

Marketing Act of 1946, the use of these standards is voluntary.

Alternatives were considered for this action. One alternative would be to not issue a rule. However, the need for revisions have increased as a result of changing marketing characteristics by industry, several years of work with the industry to assess market and grower implications, and other input from all sectors of the pistachio industry and government. Since the purpose of these standards is to expedite the marketing of pistachio nuts in the U.S., not revising the standards would result in disuse of national standards and confusion in terms of industry marketing and the proper application of the grade standards.

The proposed rule, the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts was published in the **Federal Register** on May 23, 2003 (68 FR 28141). A comment period of thirty days was issued which closed on June 23, 2003.

Final Rule and Comments

One e-mail comment was received. The commenter stated that the United States Standards for Grades of Pistachio Nuts in the Shell contain a tolerance for "damage by other means," but do not contain a definition for "damage by other means." However, "damage by other means" is not a specific defect. This tolerance is provided for all defects that are not specifically covered by other tolerances. Therefore, a definition for "damage by other means" is not necessary.

This rule would revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts that were issued under the Agricultural Marketing Act of 1946. These standards are voluntarily used by industry as a common trading language to market pistachio nuts under established and known specifications. In some transactions, the buyer and seller may establish their own specifications for the sale, use portions of the U.S. standards while altering other portions to fit the sale and needs of the parties, or use the U.S. standards as written.

At the time of its 1998 request to AMS, the CPC issued "industry standards" based on the requested changes and encouraged California pistachio nuts to be marketed under those standards. The use of the voluntary "industry standards" for national and international marketing with official certification by USDA

inspectors based on these standards has continued for three marketing seasons. The changes herein are based on the standards currently being used by the industry to market U.S. grown pistachio nuts nationally and internationally.

Background

The United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts were developed in 1986 and 1990, respectively. At that time, the U.S. pistachio industry was beginning to compete in a global market. As the industry has grown in numbers of growers and processors and in volume, the current grade standards have been regularly used as a basis of marketing. In recent years, foreign and domestic buyers have developed customers that have uses for nuts which have specifications outside the scope of the U.S. grade standards. In addition, U.S. marketers have begun to offer for sale byproduct forms of pistachio nuts for which there are no uniform marketing specifications in the form of recognized grade standards.

AMS received a request to update and revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts from the CPC. The CPC is the State-approved marketing agent for the California pistachio industry and represents nearly all commercial pistachio producers and handlers in California. AMS and its State cooperator in California have been closely working with CPC and its members since 1994 to review and update the industry grade standards. Official inspection services, with these U.S. grade standards as the basis, have been used by the industry since the inception of the standards.

Currently, the majority of U.S. pistachio production, and more than 30 percent of worldwide pistachio production, originates from California. The California industry, in cooperation with the CPC, began a comprehensive review of the current standards in 1994. As this process evolved, the industry tested possible revision theories through hands-on testing in the packing plants, through consumer preference studies, and through public meetings with processors, growers and other interested parties. This was initiated in order to review the standards and meet the marketing needs of the U.S. pistachio industry and the preferences of industry buyers and the general public. As a result of this study, the CPC, acting on behalf of California growers and

shippers, requested an amendment to the standards.

This rule revises the standards to more closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. These changes are intended to update the standards to maintain their usefulness as they are applied to today's marketing challenges, both nationally and internationally.

Therefore, AMS amends the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts as follows:

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

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

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

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.2541 is revised to read as follows:

Subpart—United States Standards for Grades of Pistachio Nuts in the Shell Grades

§ 51.2541 U.S. Fancy, U.S. Extra No. 1, U.S. No. 1 And U.S. Select Grades.

"U.S. Fancy," "U.S. Extra No. 1," "U.S. No. 1," and "U.S. Select" consists of pistachio nuts in the shell which meet the following requirements:

(a) Basic requirements:

(1) Free from:

- (i) Foreign material;
- (ii) Loose kernels;
- (iii) Shell pieces;
- (iv) Particles and dust; and,
- (v) Blanks.

(b) Shells:

(1) Free from:

- (i) Non-split shells; and,
- (ii) Shells not split on suture.

(2) Free from damage by:

- (i) Adhering hull material;
- (ii) Light stained;
- (iii) Dark stained; and,
- (iv) Other External (shell) defects.

(c) Kernels: