

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-98-304]

#### United States Standards for Grades of Pistachio Nuts in the Shell, and United States Standards for Grades of Shelled Pistachio Nuts

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

**ACTION:** Proposed rule.

**SUMMARY:** The proposed 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. The proposed revisions would modify the standards to more closely align 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, relax tolerances of the level of light stain on the shell in the various grade levels based on consumer preferences, more objectively define when nuts are damaged by various factors, and include two in-shell grade specifications which reflect the industry's byproduct. These changes are being proposed by the Agricultural Marketing Service (AMS) to promote greater uniformity and consistency in the standards. The current grades and standards were adopted in 1986 and 1990, respectively. These changes are needed to provide consistency with current marketing practices.

**DATES:** Comments must be received by June 23, 2003.

**ADDRESSES:** Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence

Avenue, SW., Room 2065 South Building, Stop 0240, Washington, DC 20250-0240; Fax (202) 720-8871; E-mail [FPB.DocketClerk@usda.gov](mailto:FPB.DocketClerk@usda.gov). Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** David L. Priester, at the above address or call (202) 720-2185; E-mail [David.Priester@usda.gov](mailto:David.Priester@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12988 and 12866

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule. The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

##### Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Available information provided by the California Pistachio Commission (CPC) show that there are 647 California pistachio producers and 19 California handlers of pistachio nuts, most of which are also growers or have grower members. Additional information provided by CPC show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 growers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers

(9%) grow more than 500,000 pounds. U.S. grade standards for pistachios would normally be used at the sales level of marketing, which is ordinarily carried out at the processor/packer level or after processing has been completed. Pistachio nuts may be marketed by multiple commodity marketing firms.

The California Department of Food and Agriculture Resource Directory 2002, reports that California accounted for more than 99 percent of domestic pistachio production. More current information available to the Department indicates that California has 97 percent of domestic production with Arizona at 2 percent and New Mexico with less than 1 percent.

Small agricultural service firms, which include handlers (packers, brokers, distributors, importers, etc.), have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000. The pistachio industry is characterized by growers that produce from .1 to more than 500 acres.

Approximately 9 percent of the California pistachio growers receive more than \$550,000 annually. Only a portion of these producers would meet SBA's definition of a small agricultural producer. At least 12 of the California pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition. We would expect that similar size determinations would hold for the remainder of domestic production.

This rule revises the standards in order 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. The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities.

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.

This action will make the standards more consistent and uniform with current industry terms and practices. This action would not impose substantial direct economic cost, record keeping, or personnel workload changes on small entities, and it would not alter the market share or competitive position of these entities relative to large businesses. USDA has not identified any Federal rules that currently duplicate, overlap, or conflict with this rule. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed 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 proposed 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 the 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 proposal would revise 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.

The following is an outline of these changes, including discussion on the need for the changes.

**UNITED STATES STANDARDS FOR GRADES OF PISTACHIO NUTS IN THE SHELL**

Current standard	Proposed	Discussion
<p><b>§ 51.2540 General</b>                      (a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.                      (b) These standards are applicable to pistachio nuts in the shell which may be in a natural, dyed, raw, roasted, or salted state; or in any combination thereof. However, nuts of obviously dissimilar forms shall not be commingled.</p>	<p><b>§ 51.2540 General</b>                      (a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.                      (b) These standards are applicable to pistachio nuts in the shell which may be in a natural, dyed, raw, roasted, or salted state; or in any combination thereof.</p>	<p>Removal of the sentence "However, nuts of obviously dissimilar forms shall not be commingled," would provide industry with additional flexibility to meet customer specifications and needs.</p>

## UNITED STATES STANDARDS FOR GRADES OF PISTACHIO NUTS IN THE SHELL—Continued

Current standard	Proposed	Discussion
<b>§ 51.2541 Grades</b>	<b>§ 51.2541 U.S. Fancy, U.S. Extra No. 1, U.S. No. 1 and U.S. Select Grades</b>	The title of this section is proposed to be changed to accommodate revised grade name designations and the addition of by-product grades following this section.
"U.S. Fancy," "U.S. No. 1," "U.S. No. 2," and "U.S. No. 3" consist of pistachio nuts in the shell which meet the following requirements:	"U.S. Fancy," "U.S. Extra No. 1," "U.S. No. 1," and "U.S. Select" consist of pistachio nuts in the shell which meet the following requirements:	It is proposed to change the grade names of "U.S. No. 1," "U.S. No. 2," and "U.S. No. 3" to "U.S. Extra No. 1," "U.S. No. 1," and "U.S. Select." This would harmonize the grade references to be similar with other tree nut standards and observe current industry marketing terms.
(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: (1) Well dried, or, very well dried when specified in connection with the grade.	(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: (1) Well dried, or, very well dried when specified in connection with the grade.	There is no change in this text.
(2) Free from damage by: (i) Minor mold; (ii) Immature kernels; (iii) Kernel spots; and, (iv) Other Internal (kernel) defects.	(2) Free from damage by: (i) Immature kernels; (ii) Kernel spotting; and, (iii) Other Internal (kernel) defects.	It is proposed to delete the term "minor mold" as the term is no longer used by the industry. All visible mold is considered under the same definition and grading category. This would result in a rearrangement of the current numerical outline designations for other factors in the standards.
(3) Free from serious damage by: (i) Minor insect or vertebrate injury; (ii) Insect damage; (iii) Mold; (iv) Rancidity; (v) Decay; and, (vi) Other Internal (kernel) defects.	(3) Free from serious damage by: (i) Minor insect or vertebrate injury; (ii) Insect damage; (iii) Mold; (iv) Rancidity; (v) Decay; and, (vi) Other Internal (kernel) defects.	There is no change in this text.
(d) The nuts are of a size not less than 26/64 inch in diameter as measured by a round hole screen.	(d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.	It is proposed to increase the minimum size by 4/64 inch in diameter, which is the current industry trading practice. Nuts smaller than 30/64 inch in diameter typically have more defects affecting the quality of the end product and it is general industry practice to use nuts smaller than this minimum size as a shelled product or for manufacturing. This change conforms with current industry practices and will ultimately provide consumers with higher quality and larger nuts.
(e) For Tolerances, see § 51.2542.	(e) For Tolerances, see § 51.2544.	The section number is changed to accommodate the addition of two byproduct grade definitions.
<b>§ 51.2542 Tolerances</b> (See tolerances section below for a side-by-side comparison of current and proposed standards.)	<b>§ 51.2542 U.S. Artificially Opened</b>	The title for this section is re-designated to allow for the establishment of the U.S. Artificially Opened grade.

