



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS-SC-16-0005, SC-16-331]

U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell issued under the Agricultural Marketing Agreement Act of 1946. The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is amending the color requirements to include red-colored walnuts. In addition, AMS is removing the “Unclassified” section. These revisions will modernize the standards to more accurately represent today’s marketing practices and to meet growing consumer demand by providing greater marketing flexibility.

DATES: Effective [Insert date 30 days after date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: David G. Horner, Agricultural Marketing Specialist, Specialty Crops Inspection Division, USDA/AMS Specialty Crops Program, 100 Riverside Parkway, Suite 101, Fredericksburg VA, 22406; telephone (540) 361-1120; fax (540) 361-1199; or email Dave.Horner@ams.usda.gov. Copies of the revised U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell are available at <http://www.regulations.gov> or <http://www.ams.usda.gov/>.

SUPPLEMENTARY INFORMATION:

The changes in these two sets of standards will permit grade certification of red-colored walnut varieties. These revisions also affect the grade requirements under the marketing order, 7 CFR part 984, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) and applicable imports.

Executive Orders 12866 and 13563

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

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

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impacts of the revisions to the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell. The purpose of the RFA is to structure regulatory actions so small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared the following final regulatory flexibility analysis.

The current U.S. walnut standards have four color classifications: Extra Light, Light, Light Amber, and Amber. Product that does not meet these color standards cannot be certified to a U.S. grade. AMS is revising these standards to include a new classification for red-colored walnuts. In addition, AMS is eliminating the “Unclassified” section. These revisions modernize the current grading standards by allowing the industry to meet the growing consumer demand for red-colored walnuts and by promoting better market information and greater marketing flexibility within the industry.

The process of grading improves the functioning of a commodity market. Assigning different prices to different product characteristics and levels of quality increases opportunities for profitable trade. Including red-colored varieties to the walnut grading standards will facilitate additional market opportunities for walnut producers and other participants in the supply chain. The revision will result in a minor change only to the color requirements of the current standards.

AMS anticipates that there will be little or no additional cost to implement this revision. This change applies uniformly to all market participants, and will not result in disproportionate additional costs being borne by small walnut producers or other small businesses.

To determine the proportion of walnut producers that would be considered small, AMS conducted the following analysis. The Small Business Administration (SBA) defines small agricultural producers as those with annual receipts of less than \$750,000 (13 CFR 121.601).

AMS used crop value per acre to determine the number of bearing acres required to generate annual sales of \$750,000 or more, and came to 136 bearing acres. To reach this number, AMS divided the total crop value measured in dollars by the total utilized production measured in tons. Using annual National Agricultural Statistics Service (NASS) data for the years 2010 to 2014, the 5-year average crop value was \$1,507,478,000; utilized production was 504,800 tons; and, grower price was \$2,982 per ton. AMS multiplied the price by yield to find the crop value per acre of \$5,670 on average over 5 years. Finally, AMS divided the SBA-defined annual sales threshold of \$750,000 by value per acre, which resulted in 136 acres.

The NASS Agricultural Census is conducted every 5 years and in 2012 showed that 87 percent of walnut farming operations in the U.S. fell into its Census category of “under 100 bearing acres” of walnuts. AMS estimates that the proportion of walnut growers that qualify as small businesses under the SBA definition is likely to be close to 90 percent, given the probable exclusion in the “under 100 bearing acres” Census category of walnut producers with bearing acreage between 100 and 136. These small growers will not be disproportionately affected by the final rule as all changes to the standards will be applied uniformly to all market participants.

In August 2015, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously to revise the U.S. walnut standards to include non-amber

cultivars such as red-colored varieties. More than 99 percent of U.S. walnuts are produced in California. Addition of an expanded color certification grade will encourage greater revenue to flow into the industry due to greater marketing opportunities for red-colored nuts. Revising the current grading standards to include red walnuts will come at a minimal cost to the industry. The benefits of modernized grading standards, which include better market information and greater marketing flexibility, exceed the minor costs to market participants of implementing this revision to the U.S. standards for walnuts.

