this tightening of the tolerances reflects

the current requirements of most buyers, and meets current food safety concerns in regard to glass and metal. The ABCGS reports that major buyers of almonds are setting more stringent tolerances (than current tolerances in the U.S. grades) for foreign material in contract specifications. In discussions with representatives of the industry, most felt that although the tighter tolerances would be more difficult to meet, it would not be impossible. The effect this change would have on the industry would be to fail any lot found to have any amount of glass or metal, and in most grades further restrict other types of foreign material.

The ABCGS recommends that the tolerance for live insects inside the shell be restricted to zero in the U.S. Standards for Grades of Almonds In The Shell. They state that this tightening of the tolerance reflects the requirements of consumers, and with effective fumigation practices live insects can be eliminated. This change would cause any lot found to have any amount of live insects if found inside the shell to fail to meet any U.S. grade.

The ABCGS recommends to modify the U.S. Standard Sheller Run grade within the U.S. Standards for Grades of Shelled Almonds by combining the tolerances for chipped and scratched kernels (20 percent) and split and broken kernels (15 percent). The new total tolerance would be 35 percent, with a restriction of not more than 15 percent for split and broken. The ABCGS views chipped and scratched kernels as less objectionable than split and broken kernels. Chipped and scratched kernels essentially retain their full shape, but have superficial chips and scratches of the pellicle and meat. Split and broken kernels are those with 1/8 or more of the kernel split or broken off. The effect of this change would be to allow with up to 35 percent chipped and scratched (with 0 percent split and broken), or any combination of the two types of defects totaling 35 percent (or less), as long as the percentage of split and broken does not exceed 15 percent.

The "Unclassified" designation would be deleted from the two grade standards. The term "unclassified" is not a grade within the meaning of the standards and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it would be deleted from the standards.

The ABCGS recommends that current language referring to "appearance of the lot" be removed from both grade standards. Currently, this language is found in the general definitions of

"injury," "damage," and in the specific definition of "damage by chipped and scratched kernels" in the shelled grades; and, in the general definition of "damage" in the in-the-shell grades. This language allows interpretations for various defects, whereby a lot of almonds that are not considered injured, or damaged individually by particular defects may be considered injured or damaged based on affecting the appearance of the lot. Removing this language would limit the scoring of defects based on the individual kernel and not on the general appearance of the lot.

This change in both grade standards would cause defects to be scored, based on the individual kernel, rather than based on the lot as a whole.

ABCGS suggests that USDA revise the definition of "damage by gum" from its current definition of "more than 1/8 of the surface affected" to an "area aggregating more than the equivalent of a circle 1/4 inch in diameter" in both grade standards regardless of the size of the almond. The ABCGS feels that gum is a serious defect on any size nut, (generally viewed as an inedible) and should be scored more tightly than at present. Industry generally allows less of an area to be affected than the current standards permit. By using a specific area rather than a percentage of the surface, scoring will be easier and more objective for inspectors.

The ABCGS recommends that the definition of "fairly uniform color" be changed in § 51.2086 of the U.S. Standards for Grades of Almonds In The Shell to account for uniformity in color of the shell, whether lots of almonds are "natural" or "bleached." The industry offers in-the-shell almonds with both "natural" and "bleached" shells. Bleaching of the shells is an approved practice within the industry, however, confusion exists between buyers and sellers regarding the acceptability of bleached shells. Adding the reference of bleaching in the definition of "fairly uniform color" should eliminate the confusion.

The ABCGS recommends that the definition of "decay" be changed in § 51.2121 of the U.S. Standards for Grades of Shelled Almonds to correspond with the definition in the U.S. Standards for Grades of Almonds In The Shell from "the kernel is putrid or decomposed" to "part or all of the kernel has become decomposed." The language and wording of decay would be changed to promote uniformity and consistency between the two grade standards.

The definitions of "damage," "insects," "mold," and "shriveling"

would be changed in the U.S. Standards for Grades of Almonds In The Shell to correspond with the definitions in the U.S. Standards for Grades of Shelled Almonds. The language and wording of these definitions would be changed to promote uniformity and consistency between the two grade standards.

Skin discoloration of the kernel (staining) is currently referenced as a defect in the in-the-shell standard. Skin discoloration does not change when the almonds are shelled, and therefore would be considered a defect in the shelled standard. The ABCGS recommends specifically referencing this defect in the shelled standards to promote uniformity and consistency between the two grade standards. Although this skin discoloration has historically been considered a defect in the shelled almonds standards, specifically naming it will give a point of reference to the industry and the inspection service.

In keeping with Departmental Regulations of moving towards metrification, metric equivalents will be added, in parenthesis, following any Imperial measurements, throughout the text of the standards. The metric equivalents, in millimeters, are based on the conversion of 64/64 on an inch equals 25.4 millimeters.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

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

Authority: 7 U.S.C. 1621–1627.