## UNITED STATES STANDARDS FOR GRADES OF PISTACHIO NUTS IN THE SHELL—Continued

Current standard	Proposed	Discussion
	<p>“U.S. Artificially Opened” consists of artificially opened pistachio nuts in the shell which meet the following requirements:</p> <p>(a) Basic Requirements:</p> <p>(1) Free from:</p> <p>(i) Foreign material;</p> <p>(ii) Loose kernels;</p> <p>(iii) Shell pieces;</p> <p>(iv) Particles and dust; and,</p> <p>(v) Blanks.</p> <p>(b) Shells:</p> <p>(1) Free from:</p> <p>(i) Non-split shells; and,</p> <p>(ii) Shells not split on suture.</p> <p>(2) Free from damage by:</p> <p>(i) Adhering hull material;</p> <p>(ii) Light stained;</p> <p>(iii) Dark stained; and,</p> <p>(iv) Other External (shell) defects.</p> <p>(c) Kernels;</p> <p>(1) Well dried, or, very well dried when specified in connection with the grade;</p> <p>(2) Free from damage by:</p> <p>(i) Immature kernels;</p> <p>(ii) Kernel spotting; and,</p> <p>(iii) Other Internal (kernel) defects.</p> <p>(3) Free from serious damage by:</p> <p>(i) Minor insect or vertebrate injury;</p> <p>(ii) Insect damage;</p> <p>(iii) Mold;</p> <p>(iv) Rancidity;</p> <p>(v) Decay; and,</p> <p>(vi) Other Internal (kernel) defects.</p> <p>(d) The nuts are of a size not less than <math>\frac{30}{64}</math> inch in diameter as measured by a round hole screen.</p> <p>(e) For Tolerances, see § 51. 2544.</p>	<p>It is proposed to establish a “U.S. Artificially Opened” grade, which would acknowledge the evolution in the industry’s practice of marketing its byproducts. Tables I, II and III establish tolerances for this grade level.</p> <p>Current industry marketing practices are to artificially open nuts which do not open naturally on the tree. This is accomplished either mechanically or through hand cracking. Specific requirements for this grade level are the same as is currently being proposed in the previously discussed U.S. grades. Tolerances for defective nuts are established at the same level as the proposed U.S. Select grade level. Internal (kernel) defects are the same as those cited in other grade levels.</p>
<p><b>§ 51.2543 Application of Tolerances</b> (See application of tolerances section below for a side-by-side comparison of current and proposed standards.)</p>	<p><b>§ 51.2543 U.S. Non-Split Grade</b></p>	<p>The title for this section is re-designated to allow for the establishment of the “U.S. Non-Split” grade.</p>
	<p>“U.S. Non-Split” consists of non-split pistachio nuts in the shell which meet the following requirements:</p> <p>(a) Basic requirements:</p> <p>(1) Free from:</p> <p>(i) Foreign material;</p> <p>(ii) Loose kernels;</p> <p>(iii) Shell pieces;</p> <p>(iv) Particles and dust; and,</p> <p>(v) Blanks.</p>	<p>It is proposed to establish a “U.S. Non-Split” grade which would acknowledge the evolution in the industry’s practice of marketing its byproducts. Tables I, II and III establish tolerances for this grade level. Current industry marketing practices are to artificially open, shell or sort and sell nuts which do not open naturally on the tree. Use of this grade level would be for nuts that are primarily sorted and sold for further processing. Ultimate users of unopened nuts may artificially open these nuts by hand or mechanical means or mechanically shell them and use the kernel as a food source. Artificially opened nuts may be further sorted and designated according to the “U.S. Artificially Opened” grade, previously discussed, or shelled and designated according to grade levels defined in the U.S. Standards for Grades of Shelled Pistachio Nuts, discussed elsewhere in this proposed rule.</p>

UNITED STATES STANDARDS FOR GRADES OF PISTACHIO NUTS IN THE SHELL—Continued

Current standard	Proposed	Discussion
	(b) Shells: (1) Free from damage by: (i) Adhering hull material; and, (ii) Dark stain. (c) Kernels: (1) Well dried, or very well dried when specified in connection with the grade. (2) Free from damage by: (i) Immature kernels; (ii) Kernel spotting; and, (iii) Other internal (kernel) defects. (3) Free from serious damage by: (i) Minor insect or vertebrate injury; (ii) Insect damage; (iii) Mold; (iv) Rancidity; (v) Decay; and, (vi) Other internal (kernel) defects. (d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen. (e) For Tolerances, see §51.2544.	External (shell) defects under this grade are only adhering hull material and dark stain. Other factors affecting the shells would not be considered as a defect. Internal (kernel) defects are the same as those noted in other grade levels.
<b>§ 51.2544 Size</b> (See size section below for a side-by-side comparison of current and proposed standards.)	<b>§ 51.2544 Tolerances</b>	The title and section number is proposed to be re-designated to allow for the previous establishment of the "U.S. Artificially Opened" and "U.S. Non-Split" grades.
<b>§ 51.2542 Tolerances</b> (a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, III and paragraph (b) of this section are provided. (See tables below.) (b) No lot shall contain more than 4 percent loose kernels, by weight.	<b>§ 51.2544 Tolerances</b> (a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, III of this section are provided.	The tolerance for nuts smaller than the minimum size is proposed to be reduced from 5 percent to 4 percent. This is included in Table 1. Industry sorting and sizing practices and the use of electronic sorting equipment make it possible to eliminate the smaller nuts and further reduce this tolerance. Paragraph (b), which establishes a tolerance for loose kernels, and the reference to it are proposed to be deleted from this section. The tolerance established under this paragraph has been incorporated into Table III, Line (d). Refer to Tables I, II and III and to subsequent discussion for proposed changes and established tolerances for the grades.

**Tolerances and Proposed Tolerances for United States Standards for Grades of Pistachio Nuts in the Shell**

TABLE I.—EXTERNAL (SHELL) DEFECTS

Factor	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Proposed	Proposed
	U.S. fancy	U.S. fancy	U.S. No. 1	U.S. extra No. 1	U.S. No. 2	U.S. No. 1	U.S. No. 3	U.S. select	U.S. artificially opened	U.S. non-split
External (shell Defects) (tolerances by weight)	Percent		Percent		Percent		Percent		Percent	Percent
(a) Non-split and not split on suture .....	2	2	3	3	6	6	10	10	10	N/A
(1) Non-split included in (a) .....	1	1	2	2	4	3	4	4	4	N/A
(b) Adhering hull material .....	1	1	1	1	2	1	2	2	2	2
(c) Light stained .....	7	7	12	12	20	25	35	N/A	N/A	N/A
(1) Dark stained, included in (c) .....	2	2	3	3	4	3	6	3	3	3
(d) Damage by other means .....	1	1	1	1	1	2	2	3	10	N/A
(e) Total external defects .....	N/A	9	N/A	16	N/A	N/A	N/A	N/A	N/A	N/A
	5	( <sup>1</sup> )	5	( <sup>1</sup> )	5	( <sup>1</sup> )	5	( <sup>1</sup> )	N/A	N/A
(f) Undersized (Less than <sup>30</sup> / <sub>64</sub> inch in diameter) .....	N/A	4	N/A	4	N/A	4	N/A	4	4	4

<sup>1</sup> Delete.

**Table I Discussion:**

In Line (a), pertaining to Non-Split and Not Split on Suture nuts, there are no changes in tolerances for the current grades. In Line (a)(1), included in Line (a), pertaining to Non-Split, the tolerance is reduced from 4 percent to 3 percent, in the U.S. No. 1 grade (Previously U.S. No. 2).

In Line (b), pertaining to Adhering Hull Material, the tolerance in the U.S. No. 1 grade (Previously U.S. No. 2) is reduced from 2 percent to 1 percent. In Line (c), pertaining to Light Stained, the tolerance in the U.S. No. 1 grade (Previously U.S. No. 2) is increased from 20 percent to 25 percent and increased from a maximum of 35 percent to unlimited in the U.S. Select grade (Previously U.S. No. 3). In Line (c)(1), included in Line (c), pertaining to Dark Stained, the tolerance in the U.S. No. 1 grade (Previously U.S. No. 2) is reduced from 4 percent to 3 percent and is reduced from 6 percent to 3 percent in the U.S. Select grade (Previously U.S. No. 3).

