

concerning an individual from the Authority, the General Counsel, the IG, or the Panel under false pretenses will be subject to criminal prosecution under 5 U.S.C. 552a(i)(3), which provides that such person shall be guilty of a misdemeanor and fined not more than \$5,000.

#### § 2412.15 Exemptions.

(a) *Files of FLRA's Office of Inspector General (OIG) compiled for the purpose of a criminal investigation and for related purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the FLRA hereby exempts the system of records entitled "FLRA/OIG-1, Office of Inspector General Investigative Files," insofar as it consists of information compiled for the purposes of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11) and (i).

(b) *OIG files compiled for other law enforcement purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the FLRA hereby exempts the system of records entitled "FLRA/OIG-1, Office of Inspector General Investigative Files," insofar as it consists of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

Dated: October 4, 2023.

Thomas Tso,  
Solicitor.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

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

#### 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) is proposing 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 proposal also includes updating terminology, definitions, and defect scoring guides.

**DATES:** Comments must be submitted on or before December 11, 2023.

**ADDRESSES:** Interested persons are invited to submit comments to the Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center; 100 Riverside Parkway, Suite 101; Fredericksburg, Virginia 22406; fax: (540) 361-1199, or via the internet at: <https://www.regulations.gov>. Comments should reference the date and page numbers of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will become a part of the public record and be made available to the public including any personal information provided at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Olivia L. Banks at the address above, or by phone (540) 361-1120; fax (540) 361-1199; or email [SCISStandards@usda.gov](mailto:SCISStandards@usda.gov). Copies of the proposed U.S. Standards for Grades of Pecans in the Shell and U.S. Standards for Grades of Shelled Pecans are available on the internet at <https://www.regulations.gov>. Copies of the current U.S. Standards for Grades of Pecans in the Shell and U.S. Standards for Grades of Shelled Pecans are available at <https://www.ams.usda.gov/grades-standards/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, (Marketing Order 986) issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) or applicable imports.

#### Executive Orders 12866, 13563, and 14094

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. 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. Executive Order 14094 reaffirms, supplements, and

updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. 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 Executive Order 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 continually reviews fruit and vegetable grade standards to ensure their usefulness to 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). 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 and the terminology of the standards no longer reflects current industry descriptions and practices. The National Pecan Shellers Association (NPSA) 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 changes to the standards would replace current grades with new ones, revise scoring guides for defects, create new sizes, and revise definitions. 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. AMS proposes to revise both standards by replacing the current grades with U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades. These proposed changes represent current industry descriptions and practices.

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

The first proposed rule was published in the **Federal Register** of June 1, 2022 (87 FR 33064), inviting comments on proposed revisions to the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans. The public was invited to review and comment on the proposed rule, which was to be accompanied by copies of the proposed standards, on <https://www.regulations.gov>. On June 28, 2022, AMS noted that the proposed U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans failed to upload to <https://www.regulations.gov>, and the supporting documents were uploaded to <https://www.regulations.gov> on that date. To provide all interested persons a full 60-day comment period to view copies of the proposed standards and facilitate review of the proposed rule, AMS extended the public comment period by 30 days (87 FR 48091) to September 7, 2022. In an effort to pursue clarification, and based on the feedback USDA received during the comment period, Specialty Crop Inspection Division (SCI) invited interested parties to meet on February 28, 2023, and May 2, 2023, to provide an opportunity to clarify language and discuss specific sections of the proposed standards to ensure there are no misinterpretations on how any proposed language would be applied before moving forward with this rulemaking.

This proposed rule also includes additional changes to align with updated Code of Federal Regulations formatting requirements and to correct errors that were made in the printing of the previous proposed rule in the **Federal Register**.

### 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 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.

The Small Business Administration (SBA) defines small growers engaging in tree nut farming<sup>1</sup> as those having annual receipts of no more than \$3.75 million (13 CFR 121.201).<sup>2</sup> Handlers, which can be defined as those engaging in postharvest crop activities (except cotton-ginning),<sup>3</sup> have a small business size standard of annual receipts not exceeding \$34 million, per the SBA (13 CFR 121.201).<sup>2</sup>

In the 2017 Census of Agriculture, the most recent to date, the National Agricultural Statistics Service (NASS) reports that of the 19,008 pecan farms counted nationwide, 440 of them had annual sales valued at \$1 million or more. This means that 18,568 pecan farms, or 98 percent of the census, had annual receipts of less than \$1 million. As the threshold for meeting the definition of a small business, per the SBA, is \$3.75 million, nearly four times the \$1 million maximum reported by NASS, the portion of pecan farms that may be considered small by the SBA standard is likely even higher than 98 percent.

According to the Census Bureau, there were 910 firms classified as those engaging in postharvest crop activities (except cotton-ginning) in 2017. Total sales for all 910 firms was valued at more than \$6.4 billion. The Census Bureau survey<sup>4</sup> which yielded these results for 2017 is the most recent to date. The APC estimates that there are 115 handlers subject to regulation under Marketing Order 986. Of these, the APC estimates that 9 handlers have annual sales exceeding \$34 million, thus surpassing the threshold of a small business as defined by the SBA. This means that 106 handlers, or 92 percent of the total, had annual receipts not exceeding \$34 million and would, therefore, be designated as small per the SBA definition.

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 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.

### Comments

The first proposed rule was published in the **Federal Register** of June 1, 2022 (87 FR 33064), inviting comments on proposed revisions to the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans. The public was invited to review the two proposed standards in their entirety online and comment on the proposed rule. Due to AMS technical issues, the drafts of both standards were not immediately uploaded through the **Federal Register** automated document management system for public viewing, resulting in some commenters misinterpreting that the two standards were being combined into a single standard, which was not AMS's intent. On August 8, 2022, AMS extended the public comment period by 30 days (87 FR 48091) to allow additional time for commenters to review both standards. The 60-day comment period for the proposed rule, lengthened by the 30-day extension period, ended September 7, 2022.

AMS received comments on the proposed changes to the U.S. Standards for Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans from 34 respondents.

*Comment:* Numerous comments stated that the two standards should not be combined.

*Response:* Due to the technical issues described above, some commenters misinterpreted that the two standards were being combined into one standard, which was not AMS's intent. AMS extended the public comment period by 30 days to allow the public additional time to review and comment on the two separate standards once they were made available.