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

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

Grades

Sec.

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

Application of Tolerances

- 51.2079 Application of tolerances.

Determination of Grade

- 51.2080 Determination of grade.

Definitions

- 51.2081 Similar varietal characteristics.

- 51.2082 Loose extraneous and foreign material.

- 51.2083 Clean.
- 51.2084 Fairly bright.
- 51.2085 Fairly uniform color.
- 51.2086 Well dried.
- 51.2087 Decay.
- 51.2088 Rancidity.
- 51.2089 Damage.
- 51.2090 Serious damage.
- 51.2091 Thickness.

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

Grades

§ 51.2075 U.S. No. 1.

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

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

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

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

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

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

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

(5) *For internal (kernel) defects.* 10 percent, by count, for almonds with kernels failing to meet the requirements of this grade: Provided, that not more than one-half of this tolerance or 5 percent shall be allowed for kernels affected by decay or rancidity, damaged by insects or mold or seriously damaged by shriveling: And provided further, that no part of this tolerance shall be allowed for live insects inside the shell.

§ 51.2076 U.S. No. 1 Mixed.

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

§ 51.2077 U.S. No. 2.

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

§ 51.2078 U.S. No. 2 Mixed.

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

Application of Tolerances

§ 51.2079 Application of tolerances.

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

Determination of Grade

§ 51.2080 Determination of grade.

In grading the inspection sample, the percentage of loose hulls, pieces of shell, chaff and foreign material is determined on the basis of weight. Next, the percentages of nuts which are of dissimilar varieties, undersize or have adhering hulls or defective shells are determined by count, using an adequate portion of the total sample. Finally, the nuts in that portion of the sample are cracked, and the percentage having internal defects is determined on the basis of count.

Definitions

§ 51.2081 Similar varietal characteristics.

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

§ 51.2082 Loose extraneous and foreign material.

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

§ 51.2083 Clean.

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

§ 51.2084 Fairly bright.

Fairly bright means that the shells show good characteristic color.

§ 51.2085 Fairly uniform color.

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

§ 51.2086 Well dried.

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

§ 51.2087 Decay.

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

§ 51.2088 Rancidity.

Rancidity means that the kernel is noticeably rancid to taste.

§ 51.2089 Damage.

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

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

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

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

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

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

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

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

(h) Shriveling when the kernel is excessively thin for its size, or when materially withered, shrunken, leathery, tough or only partially developed:

Provided, that partially developed kernels are not considered damaged if more than three-fourths of the pellicle is filled with meat. An almond containing two kernels shall not be classed as damaged if either kernel has more than three-fourths of the pellicle filled with meat; and,

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

§ 51.2090 Serious damage.

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

§ 51.2091 Thickness.

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

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

Subpart—United States Standards of Grades of Shelled Almonds**Grades****Sec.**

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

Mixed Varieties

- 51.2112 Mixed varieties.

Size

- 51.2113 Size requirements.
- 51.2114 Tolerances for size.

Application of Tolerances

- 51.2115 Application of tolerances.

Definitions

- 51.2116 Similar varietal characteristics.
- 51.2117 Whole.
- 51.2118 Clean.
- 51.2119 Well dried.
- 51.2120 Decay.
- 51.2121 Rancidity.
- 51.2122 Insect injury.
- 51.2123 Foreign material.
- 51.2124 Doubles.
- 51.2125 Split or broken kernels.
- 51.2126 Particles and dust.
- 51.2127 Injury.

51.2128 Damage.

51.2129 Serious damage.

51.2130 Diameter.

51.2131 Fairly uniform in size.

Subpart — United States Standards for Grades of Shelled Almonds**Grades****§ 51.2105 U.S. Fancy.**

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

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

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

(b) *For doubles.* 3 percent;

(c) *For kernels injured by chipping and/or scratching.* 5 percent;

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

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

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

§ 51.2106 U.S. Extra No. 1.

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

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

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

(b) *For doubles.* 5 percent;

(c) *For kernels damaged by chipping and/or scratching.* 5 percent;

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

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

(f) *For other defects.* 4 percent, including not more than one-fourth of this amount, or 1 percent, for split or broken kernels, and including not more than three-eighths of the former amount, or 1-1/2 percent, for seriously damaged kernels.

§ 51.2107 U.S. No. 1.

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

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

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

(b) *For doubles.* 15 percent;

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

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

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

(f) *For other defects.* 5 percent including not more than one-fifth of this amount, or 1 percent, for split or broken kernels, and including not more than three-tenths of the former amount, or 1 1/2 percent, for seriously damaged kernels.

§ 51.2108 U.S. Select Sheller Run.