In line (d), pertaining to Damage by Other Means, the tolerance in the U.S. No. 1 grade (Previously U.S. No. 2) is increased from 1 percent to 2 percent and in the U.S. Select grade (Previously U.S. No. 3) is increased from 2 percent to 3 percent.

Line (e), pertaining to nuts less than 26/64 inch in diameter and which established a tolerance of 5 percent for small and 1 percent for larger sizes, is deleted and replaced by a new Line (e) which establishes a maximum percentage of total External Defects allowed in the U.S. Fancy and U.S. Extra No. 1 grades. Previously, these maximums were only limited by the total additive percentage of all primary defects allowed under the applicable grade level. Maximum tolerances for other grade levels established in these grade standards are not specified and the maximum allowable is dependent on the total additive percentage of all primary defects listed.

Line (f) is established to provide a maximum of 4 percent for Undersized (Less than 3/64 inch in diameter) in all grades, including the newly established levels.

Tolerances in the U.S. Artificially Opened grade are established at the same levels as the U.S. Select (previously U.S. No. 3) grade, except that any amount of light stain of the shell shall be allowed the tolerance for Damage by Other Means (line (d)) is established at 10 percent and that there shall be no established maximum tolerance for shell defects.

Tolerances in the U.S. Non-Split grade are established for Adhering Hull Material and Dark Stained. Other defects, applicable under the other grade levels do not apply under this grade. Any factors other than Adhering Hull Material or Dark Stained are unlimited as to the percentage of which may be contained.

TABLE II.—INTERNAL (KERNEL) DEFECTS

Factor	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Proposed	Proposed
	U.S. fancy	U.S. fancy	U.S. No. 1	U.S. extra No. 1	U.S. No. 2	U.S. No. 1	U.S. No. 3	U.S. select	U.S. artificially opened	U.S. non-split
Internal (Kernel) Defects (tolerances by weight)	Percent		Percent		Percent		Percent		Percent	Percent
(a) Damage .....	3	3	6	6	8	6	8	6	6	6
(b) Serious Damage .....	3	3	4	4	5	4	5	4	4	4
(1) Insect Damage, mold, rancid, decay, included in (b) .....	1	1	2	2	3	2	3	2	2	2
(c) Total Internal Defects .....	5	4	9	8	10	9	10	9	9	9

**Table II Discussion:**

In Line (a), pertaining to Damage, tolerances are reduced from 8 percent to 6 percent in the U.S. No. 1 (Previously U.S. No. 2) and U.S. Select (Previously U.S. No. 3) grades. Maximum tolerances for Damage are established at 6 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (b), pertaining to Serious Damage, tolerances are reduced from 5 percent to 4 percent in the U.S. No. 1 (Previously U.S. No. 2) and U.S. Select (Previously U.S. No. 3) grades. Maximum tolerances for Serious Damage are established at 4 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (b) (1), pertaining to Insect Damage, Mold, Rancid, and Decay, Included in Line (b), tolerances are reduced from 3 percent to 2 percent in the U.S. No. 1 (Previously U.S. No. 2) and U.S. Select (Previously U.S. No. 3) grades. Maximum tolerances for these factors are established at 2 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (c), pertaining to Total Internal Defects, tolerances are reduced from 5 percent to 4 percent in the U.S. Fancy grade; from 9 percent to 8 percent in the U.S. Extra No. 1 grade (Previously U.S. No. 2); from 10 percent to 9 percent in the U.S. No. 1 and U.S. Select grades (Previously U.S. No. 2 and U.S. No. 3). Maximum tolerances for these factors are established at 9 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

TABLE III.—OTHER DEFECTS

Factor	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed	Proposed	Proposed
	U.S. fancy	U.S. fancy	U.S. No. 1	U.S. extra No. 1	U.S. No. 2	U.S. No.1	U.S. No. 3	U.S. Select	U.S. artificially opened	U.S. non-split
Other Defects (tolerances by weight)	Percent		Percent		Percent		Percent		Percent	Percent
(a) Shell pieces and blanks .....	1	2	1	2	2	2	2	2	2	2
(1) Blanks, included in (a) .....		1		1		1		1	1	1
(b) Foreign material (No glass, metal or live insects shall be permitted) .....	.25	.25	.25	.25	.50	.25	.50	.25	.25	.25
(c) Particles and Dust .....	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25
(d) Loose kernels .....	4	4	4	5	4	6	4	6	6	6

**Table III Discussion:**

In Line (a), pertaining to Shell Pieces and Blanks, tolerances are increased from 1 percent to 2 percent in the proposed U.S. Fancy and U.S. Extra No. 1 grades (Previously U.S. Fancy and U.S. No. 1, respectively). There is no change in the subsequent grade levels. Maximum tolerances are established at 2 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (a) (1), included as a part of Line (a) and pertaining to Blanks, a separate tolerance of 1 percent for Blanks is established in all grade levels. This is the same tolerance previously established for a combination of shell pieces and Blanks. Thus, the absolute tolerance for Blanks remains the same as previously established. Maximum tolerances are established at 1 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (b), pertaining to Foreign Material, the total tolerance in the U.S. No. 1 and U.S. Select grades (Previously U.S. No. 2 and U.S. No. 3 grades, respectively) is reduced from .50 percent to .25 percent. Maximum tolerances are established at .25 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

In Line (c), pertaining to Particles and Dust, there is no change in the tolerances for any of the established grade levels. The tolerance level for the U.S. Artificially Opened and the U.S. Non-Split grades is established at .25 percent.

In Line (d), pertaining to Loose Kernels, tolerances are established as a part of this table. Previously, the tolerances were established at 4 percent under paragraph (b) of the section. For the U.S. Fancy grade, tolerances remain at 4 percent. For the U.S. Extra No. 1 grade (Previously U.S. No. 1), the tolerance is increased to 5 percent. For the U.S. No. 1 and U.S. Select grades (Previously U.S. No. 2 and U.S. No. 3, respectively), tolerances are increased to 6 percent. Maximum tolerances are established at 6 percent for the U.S. Artificially Opened and the U.S. Non-Split grades.

Current Standard	Proposed	Discussion
<b>§ 51.2545 Definitions</b> (See definitions section below for a side-by-side comparison of current and proposed standards.)	<b>§ 51.2545 Application of Tolerances</b>	The title and section number is proposed to be redesignated to allow for the previous establishment of the "U.S. Artificially Opened" and "U.S. Non-Split" grades.

Current Standard	Proposed	Discussion
<p><b>§ 51.2543 Application of Tolerances</b> The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality or size from those in the majority of the containers shall be considered a separate lot and shall be sampled separately.</p>	<p><b>§ 51.2545 Application of Tolerances</b> The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality or size from those in the majority of the containers shall be considered a separate lot and shall be sampled separately.</p>	There is no change in this text just a change in the section number.
<p><b>§ 51.2546 Average Moisture Content Determination</b> (See average moisture content determination section below for a side-by-side comparison of current and proposed standards.)</p>	<p><b>§ 51.2546 Size</b></p>	The title and section number is proposed to be redesignated to allow for the previous establishment of the "U.S. Artificially Opened" and "U.S. Non-Split" grades.
<p><b>§ 51.2544 Size</b> Nuts may be considered as meeting a size designation specified in Table IV or a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.70 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.</p>	<p><b>§ 51.2546 Size</b> Nuts may be considered as meeting a size designation specified in Table IV or a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.50 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.</p>	It is proposed to decrease the ratio of largest to smallest nuts in the size classification from 1.70 to 1.50. This would result in more uniformly sized nuts. Current sizing apparatus used by the industry has the capability to accomplish this uniformity during sizing and packing.

TABLE IV.—NUT SIZE

Size designations		Average number of nuts per ounce	
Current	Proposed	Current <sup>1</sup>	Proposed <sup>1</sup>
(Not in current standard) .....	Colossal .....	(Not in current standard) .....	Less than 18.
Extra Large .....	Extra Large .....	20 or less .....	18 to 20,
Large .....	Large .....	21 to 25 .....	21 to 25.
Medium .....	Medium .....	26 to 30 .....	26 to 30.
Small .....	Small .....	31 or more .....	More than 30.

<sup>1</sup> Before Roasting.

**Discussion:**

It is proposed to establish a Colossal size designation to provide a designation for larger size nuts. Cultural and marketing changes and technological advances in processing apparatus have allowed for the production, sorting and marketing of larger size nuts. Buyers have been demanding, and industry has been supplying, larger nuts; this classification would provide a uniform size classification for larger nuts. This would result in a new definition for the Extra Large category.

Current standard	Proposed	Discussion
<p><b>§ 51.2547 Metric Conversion Table</b> (See metric conversion table section below for a side-by-side comparison of current and proposed standards.)</p>	<p><b>§ 51.2547 Definitions</b></p>	The title and section number is proposed to be re-designated to allow for the previous establishment of the "U.S. Artificially Opened" and "U.S. Non-Split" grades.
<p><b>§ 51.2545 Definitions</b> (a) "Well dried" means the kernel is firm and crisp. (b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified. (See § 51.2546).</p>	<p><b>§ 51.2547 Definitions</b> (a) "Well dried" means the kernel is firm and crisp. (b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified. (See § 51.2546).</p>	There is no change in this text, except for section number references in subparagraphs (b) and (d)(1).

Current standard	Proposed	Discussion
<p>(c) "Loose kernels" means edible kernels or kernel portions which are out of the shell and which cannot be considered particles and dust.</p> <p>(d) "External (shell) defects" means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.</p>	<p>(c) "Loose kernels" means edible kernels or kernel portions which are out of the shell and which cannot be considered particles and dust.</p> <p>(d) "External (shell) defects" means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.</p>	
<p>(1) "Damage" by external (shell) defects means any specific defect described in paragraph (d)(1)(i) through (v) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot. (For tolerances see § 51.2542, Table I).</p>	<p>(1) "Damage" by external (shell) defects means any specific defect described in paragraph (d)(1)(i) through (v) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot. (For tolerances see § 51.2544, Table I).</p>	<p>There is no change in this text, except for section number references in subparagraphs (d)(1).</p>
<p>(i) "Non-split shells" when shells are not opened or are partially opened and will not allow an <math>18/1000</math> (.018) inch thick by <math>1/4</math> (.25) inch wide gauge to slip into the opening.</p> <p>(ii) "Not split on suture" when shells are split other than on the suture and will allow an <math>18/1000</math> (.018) inch thick by <math>1/4</math> (.25) inch wide gauge to slip into the opening.</p>	<p>(i) "Non-split shells" means shells are not opened or are partially opened and will not allow an <math>19/1000</math> (.018) inch thick by <math>1/4</math> (.25) inch wide gauge to slip into the opening.</p> <p>(ii) "Not split on suture" means shells are split other than on the suture and will allow an <math>18/1000</math> (.018) inch thick by <math>1/4</math> (.25) inch wide gauge to slip into the opening.</p>	<p>The word "when" is proposed to be replaced by the word "means" to clearly define the term noted. There is no change in the application of the term to the product.</p>
<p>(iii) "Adhering hull material" when an aggregate amount covers more than one-sixteenth of the total shell surface, or when readily noticeable on dyed shells.</p>	<p>(iii) "Adhering hull material" means an aggregate amount covers more than one-eighth of the total shell surface, or when readily noticeable on dyed shells.</p>	<p>It is proposed to increase the surface area allowed for adhering hull material. The industry believes that small amounts of adhering hull material do not detract from the marketability of nuts, that this change promotes uniformity of defining similar factors as this factor is similar in appearance to Dark Stained, that the change enables more accurate product grading, and that the tolerance allowed is sufficiently restrictive in order to promote orderly marketing.</p>
<p>(iv) "Light stained" on raw or roasted nuts, when an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface or, on dyed nuts, when readily noticeable.</p>	<p>(iv) "Light stained" on raw or roasted nuts, means an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface or, on dyed nuts, when readily noticeable.</p>	<p>The word "when" is proposed to be replaced by the word "means" to clearly define the term noted. There is no change in the application of the term to the product.</p>
<p>(v) "Dark stained" on raw or roasted nuts, when an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable.</p>	<p>(v) "Dark stained" on raw or roasted nuts, means an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable, provided that speckled appearing stain located within the area of one-fourth of the shell surface nearest the stem end shall be disregarded.</p>	<p>The word "when" is proposed to be replaced by the word "means" to clearly define the term noted. There is no change in the application of the term to the product. It is proposed to exempt speckled appearing stain on the stem end of the nut. The industry believes that this type of stain is routinely overlooked, is inconspicuous, does not adversely affect the marketing of affected nuts, and that this change will enable more accurate product grading.</p>



Current standard	Proposed	Discussion
<p>(e) "Internal (kernel) defects" means any blemish affecting the kernel. Such defects include, but are not limited to evidence of insects, immature kernels, rancid kernels, mold, or decay.</p> <p>(1) "Damage" by internal (kernel) defects means any specific defect described in paragraphs (e)(1)(i) through (iii) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2542, Table II.)</p>	<p>(e) "Internal (kernel) defects" means any blemish affecting the kernel. Such defects include, but are not limited to evidence of insects, immature kernels, rancid kernels, mold, or decay.</p> <p>(1) "Damage" by internal (kernel) defects means any specific defect described in paragraphs (e)(1)(i) through (ii) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)</p>	<p>There is no change in this text, except for section number references in subparagraph (e)(1) and the redesignation of paragraphs (i through iii) as (i through ii) as a result of the removal of paragraph (i), as discussed below.</p>
<p>(i) "Minor white or gray mold" when not readily noticeable on the kernel and which can be easily rubbed off with the fingers.</p>		<p>It is proposed to delete the term "minor mold" as the term is no longer used by the industry. All visible mold is considered under the same grading category. This would result in a rearrangement of the current outline designations for other factors in the standards.</p>
<p>(ii) "Immature kernels" when they are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.</p> <p>(iii) "Kernel spots" when dark brown or dark gray and aggregating more than one-eighth of the surface of the kernel.</p>	<p>(i) "Immature kernels" are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.</p> <p>(ii) "Kernel Spotting" refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.</p>	<p>All proposed changes of text in this section are for clarification of the definition. There is no change in the application of the term to the product. The paragraph designations are changed to correspond with the deletion of paragraph (i).</p>
<p>(2) "Serious damage" by internal (kernel) defects means any specific defect described in paragraphs (e)(2)(i) through (v) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2542, Table II.)</p>	<p>(2) "Serious damage" by internal (kernel) defects means any specific defect described in paragraphs (e)(2)(i) through (v) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)</p>	<p>There is no change in this text, except for the re-designation of the parenthetical reference to § 51.2544, required because of the rearrangement of the section numbers.</p>
<p>(i) "Minor insect or vertebrate injury" when the kernel shows conspicuous evidence of feeding.</p> <p>(ii) "Insect damage" when an insect, insect fragment, web or frass is attached to the kernel. No live insects shall be permitted.</p> <p>(iii) "Mold" when any type is readily visible on the shell or kernel.</p>	<p>(i) "Minor insect or vertebrate injury" means the kernel shows conspicuous evidence of feeding.</p> <p>(ii) "Insect damage" is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.</p> <p>(iii) "Mold" which is readily visible on the shell or kernel.</p>	<p>All proposed changes in this text are for clarification of the definition. There is no change in the application of the term to the product.</p>
<p>(iv) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.</p>	<p>(iv) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.</p>	<p>There is no change in this text.</p>
<p>(v) "Decay" when any portion of the kernel is decomposed.</p>	<p>(v) "Decay" means one-sixteenth or more of the kernel surface is decomposed.</p>	<p>It is proposed that the scoring of decay on individual kernels be amended to recognize it on the basis of surface area. Areas of decay smaller than the one-sixteenth surface area are difficult to see and verify as decay. Smaller areas are routinely dry and do not affect the taste or marketing of nuts.</p>
<p>(f) "Other defects" means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2542, Table III.)</p>	<p>(f) "Other defects" means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2544, Table III.)</p>	<p>There is no change in this text, except for the re-designation of the parenthetical reference to § 51.2544, required because of the rearrangement of the section numbers.</p>

Current standard	Proposed	Discussion
<p>(1) "Shell pieces" means half shells or pieces of shell which are loose in the sample.</p> <p>(2) "Blank" means a split or a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.</p>	<p>(1) "Shell pieces" means open in-shell nuts not containing a kernel, half shells or pieces of shell which are loose in the sample.</p> <p>(2) "Blank" means a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.</p>	<p>It is proposed to amend the definition of "Shell Pieces" to include split shell nuts without a kernel and to remove this type of empty shell from the definition of "Blanks." Such empty shells are naturally split, whole shells without a resident kernel. Blanks are considered as an empty or partially filled shell which has not become naturally opened. This will provide a more logical and uniformly applicable definition for treating loose shells or shell pieces. All empty shells, half shells or pieces of shells will be considered under the same definition.</p>
<p>(3) "Foreign material" means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.</p> <p>(4) "Particles and dust" means pieces of nut kernels which will pass through a 5/64 inch round opening.</p>	<p>(3) "Foreign material" means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.</p> <p>(4) "Particles and dust" means pieces of nut kernels which will pass through a 5/64 inch round opening.</p>	<p>There is no change in this text.</p>
	<p>(5) "Undersized" means pistachio nuts in the shell which fall through a 3/64 inch round hole screen.</p>	<p>This definition is proposed to be added in order to interpret the term as it is used in the grade level specifications and application of the tolerance established in Table I.</p>
<p><b>§ 51.2546 Average Moisture Content Determination</b></p>	<p><b>§ 51.2548 Average Moisture Content Determination</b></p>	<p>This section number is proposed to be added to allow for the previous establishment of the U.S. Artificially Opened and U.S. Non-Split grades. The title and accompanying text has been moved from § 51.2546, and is changed as noted.</p>
<p>(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.</p>	<p>(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.</p>	<p>There is no change in this text from § 51.2546, as written.</p>
<p>(b) Nuts shall be obtained from a randomly drawn composite sample and only kernels shall be used for analysis. Shells and all non-kernel material shall be removed immediately before analysis. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and the owner of any equipment used.</p>	<p>(b) Nuts shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and the owner of any equipment used.</p>	<p>The requirement that the nuts be shelled to determine the moisture content of the kernels is proposed to be deleted. It is industry practice to determine moisture content on the entire nut (shell and kernel).</p>
<p><b>§ 51.2547 Metric Conversion Table</b></p>	<p><b>§ 51.2549 Metric Conversion Table</b></p>	<p>This section number is proposed to allow for the previous establishment of the "U.S. Artificially Opened" and "U.S. Non-Split" grades. The title and text have been moved from § 51.2547.</p>
<p><b>Inches      Millimeters</b>                      5/64..... 1.98                      13/100..... 0.46                      1/4..... 6.35                      29/64..... 10.32  <b>Ounces..... Grams</b>                      1..... 28.35                      2..... 56.70</p>	<p><b>Inches      Millimeters</b>                      5/64..... 1.98                      13/100..... 0.46                      1/4..... 6.35                      30/64..... 11.88  <b>Ounces..... Grams</b>                      1..... 28.35                      2..... 56.70</p>	<p>A conversion from fractions of an inch to millimeters has been provided for the measurement 30/64, as this is the minimum nut size referenced in the standards. It replaces the fraction 26/64.</p>

UNITED STATES STANDARDS FOR GRADES OF SHELLED PISTACHIO NUTS

Current standard	Proposed	Discussion
<p><b>§ 51.2555 General</b>                      (a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.                      (b) These standards are applicable to raw, roasted, or salted pistachio kernels; or any combination thereof. However, nuts of obviously dissimilar forms shall not be commingled.</p>	<p><b>§ 51.2555 General</b>                      (a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.                      (b) These standards are applicable to raw, roasted, or salted pistachio or salted/roasted pistachio kernels.</p>	<p>The proposed change in section (b) provides the latitude to use the U.S. grade standards for kernels which have been both salted and roasted.</p>
<p><b>§ 51.2556 Grades</b>                      (a) "U.S. Fancy," "U.S. No. 1," and "U.S. No. 2" consist of pistachio kernels which meet the following basic requirements:</p>	<p><b>§ 51.2556 Grades</b>                      (a) "U.S. Fancy," "U.S. Extra No. 1," and "U.S. No. 1" consist of pistachio kernels which meet the following basic requirements:</p>	<p>The grade names of "U.S. No. 1" and "U.S. No. 2" are proposed to be changed to "U.S. Extra No. 1" and "U.S. No. 1." This would harmonize the grade references with other tree nut standards and observe current industry marketing terms.</p>
<p>(1) Well dried, or very well dried when specified in connection with the grade.                      (2) Free from:                      (1) Foreign material, including in-shell nuts, shells, or shell fragments.                      (3) Free from damage by:</p>	<p>(1) Well dried, or very well dried when specified in connection with the grade.                      (2) Free from:                      (1) Foreign material, including in-shell nuts, shells, or shell fragments.                      (3) Free from damage by:</p>	<p>There is no change in this text.</p>
<p>(i) Minor mold;                      (ii) Immature kernels;                      (iii) Spotting; and,                      (iv) Other defects.</p>	<p>(i) Immature kernels;                      (ii) Kernel spotting; and,                      (iii) Other defects.</p>	<p>The term "minor mold" is proposed to be deleted as the term is no longer used by the industry. All visible mold is considered under the same grading category. This would result in a rearrangement of the current outline designations for other factors in the standards. The term "Spotting" is revised to "Kernel spotting" to correspond with the term defined in § 51.2560.</p>
<p>(4) Free from serious damage by:                      (i) Mold;                      (ii) Minor insect or vertebrate injury;                      (iii) Insect damage;                      (iv) Rancidity;                      (v) Decay; and,                      (vi) Other defects.</p>	<p>(4) Free from serious damage by:                      (i) Mold;                      (ii) Minor insect or vertebrate injury;                      (iii) Insect damage;                      (iv) Rancidity;                      (v) Decay; and,                      (vi) Other defects.</p>	<p>(vi) There is no change in this text.</p>
<p>(5) Unless otherwise specified, kernels shall meet the size classification of Whole Kernels (See § 51.2559).</p>	<p>(5) Unless otherwise specified, kernels shall meet the size classification of Jumbo Whole Kernels (See § 51.2559).</p>	<p>The size classification "Whole Kernels" is proposed to be changed to "Jumbo Whole Kernels" to be the same as current industry use.</p>
<p><b>§ 51.2557 Tolerances</b>                      (a) In order to allow for variations incident to proper grading and handling, the tolerances, by weight, in Table I are provided.</p>	<p><b>§ 51.2557 Tolerances</b>                      (a) In order to allow for variations incident to proper grading and handling, the tolerances, by weight, in Table I are provided.</p>	<p>There is no change in this text.</p>