*Comment:* Several comments stated there was no need for the standards, that no changes should be made to the current standards, that things should be kept simple, or that there is no need for inshell standards.

*Response:* AMS acknowledges these comments. AMS pursued these revisions in response to the APC petition to revise the U.S. Standards for

<sup>1</sup> North American Industry Classification System (NAICS) Code 111335.

<sup>2</sup> Version December 2022 size standards.

<sup>3</sup> NAICS Code 115114.

<sup>4</sup> Economic Surveys Annual Business Survey: Statistics for Employer Firms by Industry, Sex, Ethnicity, Race, and Veteran Status for the U.S., State, Metro Areas, Counties, and Places: 2017.

Grades of Pecans in the Shell and the U.S. Standards for Grades of Shelled Pecans. As mentioned earlier, the APC represents all 15 major U.S. pecan-growing states.

The APC noted that the pecan standards have not been substantially updated since 1969 and the terminology of the standards no longer reflects current industry descriptions and practices. The APC voted unanimously to submit their recommended revisions to the USDA. Based on industry input, AMS has determined that the standards continue to play an important role in U.S. pecan marketing and that they should be preserved. The APC has provided evidence of broad-based industry support from growers and handlers for the changes to the standards in the petition submitted. The recommended changes will modernize the standards to reflect current industry practices. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* Several comments stated that the “application of tolerances” language in § 51.1407 was not part of the industry’s original proposal. However, USDA currently uses a 100-count sample for certification of pecans for export. Based on the existing sampling procedures, the commenters acknowledged that the 100-count sample size would be acceptable in the inshell standard.

*Response:* AMS acknowledges this was not in the original petition. AMS retained the current 100-count sample size used in the inshell standard. The 100-count sample size is not limited to export as noted by the commenter. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* One commenter asked about sampling rates and tools used to select samples. In addition, they did not agree with the process currently used to determine the 10 smallest nuts out of 100 nuts and suggested that the sample size should be one or two one-pound samples without requiring the inspector to pick out the 10 smallest nuts.

*Response:* The petitioner did not recommend changes to § 51.1402—Size classification of the current inshell standards or to the sampling procedures. The commenter has not provided supporting background or sufficient data to justify changes to the sample size. Current requirements for any one of the classifications in Table 1 of § 51.1404—Size classification state 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. Sampling guidelines

and tools are described in inspection manuals which are available at <https://www.ams.usda.gov/grades-standards/nuts>. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* One commenter expressed concern with § 51.1406—Tolerances of the June 2022 proposed inshell standards, stating that a processor could sell product with 12 percent of the kernels having serious damage and 6 percent of the product being rancid, moldy, decayed, or injured by insects. On a 30-pound case, the standard size case used in commerce, that would mean that 3.6 pounds could be sold with serious defects, including rancid, moldy product.

*Response:* AMS disagrees. The percentages referenced in this proposed section for inshell pecans are based on sample size by count, not container size by weight. These tolerances would apply to U.S. Extra Fancy, U.S. Fancy, and U.S. Choice grades, and would allow for 12 percent total defects for kernels, including not more than 7 percent for kernels which are seriously damaged, provided that not more than 6 percent are rancid, moldy, decayed, or injured by insects. This proposed restrictive tolerance limits the percent of rancid, moldy, or decayed pecans to 6 percent. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* One commenter stated that they did not support the proposed revisions to the inshell pecan standards, stating that a small number of shellers control the market. Further, they stated that the revision would automatically put almost the entirety of the U.S. pecan crop in the bottom half of the quality grades. They additionally stated that it is rare that any one-pound sample of inshell pecans would ever be completely “free from damage by any cause,” and they are concerned that the proposed revisions will negatively impact U.S. pecan growers.

*Response:* AMS is revising these voluntary standards based on a petition from the APC. AMS reviewed this request and determined it had merit. AMS finds that the proposed revisions should improve the marketing of pecans in the United States and internationally by modernizing language to more accurately reflect product currently available, including the addition of higher quality options to meet customer preferences. Regarding the concerns surrounding the “free from damage by any cause” language, this does not mean free from defects, or that any amount of blemishes would fail the lot. The term “damage” is defined in the proposed

inshell standards in § 51.1416. This section provides a listing of defects, including the severity and scoring criteria. The tolerances provided in § 51.1406—Tolerances apply to U.S. Extra Fancy, U.S. Fancy, U.S. Choice, and U.S. Standard grades; are based on a composite sample by count, not by weight; and allow for percentage totals for defects based on the grade being applied. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* Several commenters indicated that the text in the June 2022 proposed shelled standards at § 51.1433(a)(3) read “No requirement for uniformity of kernel,” while it should have read “No requirement for uniformity of color.”

*Response:* AMS recognizes this typographical error in the June 2022 proposed standards and has included the corrected text in this proposed rule.

*Comment:* Several comments indicated that the term “sixteenths” in the size classification for pieces should be removed from the June 2022 proposed shelled standards at § 51.1436(a) as all size classifications should be described in “sixty-fourths” of an inch.

*Response:* AMS agrees with the removal of the “sixteenths” measurement as it was a carryover from the current standard. Accordingly, AMS has made this change in this proposed rule.

*Comment:* Several comments noted the omission of language in the June 2022 proposed shelled standards at § 51.1437—Tolerances for defects concerning the restrictive tolerance for color of kernels.

*Response:* AMS recognizes this typographical error in the June 2022 proposed standards and has included the missing text in the “Extra Fancy” grade section of § 51.1437—Tolerances for defects of this proposed rule.

*Comment:* One commenter stated that they did not agree with the proposed definitions for “half-kernel,” that the definitions as proposed would allow for all product to have a portion missing and still meet the requirements, and that there should be a limit to the allowable amount of kernels (5 percent for Extra Fancy and 15 percent for all other grades) with portions missing.

*Response:* AMS disagrees with this comment, as the proposed definitions reflect current industry practices and have been in the standard since 1969. However, the terms have been updated in the new proposed standards to include definitions for both “premiere half-kernels” and “half-kernels” to differentiate between § 51.1439(a) and

(b) of the June 2022 proposed standard. For kernels failing to meet the definition, the tolerances in proposed § 51.1437—Tolerances for defects would be applied. Based on clarifying conversation items 8 and 9, discussed later in this document, there has not been broad-based support from industry for adding further limitations to these definitions and tolerances. Accordingly, AMS has made the above-mentioned changes to this proposed rule.