Background

The current U.S. walnut standards only permit the following four colors: Extra Light, Light, Light Amber, and Amber. However, consumer demand is growing for red walnuts in the United States. In China, the Livermore variety (a red-colored walnut) is very desirable. U.S. growers and companies expect sales to continue rising domestically and in China, especially once red walnuts are permitted grade certification.

To address anticipated consumer needs, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously in August 2015 to revise the U.S. walnut standards to include non-amber cultivars, beginning with the Livermore variety. Later, the California Walnut Board and Commission sent an official letter to the AMS Administrator formally requesting the addition of red-colored varieties.

On November 25, 2016, AMS published a Proposed Rule in the **Federal Register** (81 FR 85164) soliciting comments on its proposal to amend the standards to (1) include red-colored walnuts and (2) remove the “Unclassified” section. On March 23, 2017, AMS published a “Reopening of the comment period” in the **Federal Register** (82 FR 14832). The extended

comment period closed April 24, 2017. To view the eight posted comments, please visit <http://www.regulations.gov>.

Six commenters supported the changes. One supporter was a trade association representing nearly 4,000 family farms, nearly 60,000 jobs, and a \$1.7 billion walnut industry. The other supporting commenters were from the general public. Two of the supporting individuals asked for clarification on the following:

- Was there a health hazard in the past, preventing red walnuts from being certified to a U.S. grade? No. When the USDA Walnut Color Chart was developed in 1967, walnuts came in light to dark amber colors. Since then, red varieties of walnuts (e.g., Livermore) have been bred and seen increased demand. The standards are being updated to reflect the changing market.
- Are red walnuts a type of English walnut? Yes. Red walnuts, such as the Livermore variety, are a *Juglans Regia* cultivar with a red seed coat.
- What would prevent the industry from marketing dyed walnuts as true red walnuts? Marketing Order 984, which regulates walnuts grown in California, prohibits walnuts from being modified in any form (over 99 percent of U.S. walnuts are grown in California). In addition, the U.S. grade standards have no provision for artificial coloring and, therefore, walnuts could not be certified to grade if color was added.

Two commenters, representing the general public, opposed the changes. One believed red walnuts should be free from regulations and the other believed it would affect the market negatively. The purpose of U.S. grade standards is to facilitate the marketing of agriculture in the United States and around the world. These revisions come at the request of the U.S. walnut industry. In addition, AMS believes these revisions would increase supply of red walnuts.

Marketing Order 984 requires walnuts grown in California to be certified to a U.S. grade. Once red walnuts can be grade certified, they will become more available to domestic and global consumers.

Based on the above information gathered, AMS is making the following revisions in the U.S. Standards for Grades of Shelled Walnuts:

- §51.2276 Color chart: Removed and reserved. The information in this section regarding the U.S.D.A. Walnut Color Chart is obsolete.
- §51.2277 U.S. No. 1(a): Revised to include red walnuts.
- §51.2278 U.S. Commercial (a): Revised to include red walnuts.
- §51.2279 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.
- §51.2281 Color classifications: The section is reorganized into subparts (a) and (b) to include red walnuts.
- §51.2282 Table II: Revised to include red walnuts.
- §51.2283 Off color: Revised to include red walnuts.

In addition, AMS is making the following revisions in the U.S. Standards for Grades of Walnuts in the Shell:

- §51.2946 Color chart: Removed and reserved. This section is now redundant and no longer needed.
- §51.2948 U.S. No. 1 (a), §51.2949 U.S. No. 2 (a), and §51.2950 U.S. No. 3 (a): Subpart (1) was added to subpart (a) in each section to accommodate red walnuts.
- §51.2951 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.

- §51.2954 Tolerances for grade defects: Revised to include red walnuts.

The U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell will be effective 30 days after publication of this rule in the **Federal Register**.

List of Subjects in 7 CFR Part 51

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

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

PART 51 – [AMENDED]

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

Authority: 7 U.S.C. 1621 – 1627.

§51.2276 [Removed and reserved]

2. Section 51.2276 is removed and reserved.
3. In §51.2277, paragraph (a) is revised to read as follows:

§51.2277 U.S. No. 1.

* * * * *

(a) Color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See §51.2281 and §51.2282.)