TABLE I

Factor (tolerances by weight)	Current	Proposed	Current	Proposed	Current	Proposed
	U.S. fancy	U.S. fancy	U.S. No. 1	U.S. extra No. 1	U.S. No. 2	U.S. No. 1
	Percent		Percent		Percent	
(a) Damage .....	2.0	2.0	2.5	2.5	3.0	3.0
(b) Serious Damage .....	1.5	1.5	2.0	2.0	2.5	2.5
(1) Insect Damage, mold, rancid, decay, included in (b) .....	.3	.3	.4	.4	.5	.5
(c) Foreign Material .....	.03	.03	.05	.05	.1	.1

**Table I Discussion:**

Column headings are changed to correspond with grade name changes. There is no change in the tolerances for the re-designated grade names, as compared to previous grade names.

Current standard	Proposed	Discussion
<p><b>§ 51.2558 Application of Tolerances</b> The tolerances for the grades apply to the entire lot and shall be based on a composite sample representative of the lot. Any container or group of containers which have kernels obviously different in quality or size from those in the majority of containers shall be considered a separate lot and shall be sampled separately.</p>	<p><b>§ 51.2558 Application of Tolerances</b> The tolerances for the grades apply to the entire lot and shall be based on a composite sample representative of the lot. Any container or group of containers which have kernels obviously different in quality or size from those in the majority of containers shall be considered a separate lot and shall be sampled separately.</p>	There is no change in this text.
<p><b>§ 51.2559 Size Classifications</b> (a) The size of pistachio kernels may be specified in connection with the grade in accordance with one of the following size classifications.</p>	<p><b>§ 51.2559 Size Classifications</b> (a) The size of pistachio kernels may be specified in connection with the grade in accordance with one of the following size classifications.</p>	No change in subparagraph (a); however, size classifications and definitions previously designated as subparagraphs (1) through (5) have been changed as noted. These changes are proposed to conform with current industry terminology and definitions of sizes used in marketing pistachio kernels.
<p>(1) Whole Kernels: 80 percent or more by weight shall be whole kernels and not more than 5 percent of the total sample shall pass through a <math>\frac{1}{64}</math> inch round opening, including not more than 1 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round opening. (2) Whole and Pieces: 40 percent or more by weight shall be whole kernels and not more than 15 percent of the total sample shall pass through a <math>\frac{1}{64}</math> inch round opening, including not more than 2 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round opening.</p>	<p>(1) Jumbo Whole Kernels: 80 percent or more by weight shall be whole kernels and not more than 5 percent of the total sample shall pass through a <math>\frac{2}{64}</math> inch round hole screen with not more than 1 percent passing through a <math>\frac{1}{64}</math> inch round hole screen. (2) Large Whole Kernels: 80 percent or more, by weight, shall be whole kernels and not more than 2 percent of the total sample shall pass through a <math>\frac{1}{64}</math> inch round hole screen.</p>	Kernel size definitions are proposed to be redefined to conform to current industry terminology and marketing practices.
<p>(3) Large Pieces: Portions of kernels of which not more than 10 percent will remain on a <math>\frac{2}{64}</math> inch round opening, provided that not more than 20 percent of the total sample shall pass through a <math>\frac{1}{64}</math> inch round opening, including not more than 2 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round opening. Not more than 25 percent of the total sample shall be whole kernels. (4) Small Pieces: Portions of kernels of which not more than 10 percent will remain on a <math>\frac{1}{64}</math> inch round opening, provided that not more than 3 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round opening. Not more than 3 percent of the total sample shall be whole kernels. (5) Mixed sizes: Means a mixture of any combination of whole kernels or pieces. The percentage of whole kernels and/or pieces may be specified. Not more than 5 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round opening.</p>	<p>(3) Large Split Kernels: 75 percent or more, by weight, shall be half kernels split lengthwise and not more than 5 percent of the total sample shall pass through a <math>\frac{1}{64}</math> inch round hole screen. (4) Whole and Broken Kernels: means a mixture of any combination of whole kernels or pieces. The percentage of whole kernels and/or pieces may be specified. Not more than 5 percent of the total sample shall pass through a <math>\frac{5}{64}</math> inch round hole screen.</p>	Kernel size definitions are proposed to be redefined to conform to current industry terminology and marketing practices.
<p><b>§ 51.2560 Definitions</b> (a) "Well dried" means the kernel is firm and crisp. (b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7 percent or lower levels, if specified (See § 51.2561). (c) "Foreign material" means leaves, sticks, in-shell nuts, shells or pieces of shells, dirt, or rocks, or any other substance other than pistachio kernels. No allowable tolerances for metal or glass. (d) "Whole kernel" means <math>\frac{3}{4}</math> of a kernel or more.</p>	<p><b>§ 51.2560 Definitions</b> (a) "Well dried" means the kernel is firm and crisp. (b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7 percent or is specified (See § 51.2561). (c) "Foreign material" means leaves, sticks, in-shell nuts, shells or pieces of shells, dirt, or rocks, or any other substance other than pistachio kernels. No allowable tolerances for metal or glass. (d) "Whole kernel" means <math>\frac{3}{4}</math> of a kernel or more.</p>	The proposed change in subparagraph (b) allows levels of moisture to be specified under special marketing purposes or customer specifications.

Current standard	Proposed	Discussion
(e) "Pieces" means less than $\frac{3}{4}$ of a kernel.	(e) "Splits" means more than $\frac{3}{4}$ of a half kernel split lengthwise.	The term "Pieces" is proposed to be deleted and replaced with the term and definition for "Splits" to harmonize the standards terminology with current industry marketing practices.
(f) "Damage" means any specific defect described in paragraph (f) (1) through (3) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)	(f) "Damage" means any specific defect described in paragraph (f) (1) through (2) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)	There is no change in this portion, except for the proposed change in paragraph numbering account of the deletion of the definition of "minor mold."
(1) "Minor white or gray mold" is mold that is not readily noticeable on the kernel and which can be easily rubbed off with the fingers.		The term "minor mold" is proposed to be deleted as the term is no longer used by the industry. All visible mold is considered under the same grading category. This would result in a rearrangement of the current outline designations for other factors in the standards.
(2) "Immature kernels" are excessively thin kernels.	(1) "Immature kernels" are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel. (2) "Kernel spotting" refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.	The definition of "Immature kernels" is proposed to be revised to objectively describe the appearance and taste of immature kernels. The paragraphs are renumbered to accommodate a previous paragraph deletion.
(g) "Serious damage" means any specific defect described in paragraph (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.) (1) "Mold" which is readily visible on the kernel.	(g) "Serious damage" means any specific defect described in paragraph (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.) (1) "Mold" which is readily visible on the kernel.	There is no change in this text.
(2) "Minor insect or vertebrate injury" means the kernel shows conspicuous evidence of feeding on the kernel.	(2) "Minor insect or vertebrate injury" means the kernel shows conspicuous evidence of feeding.	The phrase "on the kernel" is proposed to be removed as it is redundant.
(3) "Insect damage" is an insect, insect fragment, web, or frass attached to the kernel. No live insects shall be permitted. (4) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity. (5) "Decay" means any portion of the kernel is decomposed.	(3) "Insect damage" is an insect, insect fragment, web, or frass attached to the kernel. No live insects shall be permitted. (4) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity. (5) "Decay" means one-sixteenth or more of the kernel is decomposed.	It is proposed that the scoring of decay on individual kernels be amended to recognize it on the basis of surface area. Areas of decay smaller than the one-sixteenth surface area are difficult to see and verify as decay. Smaller areas are routinely dry and do not affect the taste or marketing of nuts.