*Comment:* One commenter asked who would be performing the inspections.

*Response:* The standards are voluntary, and inspections would continue to be performed by federal or federal-state inspectors, at the request of the applicant.

*Comment:* One commenter asked if processors/shellers will be reimbursed for changes to boxes, literature, etc., to reflect the new regulations' sizes and names of sizes, arguing that the cost for changing labels would be a hindrance to processors, especially small ones.

*Response:* The standards are voluntary, provide common language to facilitate trade, and contain no marking requirements. While AMS understands that there may be a cost associated with labeling changes, industry use of grade and size terms is not mandated by USDA. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* One commenter shared pecan size classifications used by the pecan industry in South Africa.

*Response:* AMS acknowledges this comment and appreciates the information provided.

*Comment:* One commenter, in order to fully understand the impact of the proposed changes regarding new nomenclature and specifications, asked what percentage of crop over the last five years would have been downgraded under the proposed regs, and what percentage would have been uprated.

*Response:* Due to the voluntary nature of the U.S. standards, AMS does not collect this data and is unable to provide this information.

*Comment:* One commenter stated that they did not support the proposed revisions to the standards and did not agree with having inshell standards at all. They stated further that creating a quality standard for inshell product would mean that the farmer would be penalized for minor exterior issues when the actual product was the kernel and not the shell.

*Response:* The U.S. Standards for Grade of Pecans in the Shell were originally published in 1930. This proposed revision does not create a new U.S. Standards for Grade of Pecans in

the Shell but revises the terminology of the standards to correctly reflect current industry practices and modernizes language to more accurately reflect product currently available. Regarding the concerns surrounding being penalized for minor exterior defects, the standards provide a listing of defects, including the severity and scoring criteria, which does not mean the product must be free from defects, or that any amount of blemishes would fail the lot. Accordingly, AMS made no changes to this proposed rule based on this comment.

*Comment:* One commenter stated that the standards should include only three grades instead of four. They suggested the first two grades be combined, as they are very similar. The commenter requested that the grading process be kept simple.

*Response:* The proposed revisions are based on a petition from APC to modernize the standards and are intended to improve the marketing of pecans. AMS finds that the proposed additional grade levels should improve the marketing of pecans in the United States and internationally by allowing for the variation in grade level and including the addition of higher quality options to meet customer preferences. Accordingly, AMS made no changes to this proposed rule based on this comment.

#### Comments and Issues Addressed During Clarifying Conversations

After the comment period closed, AMS reviewed the comments received and, based on the complexity of the proposed revisions, contacted the petitioner, APC, for clarifying conversations. AMS held these conversations with the APC, NPSA, National Pecan Federation, Georgia Pecan Growers Association, Oklahoma Pecan Growers Association, Texas Pecan Growers Association, Western Pecan Growers Association, members of the industry, and other interested parties on February 28, 2023, and May 2, 2023. Select comments received on the proposed rule were discussed, and issues were clarified and incorporated into the draft standards associated with this proposed rule. Changes based on these conversations are outlined below.

##### 1. Inshell—Loose Extraneous or Foreign Material

In the June 2022 proposed rule, AMS proposed to retain—in proposed §§ 51.1400(a), 51.1401(a), 51.1402(a), and 51.1403(a)—the current requirement for all grades of inshell pecans that they be free of loose extraneous or foreign material. The

proposed rule also retained current tolerances for such material for each grade (0.5 percent (one-half of 1 percent) by weight for all grades), as well as the current definition for the term *loose extraneous or foreign material*, which means loose hulls, empty broken shells, or any substance other than pecans in the shell or pecan kernels.

Due to confusion about which standard the proposed requirements applied to, numerous commenters stated that tolerances for loose extraneous or foreign material did not belong in the inshell standards. On the other hand, one comment stated that limits for loose extraneous or foreign material should be included in the inshell standards so that large amounts of such material are not included in loads of inshell pecans.

While not included in the original recommended language from the APC, “Free from loose extraneous or foreign material” is a basic requirement of each grade and is included in the current standards to prevent large amounts of loose extraneous or foreign material from entering commerce. There are restrictive tolerances set in place to allow for a certain percentage of loose extraneous or foreign material in each sampled load. APC originally recommended adding rocks, wood, glass, and plastic to the definition of *loose extraneous or foreign material*.

After discussions with the industry, AMS retained “Free from loose extraneous or foreign material” in the proposed requirements for each grade; retained the proposed tolerances for such material in inshell pecans; and included the recommended additional defects in the definition of *loose extraneous or foreign material* in this proposed rule.

##### 2. Inshell—Damage and Serious Damage

In the June 2022 proposed rule, AMS proposed requirements pertaining to shell or kernel “damage by any cause” for the U.S. Extra Fancy and U.S. Fancy grades in §§ 51.1400 and 51.1401 and to shell or kernel “serious damage by any cause” for the U.S. Choice grade in § 51.1402. No requirements pertaining to “damage” or “serious damage” defects were specified for shells or kernels for the U.S. Standard grade in proposed § 51.1403. The proposed rule further specified in § 51.1406 related tolerances for those defects in all four grades. Finally, in proposed §§ 51.1416 and 51.1417, AMS proposed definitions for the defects *Damage and Serious damage*.

AMS later determined that the requirements for the U.S. Choice grade

needed to align with those for U.S. Extra Fancy and U.S. Fancy grades, as they are grouped together, and all have the same “damage” and “serious damage” defect tolerances in § 51.1406. AMS further determined that it was necessary to revise the proposed language for the U.S. Standard grade in § 51.1403(h) references to the “Tolerances” section, proposed § 51.1406, to clarify that there are not increased tolerances for the U.S. Standard grade.

APC’s original petition included the language “free from damage or serious damage by any cause,” while the June 2022 proposed standards only specified “free from damage by any cause” for U.S. Extra Fancy and U.S. Fancy and “free from serious damage by any cause” for U.S. Choice. In discussions with AMS, the industry agreed that “free from damage by any cause” is appropriate for the requirements of both the U.S. Choice and U.S. Standard grades in §§ 51.1402 and 51.1403, and that the restrictive tolerance for serious damage should be included in the “Tolerances” in § 51.1406(a) for U.S. Extra Fancy, U.S. Fancy, and U.S. Choice grades, and (b) for U.S. Standard grade. Accordingly, AMS has made these changes in this proposed rule.

