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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-98-304 C]

#### Pistachio Nuts in the Shell, and Shelled Pistachio Nuts; Grade Standards

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

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations which were published August 22, 2003 (68 FR 50681). The regulations related to

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

**EFFECTIVE DATE:** December 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250-0240, Fax (202) 720-8871 or call (202) 720-2185; e-mail [David.Priester@usda.gov](mailto:David.Priester@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of this correction revised §§ 51.2544, Tolerances, and 51.2557, Tolerances.

##### Need for Correction

As published, minor insect injury or vertebrate injury was inadvertently omitted from regulatory text § 51.2544, Table II paragraph (b) and § 51.2557, Table I paragraph (b). Additionally,

mold, rancid, decay was incorrectly listed in § 51.2544, Table II paragraph (b)(1), and § 51.2557, Table I paragraph (b)(1). This document corrects those errors. The corrected tables conform to the definitions of serious damage in § 51.2547 and § 51.2560.

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

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

■ Accordingly, 7 CFR is amended by making the following corrections:

#### PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

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

**Authority:** 7 U.S.C. 1621-1627.

■ 2. In § 51.2544, Table II is revised to read as follows:

##### § 51.2544 Tolerances.

\* \* \* \* \*

TABLE II.—TOLERANCES

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

\* \* \* \* \*

■ 3. In § 51.2557, Table I is revised to read as follows:

##### § 51.2557 Tolerances.

\* \* \* \* \*

TABLE 1.—TOLERANCES

Factor (tolerances by weight)	U.S. fancy (percent)	U.S. extra No. 1 (percent)	U.S. No. 1 (percent)
(a) Damage .....	2.0	2.5	3.0
(b) Serious Damage (Minor Insect or Vertebrate Injury, Mold, Rancid, Decay) .....	1.5	2.0	2.5
(1) Insect Damage, included in (b) .....	.3	.4	.5
(c) Foreign Material .....	.03	.05	.1

Dated: December 17, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-28056 Filed 12-22-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 784

RIN 0560-AH15

#### 2004 Ewe Lamb Replacement and Retention Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

**SUMMARY:** This rule sets forth the regulations for the 2004 Ewe Lamb Replacement and Retention Payment Program. This program will assist producers of sheep and promote the replacement and retention of ewe lamb breeding stock by providing payments to producers who have recently reduced production and flock size due to low prices, and other market conditions.

**DATES:** This rule is effective on December 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512. Telephone (202) 720-1919; email: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Final Rule

The ELRRPP provides direct payments to sheep producers in order to help the U.S. sheep industry achieve sustained competitiveness. A reduction in sheep producer income has experienced reduced production of sheep and lambs and flock size. The domestic sheep industry has experienced reduced market prices, production, flock size, and investment in improving sheep flocks. In addition, persistent drought conditions in major U.S. sheep-producing areas have reduced available feed and forage capacity. The ELRRPP will help alleviate some of the financial stress that sheep producers are facing with an infusion of funds to improve their flocks or meet other obligations.

The Farm Service Agency published a proposed rule for ELRRPP regulations on September 7, 2004, with a 30-day comment period which ended on October 7, 2004. The proposed rule

provided that ELRRPP be based on ewe lambs held in the period between August 1, 2003, through July 31, 2004, and then, on through the end of the lamb's own offspring lambing cycle, end at the conclusion of the application period and disbursement of allotted funds. The program will operate under regulations codified in 7 CFR part 784.

#### Comments and Changes to Final Rule

The Agency received 21 public comments during the 30-day comment period. One comment was received from a marketing cooperative, 8 comments were received from sheep and lamb producer associations, and 12 comments were received from individual members of sheep and lamb companies or ranch operations. All comments received were in support of the Ewe Lamb Replacement and Retention Payment Program and expressed the need for the program because of bad drought conditions that have severely impacted the sheep and lamb industry over the past few years. In addition, 19 out of 21 of the comments received requested the Agency implement an expeditious sign-up and conclusion so that payments can be issued to producers before the end of the calendar year. No substantive changes were made from the regulations contained in the proposed rule.

However, clarifying changes were made to conform the new program with that previously administered and to promote efficiency. An unnecessary and inaccurate reference to a finality rule has been eliminated. Also, a clarifying provision has been added, among others, to specify that a purchase without possession during the base period would not constitute an acquisition in the base period. As clarified, a qualifying ewe lamb must at some point in the base period have been under 18 months old and not have, at that time, produced an offspring of its own. To receive payment, the applicant must certify that the lamb meets program conditions. The certification must show that, as of the time of certification, the lamb does not have parrot mouth, foot rot, or scrapie. Spot checks will be conducted and lambs found to have these conditions will be ineligible for payment. Other requirements apply, including holding the lamb for a specified period of time tied to the lambing cycle. Funding of the program is limited, and claims will accordingly be limited. A few comments indicated confusion with the information collection requirements of the program. These comments will be addressed in the Agency's submission of the information collection to the Office

of Management and Budget (OMB) under the Paperwork Reduction Act.

#### Executive Order 12866

This rule is issued in conformance with Executive Order 12866. This rule has been determined to be "Not Significant," and was not reviewed by OMB.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because FSA is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

#### Environmental Review

It has been determined by an environmental assessment (EA) that the actions of the Ewe Lamb Replacement and Retention Payment Program (ELRRPP) will have no significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement is not necessary to address the potential impacts of this rule.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with this rule. Before any legal action may be brought regarding determinations made under 7 CFR part 784, administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372. See 48 FR 29115 (June 24, 1983) for the notice related to 7 CFR part 3014, subpart V.

#### Unfunded Mandates Reform Act

This rule contains no Federal mandates for State, local, and tribal governments or the private sector under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act of 1995

The information collection required to support ELRRPP has been approved by OMB and assigned OMB control number 0560-0246.

#### Executive Order 12612

This rule has no Federalism implications warranting a Federalism Assessment. This rule will not affect States, or their political subdivisions, or the distribution of power and