Current standard	Proposed	Discussion														
<p><b>§ 51.2561 Average Moisture Content Determination</b></p> <p>(a) Determining average moisture content of the lot is not a requirement of the grades, except when kernels are specified as “very well dried.” It may be carried out upon request in connection with grade analysis or as a separate determination.</p> <p>(b) Kernels shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and owner of any equipment used.</p>	<p><b>§ 51.2561 Average Moisture Content Determination</b></p> <p>(a) Determining average moisture content of the lot is not a requirement of the grades, except when kernels are specified as “very well dried.” It may be carried out upon request in connection with grade analysis or as a separate determination.</p> <p>(b) Kernels shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and owner of any equipment used.</p>	<p>There is no change in this text.</p>														
	<p><b>§ 51.2562 Metric Conversion Chart</b></p> <table border="0"> <tr> <td><b>Inches</b></td> <td><b>Millimeters</b></td> </tr> <tr> <td>5/64.....</td> <td>1.98</td> </tr> <tr> <td>19/64.....</td> <td>6.35</td> </tr> <tr> <td>24/64.....</td> <td>9.53</td> </tr> <tr> <td><b>Ounces</b></td> <td><b>Grams</b></td> </tr> <tr> <td>1.....</td> <td>28.35</td> </tr> <tr> <td>2.....</td> <td>56.7</td> </tr> </table>	<b>Inches</b>	<b>Millimeters</b>	5/64.....	1.98	19/64.....	6.35	24/64.....	9.53	<b>Ounces</b>	<b>Grams</b>	1.....	28.35	2.....	56.7	<p>This section, title and chart is proposed to be created in order to establish a metric conversion chart. USDA strives to provide metric conversions for users to have a readily available means of converting U.S. standards of measure to internationally recognized metric measurements for those designations found in the U.S. Grade Standards.</p>
<b>Inches</b>	<b>Millimeters</b>															
5/64.....	1.98															
19/64.....	6.35															
24/64.....	9.53															
<b>Ounces</b>	<b>Grams</b>															
1.....	28.35															
2.....	56.7															

A 30-day comment period is provided for interested persons to comment. Thirty days is deemed appropriate because the proposed revisions are currently being used by the industry for trade facilitation. 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, it is proposed that 7 CFR part 51 be 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:

**§ 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:
  - (1) Well dried, or, very well dried when specified in connection with the grade.
  - (2) Free from damage by:
    - (i) Immature kernels;
    - (ii) Kernel spotting; and,
    - (iii) Other Internal (kernel) defects.
  - (3) Free from serious damage by:
    - (i) Minor insect or vertebrate injury;
    - (ii) Insect damage;
    - (iii) Mold;
    - (iv) Rancidity;
    - (v) Decay; and,
    - (vi) Other Internal (kernel) defects.
  - (d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.
  - (e) For tolerances, see § 51.2544.

3.-4. Section 51.2542 is revised to read as follows:

**§ 51.2542 U.S. Artificially Opened.**

“U.S. Artificially Opened” consists of artificially opened 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:
    - (1) Well dried, or, very well dried when specified in connection with the grade;
    - (2) Free from damage by:
      - (i) Immature kernels;
      - (ii) Kernel spotting; and,
      - (iii) Other Internal (kernel) defects.
    - (3) Free from serious damage by:
      - (i) Minor insect or vertebrate injury;
      - (ii) Insect damage;
      - (iii) Mold;
      - (iv) Rancidity;
      - (v) Decay; and,
      - (vi) Other Internal (kernel) defects.
    - (d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.
    - (e) For Tolerances, see § 51.2544.
  - 5. Section 51.2543 is revised to read as follows:

**§ 51.2543 U.S. Non-Split.**

“U.S. Non-Split” consists of non-split 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 damage by:
      - (i) Adhering hull material; and,

- (ii) Dark stain.
- (c) Kernels:
  - (1) Well dried, or very well dried when specified in connection with the grade.
  - (2) Free from damage by:
    - (i) Immature kernels;
    - (ii) Kernel spotting; and,
    - (iii) Other internal (kernel) defects.
  - (3) Free from serious damage by:
    - (i) Minor insect or vertebrate injury;
    - (ii) Insect damage;
    - (iii) Mold;
    - (iv) Rancidity;
    - (v) Decay; and,

- (vi) Other Internal (kernel) defects.
- (d) The nuts are of a size not less than <sup>30</sup>/<sub>64</sub> inch in diameter as measured by a round hole screen.
- (e) For Tolerances, see § 51.2544.

6. Section 51.2544 is revised to read as follows:

**§ 51.2544 Tolerances.**

(a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, and III of this section are provided.

**TABLE I.—TOLERANCES**

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
External (shell) Defects (tolerances by weight)	Percent	Percent	Percent	Percent	Percent	Percent
(a) Non-split and not split on suture .....	2	3	6	10	10	N/A
(1) Non-split included in (a) .....	1	2	3	4	4	N/A
(b) Adhering hull material .....	1	1	1	2	2	2
(c) Light stained .....	7	12	25	N/A	N/A	N/A
(1) Dark stained, included in (c) .....	2	3	3	3	3	3
(d) Damage by other means .....	1	1	2	3	10	N/A
(e) Total External Defects .....	9	16	N/A	N/A	N/A	N/A
(f) Undersized (Less than 30/64 inch in diameter): .....	5	5	5	5	4	5

**TABLE II.—TOLERANCES**

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Internal (Kernel) Defects (tolerances by weight)	Percent	Percent	Percent	Percent	Percent	Percent
(a) Damage .....	3	6	6	6	6	6
(b) Serious Damage .....	3	4	4	4	4	4
(1) Insect Damage, Mold, Rancid, Decay, included in (b) .....	1	2	2	2	2	2
(c) Total Internal Defects .....	4	8	9	9	9	9

**TABLE III.—TOLERANCES**

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Other Defects (tolerances by weight)	Percent	Percent	Percent	Percent	Percent	Percent
(a) Shell pieces and Blanks .....	2	2	2	2	2	2
(1) Blanks, included in (a) .....	1	1	1	1	1	1
(b) Foreign material (No glass, metal or live insects shall be permitted) .....	.25	.25	.25	.25	.25	.25
(c) Particles and Dust .....	.25	.25	.25	.25	.25	.25
(d) Loose kernels .....	4	5	6	6	6	6

7. Section 51.2545 is revised to read as follows:

**§ 51.2545 Application of tolerances.**

The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality

or size from those in the majority of the containers shall be considered a separate lot and shall be sampled separately.