### 3. Inshell—Moisture Content

Section 51.1416 (d) of the current inshell standards provides that kernel moisture content is not a requirement, but can be determined upon request by the applicant. In the June 2022 proposed rule, AMS proposed to add a new § 51.1420—Kernel moisture content, to specify that inshell pecans should have a moisture content of no more than 6 percent, unless otherwise specified.

APC originally recommended two different moisture content limits, one for domestic shipments (no more than 6 percent) and one for international (import/export) shipments (no more than 4.5 percent). AMS coordinated with APC prior to publishing the June 2022 proposed standards and presented options for moisture content, as there cannot be a more restrictive requirement for imported product. APC agreed that “not more than 6 percent, unless otherwise specified” would be acceptable for all shipments.

Numerous comments stated that 6 percent moisture was too high. AMS discussed with the industry at the February and May 2023 meetings whether moisture content limits should be a requirement of grade, and what that moisture content limit should be. The industry recommended making moisture content limits a requirement for grade, and keeping the language as AMS proposed. Including the language

“unless otherwise specified” as part of the moisture requirement allows parties to stipulate varying moisture content limits based on intended use and contract specifications. This additional language resolves any concern about 6 percent moisture being too high.

Accordingly, AMS is removing proposed § 51.1420—Kernel moisture content as a standalone section, and is now proposing to add kernel moisture content of no more than 6 percent, unless otherwise specified, as a basic requirement for each grade of inshell pecans in §§ 51.1400(c), 51.1401(c), 51.1402(c), and 51.1403(c).

### 4. Shelled—Damage and Serious Damage

In the June 2022 proposed rule, AMS proposed requirements pertaining to kernel “damage by any cause” for the U.S. Extra Fancy and U.S. Fancy grades in §§ 51.1430 and 51.1431, to kernel “serious damage by any cause” for the U.S. Choice grade in § 51.1432, and no requirements pertaining to damage or serious damage for the U.S. Standard grade in § 51.1433. The June 2022 proposed rule further specified in § 51.1437 related tolerances for those defects in the four grades. Finally, in §§ 51.1452 and 51.1453, AMS proposed definitions for the defects “Damage” and “Serious damage.”

AMS later determined that the requirements for U.S. Choice grade, in § 51.1432(a)(6) needed to be revised to specify “Free from damage by any cause.” Further, AMS determined the U.S. Standard grade required the addition of “Free from damage by any cause” to § 51.1433(a)(6). Additionally, AMS needed to revise § 51.1433(a)(7) references to the “Tolerances for defects” (§ 51.1437), to clarify that there are not increased tolerances for the U.S. Standard grade.

In discussions with AMS, the industry agreed that the language “free from damage by any cause” would be appropriate for the U.S. Choice and U.S. Standard grade requirements, and that § 51.1433(a)(7) needed to be updated. Accordingly, AMS added “free from damage by any cause” to the U.S. Choice and U.S. Standard grades within this proposed rule. Additionally, AMS revised § 51.1433(a)(7) references to the “Tolerances for defects” (§ 51.1437).

### 5. Shelled—Pecan Weevil Larvae

APC originally recommended that the presence of pecan weevil larvae be determined on a 30-pound sample (the typical size for a case of shelled pecans), with no larvae allowed in U.S. Extra Fancy, no more than 2 larvae in U.S. Fancy, no more than 5 larvae in U.S.

Choice, and no limit on the number of larvae in U.S. Standard. AMS’s June 2022 proposed rule contained the language as recommended by APC, but upon further review, AMS noted an additional sampling procedure would need to be established in order to determine compliance with this requirement. In discussions with AMS, industry agreed that the determination of pecan weevil larvae should be part of the current sampling process for pecan inspections and not based on an additional 30-pound sample, specifically for the presence of pecan weevil larvae. The industry also agreed that § 51.1437—Tolerances for defects for the U.S. Extra Fancy grade should remain as proposed in the June 2022 proposed rule. Therefore, any amount of pecan weevil larvae found would fail a lot; U.S. Fancy tolerance would allow not more than 2 pecan weevil larvae per lot, provided that the tolerance for serious damage is not exceeded; and U.S. Choice tolerance would allow not more than 5 pecan weevil larvae per lot, provided that the tolerance for serious damage is not exceeded. Additionally, the number of pecan weevil larvae found in U.S. Fancy and U.S. Choice lots would be included in the tolerance for serious damage, not in addition to the serious damage tolerance. The grade U.S. Standard will not specify a limit for pecan weevil larvae, as in this case the lack of a specified limit does not create an exemption from meeting the “serious damage” tolerance, under which the defect “pecan weevil larvae” is scored. Accordingly, AMS has included these changes in this proposed rule.

### 6. Shelled—Moisture Content

The standards currently require that all grades of shelled pecan halves and pieces must be well dried, but no limits to moisture content are specified in the definition of *well dried* in § 51.1444. In the June 2022 proposed rule, AMS proposed to require that all four grades of shelled pecans be well dried.

APC originally recommended including the moisture content limit as part of the definition of *well dried*, and AMS’s proposed standards included a moisture content limit as part of the definition but upon further review, AMS noted that in order to make moisture content limit a requirement, it needed to be listed in the grade requirements. Separation of these two requirements allows moisture requirements to be applied to the lot as a whole, and kernels not meeting the definition of *well dried* can be scored on an individual basis. Industry agreed to make moisture content limit a requirement, and that moisture should

be separated from the definition of *well dried*. Additionally, industry agreed to keep the proposed moisture content limit as published at not more than 4.5 percent, unless otherwise specified. Under this proposed rule, moisture content limit would be added as a basic requirement of each grade (§ 51.1430 through § 51.1433). Accordingly, AMS has included these changes in this proposed rule.