* * * * *

4. In §51.2278, paragraph (a) is revised to read as follows:

§51.2278 U.S. Commercial.

* * * * *

(a) Color of walnuts based on the USDA Walnut Color Chart shall be not darker than the “amber” classification. There are no color requirements for “red” color. Color may be specified in connection with the grade in terms of one of the color classifications in the USDA Walnut Color Chart or “red” color. “Red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See §51.2281 and §51.2282.)

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§51.2279 [Removed and reserved]

- 5. Section 51.2279 is removed and reserved.
- 6. Revise §51.2281 to read as follows:

§51.2281 Color classifications.

The following classifications are provided to describe the color of any lot:

- (a) "Extra light," "light," "light amber," and "amber:?" The portions of kernels in the lot shall be not darker than the darkest color permitted in the specified classification as shown on the USDA Walnut Color Chart.
- (b) “Red:?” There are no color requirements.

- 7. In §51.2282, Table II is amended by adding an entry for “Red” to the end of the table and by revising footnote 1 to read as follows:

§51.2282 Tolerances for color.

* * * * *

Table II

Color classification	Tolerances for color			
	Darker than extra light ¹	Darker than light ¹	Darker than light amber ¹	Darker than amber ¹
* * * * *				
Red	-----	-----	-----	-----

¹See illustration of this term on USDA Walnut Color Chart.

8. Revise §51.2283 to read as follows:

§51.2283 Off color.

The term “off color” is not a color classification, but shall be applied to any lot which fails to meet the requirements of the “amber” classification when applying the color classifications in the USDA Walnut Color Chart. Off color shall not be used for “red” color.

§51.2946 [Removed and reserved]

9. Section 51.2946 is removed and reserved.

10. In §51.2948, paragraph (a) is revised to read as follows:

§51.2948 U.S. No. 1.

* * * * *

(a) Kernel color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color.

Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 70 percent, by count, of the walnuts have kernels which are not darker than “light

amber,” and which are free from grade defects: *Provided*, That at least four-sevenths of the above amount, or 40 percent of the walnuts have kernels which are not darker than “light.”

Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects and/or higher percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See §51.2954.)

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11. In §51.2949, paragraph (a) is revised to read as follows:

§51.2949 U.S. No. 2.

* * * * *

(a) Kernel color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color.

Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 60 percent, by count, of the walnuts have kernels which are not darker than “light amber,” and which are free from grade defects. Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects, and/or percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See §51.2954.)

* * * * *

12. In §51.2950, paragraph (a) is revised to read as follows:

§51.2950 U.S. No. 3.

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(a) Kernel color may be specified in connection with this grade in terms of “light amber” or “light” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, there is no requirement in this grade for the percentage of walnuts having kernels which are “light amber” or “light.” However, the percentage, by count, of nuts with kernels not darker than “light amber” which are free from grade defects and/or the percentage with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See §51.2954.)

* * * * *

§51.2951 [Removed and reserved]

13. Section 51.2951 is removed and reserved.

14. In §51.2954, the table is revised to read as follows:

§51.2954 Tolerances for grade defects.

* * * * *

Tolerances for Grade Defects

Grade	External (shell) defects	Internal (kernel) defects	Kernel color based on USDA Walnut Color Chart	Kernel color based on red
U.S. No. 1	10%, by count, for splits. 5%, by count, for other shell defects, including not more than 3% seriously damaged.	10% total, by count, including not more than 6% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5/6 or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 70% of "light amber" kernels or the required 40% of "light" kernels or any larger percentage of "light amber" or "light" kernels specified.	-----
U.S. No. 2	10%, by count, for splits. 10%, by count, for other shell defects, including not more than 5%t serious damage by adhering hulls.	15% total, by count, including not more than 8% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5/8 or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 60% or any specified larger percentage of "light amber" kernels, or any specified percentage of "light" kernels.	-----
U.S. No. 3	Same as above tolerance for U.S. No. 2.	Same as above tolerance for U.S. No. 2	No tolerance to reduce any percentage of "light amber" or "light" kernel specified.	-----

Dated: August 16, 2017

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Agricultural Marketing Service

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