8. Section 51.2546 is revised to read as follows:

**§ 51.2546 Size.**

Nuts may be considered as meeting a size designation specified in Table IV or

a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.50 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.

TABLE IV.—NUT SIZE

Size designations	Average number of nuts per ounce <sup>1</sup>
Colossal .....	Less than 18.
Extra Large .....	18 to 20.
Large .....	21 to 25.
Medium .....	26 to 30.
Small .....	More than 30.

<sup>1</sup> Before roasting

9. Section 51.2547 is revised to read as follows:

**§ 51.2547 Definitions.**

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified. (See § 51.2548.)

(c) *Loose kernels* means edible kernels or kernel portions which are out of the shell and which cannot be considered particles and dust.

(d) *External (shell) defects* means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.

(1) *Damage by external (shell) defects* means any specific defect described in paragraphs (d) (1) (i) through (v) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot. (For tolerances see § 51.2544, Table I.)

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an <sup>18</sup>/<sub>1000</sub> (.018) inch thick by <sup>1</sup>/<sub>4</sub> (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an <sup>18</sup>/<sub>1000</sub> (.018) inch thick by <sup>1</sup>/<sub>4</sub> (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount covers more than one-eighth of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Light stained* on raw or roasted nuts, means an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface or, on dyed nuts, when readily noticeable.

(v) *Dark stained* on raw or roasted nuts, means an aggregate amount of dark

brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable, provided that speckled appearing stain located within the area of one-fourth of the shell nearest the stem end shall be disregarded.

(e) *Internal (kernel) defects* means any blemish affecting the kernel. Such defects include, but are not limited to evidence of insects, immature kernels, rancid kernels, mold, or decay.

(1) *Damage by internal (kernel) defects* means any specific defect described in paragraphs (e)(1)(i) through (ii) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Immature kernels* are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.

(ii) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(2) *Serious damage by internal (kernel) defects* means any specific defect described in paragraphs (e)(2)(i) through (v) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(ii) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(iii) *Mold* which is readily visible on the shell or kernel.

(iv) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(v) *Decay* means one-sixteenth or more of the kernel surface is decomposed.

(f) *Other defects* means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2544, Table III.)

(1) *Shell pieces* means open in-shell nuts not containing a kernel, half shells

or pieces of shell which are loose in the sample.

(2) *Blank* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.

(3) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(4) *Particles and dust* means pieces of nut kernels which will pass through a <sup>5</sup>/<sub>64</sub> inch round opening.

(5) *Undersize* means pistachio nuts in the shell which fall through a <sup>30</sup>/<sub>64</sub> inch round hole screen.

10. Section 51.2548 is added to read as follows:

**§ 51.2548 Average Moisture Content Determination.**

(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as “very well dried.” It may be carried out upon request in connection with grade analysis or as a separate determination.

(b) Nuts shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and the owner of any equipment used.

11. Section 51.2549 is added to read as follows:

**§ 51.2549 Metric Conversion Table.**

Use the following table for metric conversion:

Inches	Millimeters
<sup>5</sup> / <sub>64</sub> .....	1.98
<sup>18</sup> / <sub>1000</sub> .....	0.46
<sup>1</sup> / <sub>4</sub> .....	6.35
<sup>30</sup> / <sub>64</sub> .....	11.88
Ounces	Grams
1 .....	28.35
2 .....	56.70

**Subpart—United States Standards for Grades of Shelled Pistachio Nuts**

12. In § 51.2555, paragraph (b) is revised to read as follows:

**§ 51.2555 General.**

\* \* \* \* \*

(b) These standards are applicable to raw, roasted, salted or salted/roasted pistachio kernels.



13. Section 51.2556 is revised to read as follows:

**§ 51.2556 Grades.**

(a) "U.S. Fancy," "U.S. Extra No. 1," and "U.S. No. 1" consists of pistachio kernels which meet the following requirements:

(1) Well dried, or very well dried when specified in connection with the grade.

- (2) Free from:
  - (i) Foreign material, including in-shell nuts, shells, or shell fragments.
  - (3) Free from damage by:
    - (i) Immature kernels;
    - (ii) Kernel spotting; and
    - (iii) Other defects.
  - (4) Free from serious damage by:
    - (i) Mold;
    - (ii) Minor insect or vertebrate injury;
    - (iii) Insect damage;
    - (iv) Rancidity;

- (v) Decay; and,
- (vi) Other defects.
- (5) Unless otherwise specified, kernels shall meet the size classification of Jumbo Whole Kernels (See § 51.2559).

(b) [Reserved]  
 14. In § 51.2557, Table I is revised to read as follows:

**§ 51.2557 Tolerances.**  
 \* \* \* \* \*

TABLE I.—TOLERANCES

Factor (tolerances by weight)	U.S. fancy	U.S. extra No. 1	U.S. No. 1
	Percent	Percent	Percent
(a) Damage .....	2.0	2.5	3.0
(b) Serious Damage .....	1.5	2.0	2.5
(1) Insect Damage, mold, rancid, decay, included in (b) .....	.3	.4	.5
(c) Foreign Material .....	.03	.05	.1

15. Section 51.2559 is revised to read as follows:

**§ 51.2559 Size Classifications.**

(a) The size of pistachio kernels may be specified in connection with the grade in accordance with one of the following size classifications.

(1) Jumbo Whole Kernels: 80 percent or more by weight shall be whole kernels and not more than 5 percent of the total sample shall pass through a 24/64 inch round hole screen with not more than 1 percent passing through a 16/64 inch round hole screen.

(2) Large Whole Kernels: 80 percent or more, by weight, shall be whole kernels and not more than 2 percent of the total sample shall pass through a 16/64 inch round hole screen.

(3) Large Split Kernels: 75 percent or more, by weight, shall be half kernels split lengthwise and not more than 5 percent of the total sample shall pass through a 16/64 inch round hole screen.

(4) Whole and Broken Kernels: means a mixture of any combination of whole kernels or pieces. The percentage of whole kernels and/or pieces may be specified. Not more than 5 percent of the total sample shall pass through a 5/64 inch round hole screen.

(b) [Reserved]

16. Section 51.2560 is revised to read as follows:

**§ 51.2560 Definitions.**

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7 percent or is specified (See § 51.2561).

(c) *Foreign material* means leaves, sticks, in-shell nuts, shells or pieces of

shells, dirt, or rocks, or any other substance other than pistachio kernels. No allowable tolerances for metal or glass.

(d) *Whole kernel* means 3/4 of a kernel or more.

(e) *Splits* means more than 3/4 of a half kernel split lengthwise.

(f) *Damage* means any specific defect described in paragraph (f) (1) through (2) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)

(1) *Immature kernels* are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(2) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(g) *Serious damage* means any specific defect described in paragraphs (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.)

(1) *Mold* which is readily visible on the kernel.

(2) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(3) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(4) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(5) *Decay* means one-sixteenth or more of the kernel is decomposed.

17. Section 51.2562 is added to read as follows:

**§ 51.2562 Metric Conversion Table.**

Use the following table for metric conversion:

Inches	Millimeters
5/64 .....	1.98
19/64 .....	6.35
24/64 .....	9.53
Ounces	Grams
1 .....	28.35
2 .....	56.7

Dated: May 16, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Parts 301 and 319**

[Docket No. 00-067-1]

**RIN 0579-AB55**

**Gypsy Moth; Regulated Articles**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.