#### 7. Shelled—Insects as Foreign Material

In the June 2022 proposed rule, AMS proposed to include “insects” in the definition of *foreign material* in § 51.1450 of the shelled pecan standards, as APC originally recommended. However, upon further review, AMS determined that “insects” should be removed from the definition of *foreign material* because it would create conflicting requirements by allowing no insects as foreign material on one hand, and specifying a tolerance for serious damage, which includes insects, on the other. In discussions with AMS, industry agreed that “insects” should be removed from the definition of *foreign material* in § 51.1451 of the new proposed standards because insects would be covered under the tolerance for serious damage. Accordingly, AMS has included this change in this proposed rule.

#### 8. Shelled—Half-Kernel

In the June 2022 proposed rule, AMS proposed two definitions for the size term *Half-kernel*—one that would apply to U.S. Extra Fancy grade, and one that would apply to all other grades. This coincided with APC’s original recommendation. However, upon further review, AMS determined that a term can only have one meaning. AMS determined further that the proposed definition of *Half-kernel* for all other grades conflicted with the proposed definition of *Piece*.

In discussions with the industry, AMS suggested—and the industry agreed with—adding the size term *Premier half-kernel* (*Premiere halves*), which could be used only with the U.S. Extra Fancy grade, and with updating the size definition of *Piece*. Accordingly, *Premier half-kernel* (*Premiere halves*) is defined in § 51.1439 of this proposed rule, with tolerances provided in the newly proposed Table 2 to § 51.1435. The term *Half-kernel* (*Halves*) is defined in § 51.1440 of this proposed rule. AMS also proposes a revised size definition of *Piece* in § 51.1441 so that there would be no conflict with the proposed definition of *Half-kernel* (*Halves*). Accordingly, AMS

has included these changes in this proposed rule.

#### 9. Shelled—Size Tolerances for Pieces, Meal, and Flour

APC originally recommended having two definitions for the term *half-kernel* (as discussed in item 8 of clarifying conversations). With the addition of the new term *premier halves*, AMS changed the paragraph style format in § 51.1435(d) (of the June 2022 proposed standards) into table style format (Table 2 to § 51.1435) for clarity. Having two distinct size terms for premiere halves and halves allows for each size to be applied to the U.S. Extra Fancy grade, which allows for greater flexibility within the standard. Tolerances for U.S. Extra Fancy Premier Halves, U.S. Extra Fancy Halves, U.S. Fancy Halves, U.S. Choice Halves, and U.S. Standard Halves are shown in Table 2 to § 51.1435 of this proposed rule. Additionally, the industry requested that the originally proposed tolerances of 5 percent for U.S. Extra Fancy Premier Halves (Less than  $\frac{7}{8}$  half-kernel) and U.S. Extra Fancy Halves (Less than  $\frac{3}{4}$  half-kernel) in Table 2 to § 51.1435 be increased to 10 percent. Accordingly, AMS has included this change in this proposed rule.

#### 10. Shelled—Size Tolerances for Pieces

APC originally recommended having the range for “topping pieces” be  $\frac{1}{2}$  inch to  $\frac{3}{4}$  inch and the range for “granules” be  $\frac{3}{64}$  inch to  $\frac{1}{4}$  inch. The June 2022 proposed standards included this language; however, upon further review, AMS determined that additional clarifying language needed to be added to the restrictive tolerances for pieces in § 51.1436(b)(1)–(3) to exclude topping pieces and granules. The industry agreed with these changes. Accordingly, AMS has included these changes in this proposed rule.

#### 11. Shelled—Color

APC originally recommended including a color requirement and tolerances for each grade. The June 2022 proposed standards were published with APC’s recommended language. Upon further review, AMS determined that the proposed tolerances for kernels darker than a specified color did not align with the minimum color for U.S. Extra Fancy, U.S. Fancy, and U.S. Standard grades. To correct this issue, AMS proposed to update color terms in the “Tolerances for defects” section for U.S. Extra Fancy (§ 51.1437(a)(4)–(5)), which was changed from “dark amber” to “light amber;” and for U.S. Fancy (§ 51.1437(b)(4)–(5)), from “dark amber” to “amber.” AMS further proposed to

remove “dark amber or darker” from the “Tolerances for defects” section for U.S. Standard (§ 51.1437(d)(3)). When discussing the issue with the industry, there was some confusion about the application of the USDA kernel color standards, PEC–MC–1, and whether it was a requirement of the grade. PEC–MC–1 illustrates the color intensities implied by the terms outlined in the “Color classifications.” The industry agreed with AMS’s clarification that color is indeed a requirement of the grade and PEC–MC–1 is needed to meet the terminology in the “Color classifications” section of the standards. AMS further clarified to the industry that PEC–MC–1 is not used as a direct comparative to gauge pecan color of the individual kernel; rather, it is used to gauge the percentage of the varying colors of a kernel to meet the defined color terminology within § 51.1434—Color classifications of the standards. Accordingly, AMS has included these changes in this proposed rule.

#### 12. Inshell and Shelled—Development

The APC petition recommended a range from minimum to maximum development of pecan kernels in U.S. Fancy and U.S. Choice grades. The June 2022 proposed standards included the proper method for listing minimum kernel development requirements. AMS received comments opposing the language that was included in the June 2022 proposed standards. AMS clarified that the language as published meets the industry’s intent for minimum kernel development in each grade, as there are unintended consequences when including a range in the requirements for the grade. The industry agreed that a range from minimum to maximum kernel development within U.S. Fancy and U.S. Choice grades would result in unintentional classification of kernels as defects. Accordingly, AMS will retain descriptive language from the June 2022 proposed rule, which lists the minimum kernel development requirements of the grade for development.

#### 13. Inshell and Shelled—Rancidity

APC’s petition explained that “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 percent.

The information above was included as standalone definitions in the June

2022 proposed standards. However, upon further review by AMS, it was determined that the information would cause confusion and contradict the scoring criteria under “rancidity” in § 51.1417(i)—Serious damage for inshell standards, and § 51.1453(h)—Serious damage for shelled standards. AMS suggested adding this information as a footnote to those paragraphs instead to clarify that the analysis would not be a requirement of grade, and that no analysis for rancidity would be performed in determination of grade. The industry agreed to removing the rancidity definition from the June 2022 proposed standards at § 51.1419 and § 51.1453, and to adding a footnote to “rancidity” as a serious defect, indicating industry methods of determination. This method would allow AMS to provide the informative language desired by the industry without causing any confusion on how rancidity is scored. Accordingly, AMS is retaining the defect “rancidity,” which shows how rancidity is scored when pecans are distinctly rancid to taste in paragraph (i) of proposed § 51.1417—Serious damage in the standards for inshell pecans, and in paragraph (h) of proposed § 51.1453—Serious damage in the standards for shelled pecans; removing industry’s methods of determination for rancidity as a standalone section in the June 2022 proposed rule; and adding a footnote to “rancidity” as a serious damage defect, to indicate industry’s methods of determination within this proposed rule.