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

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

(a) *For dissimilar varieties.* 5 percent, including not more than one-fifth of this

amount, or 1 percent, for bitter almonds mixed with sweet almonds;

(b) *For doubles.* 15 percent;

(c) *For kernels damaged by chipping and/or scratching.* 20 percent;

(d) *For foreign material.* One-tenth of 1 percent (0.10 percent). No part of this percentage shall be allowed for glass and metal;

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

(f) *For split and broken kernels.* 5 percent: Provided, that not more than two-fifths of this amount, or 2 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter; and,

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

§ 51.2109 U.S. Standard Sheller Run.

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

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

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

(b) *For doubles.* 25 percent;

(c) *For kernels damaged by chipping and/or scratching or split and broken.* 35 percent; Provided, that not more than three-sevenths of this amount, or 15 percent, shall be allowed for split and broken: And Provided Further, that not more than one-third of this latter

amount, or 5 percent, shall be allowed for pieces which will pass through a round opening 20/64 inch (7.9 mm) in diameter;

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

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

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

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

"U.S. No. 1 Whole and Broken" consists of shelled almonds of similar varietal characteristics which are clean

and well dried, and which are free from decay, rancidity, insect injury, foreign material, doubles, particles and dust, and free from damage caused by mold, gum, shriveling, brown spot or other means.

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

(b) Unless otherwise specified, the minimum diameter shall be not less than 20/64 of an inch (7.9 mm). (See §§ 51.2113 and 51.2114.)

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

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

(2) *For doubles.* 35 percent;

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

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

(5) *For undersize.* 5 percent;

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

§ 51.2111 U.S. No. 1 Pieces.

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

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

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

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

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

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

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

§ 51.2112 Mixed varieties.

Any lot of shelled almonds designated as "one type" or undesignated as to

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

Size

§ 51.2113 Size requirements.

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

Count Range per Ounce

16 to 18, inclusive.
18 to 20, inclusive.
20 to 22, inclusive.
22 to 24, inclusive.
23 to 25, inclusive.
24 to 26, inclusive.
26 to 28, inclusive.
27 to 30, inclusive.
30 to 34, inclusive.
34 to 40, inclusive.
40 to 50, inclusive.
50 and smaller.

§ 51.2114 Tolerances for size.

(a) When a range is specified as, for example, "18/20," no tolerance for counts above or below the range shall be allowed.

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

Application of Tolerances

§ 51.2115 Application of tolerances.

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

materially inferior to those in the majority of the containers shall be considered a separate lot.

Definitions

§ 51.2116 Similar varietal characteristics.

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

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

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

§ 51.2117 Whole.

Whole means that there is less than one-eighth of the kernel chipped off or missing, and that the general contour of the kernel is not materially affected by the missing part.

§ 51.2118 Clean.

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

§ 51.2119 Well dried.

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

§ 51.2120 Decay.

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

§ 51.2121 Rancidity.

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

§ 51.2122 Insect injury.

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

§ 51.2123 Foreign material.

Foreign material means pieces of shell, hulls or other foreign matter which will not pass through a round opening $\frac{3}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2124 Doubles.

Doubles means kernels that developed in shells containing two kernels. One

side of a double kernel is flat or concave.

§ 51.2125 Split or broken kernels.

Split or broken kernels means seven-eighths or less of complete whole kernels but which will not pass through a round opening $\frac{3}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2126 Particles and dust.

Particles and dust means fragments of almonds kernels or other material which will pass through a round opening $\frac{3}{64}$ of an inch (3.2 mm) in diameter.

§ 51.2127 Injury.

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

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

§ 51.2128 Damage.

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

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

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

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

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

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

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

§ 51.2129 Serious damage.

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

§ 51.2130 Diameter.

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

§ 51.2131 Fairly uniform in size.

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

Dated: April 9, 1996.

Lon Hatamiya,
Administrator.

[FR Doc. 96-9829 Filed 4-19-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 929

[Docket No. FV-96-929-1PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition report from February 5 to January 5 during each crop year. This rule would provide more useful production information to the cranberry industry at an earlier time.

DATES: Comments must be received by May 22, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, PO Box

96456, Washington, DC 20090-6456, Fax # (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposal invites comments on a change to the reporting requirements currently prescribed under the cranberry marketing order. This rule would modify language in the order's rules and regulations to change the first date by which handlers must file their acquisition reports from February 5 to January 5. The committee unanimously recommended that the date be changed from February 5 to January 1. The Department proposes modifying the recommendation by requiring the first report to be filed by January 5 in order to allow sufficient time for the handlers to file the reports.

Section 929.62(b) of the cranberry marketing order provides authority to require each handler to file promptly with the committee a certified report as to the quantity of cranberries acquired during such period as may be specified. The fiscal period under the order is from September 1 of one year through August 31 of the following year. Section 929.105(b) of the order's rules and regulations prescribe that certified reports shall be filed by each handler to the committee not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period. Such report shall show the total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31, respectively.

The committee recommended that the first acquisition report due to the committee on February 5 that shows the total quantity of cranberries the handler acquired through January 31 be changed