#### 14. Inshell and Shelled—Undeveloped

APC originally recommended a definition for the term *undeveloped* in the standards for inshell pecans to clarify that undeveloped kernels have practically no food value, or are blank (complete shell containing no kernel). AMS included this description as a serious damage defect in § 51.1417(j) of the proposed rule. “Undeveloped kernel” was also listed as a serious damage defect in the standards for shelled pecans in proposed § 51.1452, but included no further description.

Upon further review, AMS determined that the inclusion of “undeveloped kernels” as a serious damage defect for shelled pecans created a conflict with the proposed definition of *poorly developed* (where the kernel is full-meated in less than 25 percent of its width and length) and asked for industry input on the definition of *undeveloped kernels* for the inshell standard.

The industry determined that there was no need for the term

“undeveloped” in the shelled pecan standard, and further stated that the definition needed to be modified for the inshell standards to mean undeveloped kernels which are blank (complete shell containing no kernel).

AMS agrees that these revisions would provide greater clarity and accordingly has revised the proposed definition of *undeveloped kernel* in the list of serious damage defects for inshell pecans in § 51.1417(j) to mean undeveloped kernels which are blank (complete shell containing no kernel). Under this proposed rule, undeveloped kernels would be scored as serious damage in all grades of inshelled pecans. For shelled pecans, the term “undeveloped kernel” is not included in the “serious damage” defect listing. Kernel development would only be scored as damage in all grades of shelled pecans.

#### 15. Inshell and Shelled—Housekeeping

Upon further review of the standards, it was determined that additional minor housekeeping edits were needed for both standards. The additional proposed edits are in line with edits that have been made to other recently revised standards, and the industry agreed that the edits are acceptable. Those edits are as follows:

*Inshell pecan standards:* Removal of metric conversions throughout the standard. These conversions were not accurate and are rarely utilized.

*Shelled pecan standards:* Removal of metric conversion table. This standard did not contain any metric conversions; therefore, the table is unnecessary.

Accordingly, AMS has included these changes in this proposed rule.

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 Grades of Shelled Pecans issued under the Agricultural Marketing Act of 1946.

#### List of Subjects in 7 CFR Part 51

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

For reasons set forth in the preamble, 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 Subpart M—United States Standards for Grades of Pecans in the Shell to read as follows:

### Subpart M—United States Standards for Grades of Pecans in the Shell

Sec.

#### Grades

§ 51.1400 U.S. Extra Fancy.  
§ 51.1401 U.S. Fancy.  
§ 51.1402 U.S. Choice.  
§ 51.1403 U.S. Standard.

#### Size Classification

§ 51.1404 Size classification.

#### Kernel Color Classification

§ 51.1405 Kernel color classification.

#### Tolerances

§ 51.1406 Tolerances.

#### Application of Tolerances

§ 51.1407 Application of tolerances.

#### Sample for Grade or Size Determination

§ 51.1408 Sample for grade or size determination.

#### Definitions

§ 51.1409 Loose extraneous or foreign material.  
§ 51.1410 Well cured.  
§ 51.1411 Well developed.  
§ 51.1412 Fairly well developed.  
§ 51.1413 Poorly developed.  
§ 51.1414 Uniform in color.  
§ 51.1415 Fairly uniform in color.  
§ 51.1416 Damage.  
§ 51.1417 Serious damage.  
§ 51.1418 Inedible kernels.

### Subpart M—United States Standards for Grades of Pecans in the Shell

#### Grades

##### § 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) Shells are:
  - (1) Uniform in color; and
  - (2) Free from damage by any cause.
- (c) Kernels are:
  - (1) Well developed;
  - (2) Well cured;
  - (3) Moisture content shall be not more than 6 percent, unless otherwise specified;
  - (4) Uniform in color and not darker than “light;” and



- (5) Free from damage by any cause.  
 (d) For tolerances see § 51.1406.

#### § 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) Shells are:  
 (1) Uniform in color; and  
 (2) Free from damage by any cause.  
 (c) Kernels are:  
 (1) Fairly well developed;  
 (2) Well cured;  
 (3) Moisture content shall be not more than 6 percent, unless otherwise specified;  
 (4) Uniform in color;  
 (5) Not darker than “light amber,” unless specified to a lighter color classification; and  
 (6) Free from damage by any cause.  
 (d) For tolerances see § 51.1406.

#### § 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) Shells are:  
 (1) Fairly uniform in color; and  
 (2) Free from damage by any cause.  
 (c) Kernels are:  
 (1) Not poorly developed;  
 (2) Well cured;  
 (3) Moisture content shall be not more than 6 percent, unless otherwise specified;  
 (4) Fairly uniform in color;  
 (5) Not darker than “amber,” unless specified to a lighter color classification; and  
 (6) Free from damage by any cause.  
 (d) For tolerances see § 51.1406.

#### § 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) Kernels well cured;  
 (c) Moisture content shall be not more than 6 percent, unless otherwise specified;  
 (d) No requirement for fullness of kernel;  
 (e) No requirement for uniformity of color of shells or kernels;  
 (f) May contain kernels that are “dark amber” or darker, unless specified to a lighter color classification; and  
 (g) Shells and kernels are free from damage by any cause.  
 (h) For tolerances see § 51.1406.

#### Size Classification

##### § 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.	

#### Kernel Color Classification

##### § 51.1405 Kernel color classification.

(a) The skin color of the pecan kernels are described in terms of the color classifications provided in this section. When specified to a lighter color classification, that color 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>.

#### Tolerances

##### § 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 grade or any specified color classification, 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).

#### Application of Tolerances

##### § 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.

#### Sample for Grade or Size Determination

##### § 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.

#### Definitions

##### § 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.

##### § 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.

##### § 51.1411 Well developed.

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

##### § 51.1412 Fairly well developed.

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

##### § 51.1413 Poorly developed.

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

##### § 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.

##### § 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.

##### § 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 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 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.

##### § 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 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<sup>1</sup> when the kernel is distinctly rancid to the taste. Staleness of flavor shall not be classed as rancidity;

(j) Undeveloped kernels which are blank (complete shell containing no kernel); and

(k) Worm holes when penetrating the shell.

Note to § 51.1417(i):

<sup>1</sup> Refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. Industry measures to determine the tendency of a kernel to become rancid include testing the kernel's peroxide and free fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acids acid value should be less than 1 percent. These analyses are not performed in determination of grade.

##### § 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.

■ 3. Revise Subpart N—United States Standards for Grades of Shelled Pecans to read as follows:

#### Subpart N—United States Standards for Grades of Shelled Pecans

Sec.

##### Grades

- § 51.1430 U.S. Extra Fancy.
- § 51.1431 U.S. Fancy.
- § 51.1432 U.S. Choice.
- § 51.1433 U.S. Standard.

##### Color Classifications

- § 51.1434 Color classifications.

##### Size Classifications

- § 51.1435 Size classifications for halves.
- § 51.1436 Size classifications for pieces.

##### Tolerances for Defects

- § 51.1437 Tolerances for defects.

##### Applications of Standards

- § 51.1438 Application of standards.

##### Definitions

- § 51.1439 Premier half-kernel (Premier halves).
- § 51.1440 Half-kernel (Halves).
- § 51.1441 Piece.
- § 51.1442 Meal and flour.
- § 51.1443 Well dried.
- § 51.1444 Well developed.
- § 51.1445 Fairly well developed.
- § 51.1446 Poorly developed.
- § 51.1447 Uniform in color.
- § 51.1448 Fairly uniform in color.
- § 51.1449 Uniform in size.
- § 51.1450 Fairly uniform in size.
- § 51.1451 Foreign material.
- § 51.1452 Damage.
- § 51.1453 Serious damage.

#### Subpart N—United States Standards for Grades of Shelled Pecans

##### Grades

##### § 51.1430 U.S. Extra Fancy.

“U.S. Extra Fancy” consists of pecan kernels which meet the following requirements:

- (a) For quality:
  - (1) Well dried;
  - (2) Moisture content shall not be more than 4.5 percent, unless otherwise specified;
  - (3) Well developed;
  - (4) Uniform in color;
  - (5) Not darker than “light;”
  - (6) Free from damage by any cause; and
  - (7) Comply with tolerances for defects (see § 51.1437).
- (b) For size:
  - (1) Uniform in size; and
  - (2) Conform to size classification or count specified.

##### § 51.1431 U.S. Fancy.

“U.S. Fancy” consists of pecan kernels which meet the following requirements:

- (a) For quality:
  - (1) Well dried;
  - (2) Moisture content shall not be more than 4.5 percent, unless otherwise specified;
  - (3) Fairly well developed;
  - (4) Uniform in color;
  - (5) Not darker than “light amber,” unless specified to a lighter color classification;
  - (6) Free from damage by any cause; and
  - (7) Comply with tolerances for defects (see § 51.1437).
- (b) For size:
  - (1) Uniform in size; and
  - (2) Conform to size classification or count specified.

##### § 51.1432 U.S. Choice.

“U.S. Choice” consists of pecan kernels which meet the following requirements:

- (a) For quality:
  - (1) Well dried;
  - (2) Moisture content shall not be more than 4.5 percent, unless otherwise specified;
  - (3) Not poorly developed;
  - (4) Fairly uniform in color;
  - (5) Not darker than “amber,” unless specified to a lighter color classification;
  - (6) Free from damage by any cause; and
  - (7) 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.

##### § 51.1433 U.S. Standard.

“U.S. Standard” consists of pecan kernels which meet the following requirements:

- (a) For quality:
  - (1) Well dried;
  - (2) Moisture content shall not be more than 4.5 percent, unless otherwise specified;
  - (3) No requirement for fullness of kernel;
  - (4) No requirement for uniformity of color;
  - (5) May contain kernels “dark amber” or darker, unless specified to a lighter color classification;
  - (6) Free from damage by any cause; and
  - (7) Comply with tolerances for defects (see § 51.1437).
- (b) For size:
  - (1) No uniformity in size; and
  - (2) Conform to size classification or count specified.

##### Color Classifications

##### § 51.1434 Color classifications.

(a) The skin color of pecan kernels are described in terms of the color classifications provided in this section. When specified to a lighter color classification, that color 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>.

##### Size Classifications

##### § 51.1435 Size classifications 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.

TABLE 1 TO § 51.1435

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

In lieu of the size classifications in this table, 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.”

(a) Halves per pound.

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) 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.

(c) Tolerances for pieces, meal, and flour.

In order to allow for variations incident to proper sizing and handling, tolerances are provided for pieces, meal, and flour in any lot of halves. The tolerances, by weight, are as shown in Table 2 to this section.

TABLE 2 TO § 51.1435

	U.S. extra fancy premier halves (%)	U.S. extra fancy halves (%)	U.S. fancy halves (%)	U.S. choice halves (%)	U.S. standard halves (%)
Tolerances for Pieces, Meal, and Flour:					
A. Less than $\frac{7}{8}$ half-kernel .....	10	.....	.....	.....	.....
B. Less than $\frac{3}{4}$ half-kernel .....	.....	10	15	20	20
C. Less than $\frac{1}{2}$ half-kernel (included in A.—U.S. Extra Fancy Premier Halves) (included in B.—U.S. Extra Fancy Halves, U.S. Fancy Halves, U.S. Choice Halves, and U.S. Standard Halves) .....	3	3	5	5	5
D. Less than $\frac{4}{64}$ " (included in C.) .....	1	1	1	1	1

#### § 51.1436 Size classifications 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.

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.

In lieu of the size classifications in this table, 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 sixty-fourths of an inch.

(a) 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) U.S. Extra Fancy pieces and U.S. 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, excluding Topping Pieces and Granules, may pass through an eight sixty-fourths of an inch round hole screen.

(2) 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,

excluding Topping Pieces and Granules, may pass through an eight sixty-fourths of an inch round hole screen.

(3) 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, excluding Topping Pieces and Granules, may pass through an eight sixty-fourths of an inch round hole screen.

#### Tolerances for Defects

#### § 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 as follows:

(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 larvae;

(4) 3 percent for portions of kernels which are "light amber" or darker color, or darker than any specified lighter color classification, but which are not otherwise defective; 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 (one-half of 1 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 "light 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;
- (4) 5 percent for portions of kernels which are "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 (one-half of 1 percent) for defects causing serious damage, including pecan weevil larvae: *Provided*, That any unused portion of this tolerance may be applied to increase the tolerance for kernels which are "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;
  - (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, including pecan weevil larvae.
- (d) U.S. Standard grade:
  - (1) No foreign material;
  - (2) 0.01 percent for shell and center wall;
  - (3) 25 percent for portions of kernels which are darker than a specified color classification, but which are not otherwise defective; and
  - (4) 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, including pecan weevil larvae.

#### Application of Standards

##### § 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.

#### Definitions

##### § 51.1439 Premier half-kernel (Premier halves).

*Premier half-kernel (Premier halves)* 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.

##### § 51.1440 Half-kernel (Halves).

*Half-kernel (Halves)* means one of the separated halves of an entire pecan kernel with not more than one-fourth of its original volume missing, exclusive of the portion which formerly connected the two halves of the kernel.

##### § 51.1441 Piece.

*Piece* means a portion of a kernel which is less than three-fourths of a half-kernel, but which will not pass through a round opening four sixty-fourths (4/64) of an inch in diameter.

##### § 51.1442 Meal and flour.

*Meal and flour* means fragments of kernels which will pass through a round opening four sixty-fourths (4/64) of an inch in diameter.

##### § 51.1443 Well dried.

*Well dried* means that the portion of kernel is firm and crisp, not pliable, or leathery.

##### § 51.1444 Well developed.

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

##### § 51.1445 Fairly well developed.

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

##### § 51.1446 Poorly developed.

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

##### § 51.1447 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.

##### § 51.1448 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.

##### § 51.1449 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.

##### § 51.1450 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 50 percent as much as the 10 largest halves.

##### § 51.1451 Foreign material.

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

##### § 51.1452 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.

##### § 51.1453 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; and

(h) Rancidity<sup>1</sup> when the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

Note to § 1453(h):

<sup>1</sup> Refers to the tendency of the oil in a pecan kernel to become tainted as a result of oxidation or hydrolysis. Industry measures to determine the tendency of a kernel to become rancid include testing the kernel's peroxide and free fatty acid values. Peroxide values should be less than 5 mEq/kg and free fatty acids acid value should be less than 1 percent. These analyses are not performed in determination of grade.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 308 and 364

**RIN 3064–AF94**

### Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions With Total Consolidated Assets of \$10 Billion or More

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking and issuance of guidelines.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is seeking comment on proposed corporate governance and risk management guidelines (Guidelines) that would apply to all insured state nonmember banks, state-licensed insured branches of foreign banks, and insured state savings associations that are subject to Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of \$10 billion or more on or after the effective date of the final Guidelines. These proposed Guidelines would be issued as Appendix C to FDIC's standards for safety and soundness regulations in part 364, pursuant to Section 39 of the FDI

Act, and would be enforceable under Section 39. The FDIC also proposes to make corresponding amendments to parts 308 and 364 of its regulations to implement the proposed Guidelines.

**DATES:** Comments on the proposed Guidelines must be received by December 11, 2023.

**ADDRESSES:** The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN 3064–AF94, by any of the following methods:

*Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications>. Follow instructions for submitting comments on the FDIC's website.

*Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AF94), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

*Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

*Email:* [comments@FDIC.gov](mailto:comments@FDIC.gov). Include RIN 3064–AF94 in the subject line of the message.

*Public Inspection:* Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-registerpublications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Division of Risk Management Supervision: Judy E. Gross, Senior Policy Analyst, 202–898–7047,

[JuGross@FDIC.gov](mailto:JuGross@FDIC.gov); Legal Division: Jennifer M. Jones, Counsel, 202–898–6768; Catherine Topping, Counsel, 202–898–3975; Nicholas A. Simons, Senior Attorney, 202–898–6785; Kimberly Yeh, Senior Attorney, 202–898–6514.

### SUPPLEMENTARY INFORMATION:

#### I. Policy Objectives

Strong corporate governance is the foundation for an insured depository institution's safe and sound operations. An effective governance framework is necessary for an insured depository institution to remain profitable, competitive, and resilient through changing economic and market conditions. The board of directors serves a critical role in maintaining an insured depository institution's safety and soundness and continued financial and operational resilience.

The FDIC observed during the 2008 financial crisis and more recent bank<sup>1</sup> failures in 2023 that financial institutions with poor corporate governance and risk management practices were more likely to fail.<sup>2</sup> Reports reviewing the recent 2023 bank failures noted that poor corporate governance and risk management practices were contributing factors.<sup>3</sup> Failures of insured depository institutions (IDIs) impose costs on the Deposit Insurance Fund (DIF) and negatively affect a wide variety of stakeholders including the institution's depositors and shareholders, employees, customers (including consumers and businesses that rely on the institution's services and the availability of credit), regulators, and the public as a whole. Insufficient attention and

<sup>1</sup> The term “bank” is used to mean the same thing as “insured depository institution” as defined in Section 3 of the FDI Act.

<sup>2</sup> *Lessons Learned and a Framework for Monitoring Emerging Risks and Regulatory Response*, GAO Report to Congress, GAO–15–365, June 2015; FDIC OIG Reports—Bank Failures, <https://www.fdicigov.gov/reports-publications/bank-failures>; Remarks by Martin J. Gruenberg, Chairman, FDIC to the American Association of Bank Directors, May 12, 2015, <https://archive.fdic.gov/view/fdic/1717>; *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*, April 2023, <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>; FDIC's *Supervision of Signature Bank*, April 2023, <https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf>.

<sup>3</sup> The FDIC report on the failure of Signature Bank in 2023 found that the root cause of the failure was poor management without adequate risk management practices and controls. The institution's management did not prioritize good corporate governance practices (*FDIC's Supervision of Signature Bank*, April 28, 2023, p. 2). The Federal Reserve Board's report on the failure of Silicon Valley Bank also identified governance and risk management failures that led to the failure. (*Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*, April 2023, p. 1).